

## PUBLIC RECORD

Dates: 03/11/2022 (adjourned part-heard)  
18/11/2022 (Reconvened)

Medical Practitioner's name: Dr Arruran SIVAKUMAR  
GMC reference number: 7411515  
Primary medical qualification: MB BS 2013 Kings College London

Type of case Outcome on impairment  
Review - Misconduct Impaired

Summary of outcome  
Suspension, 6 months.  
Review hearing directed

## Tribunal:

Legally Qualified Chair	Mrs Laura Paul
Medical Tribunal Member:	Dr Jonathan Davies
Medical Tribunal Member:	Dr Richard Brighton-Knight
Tribunal Clerk:	Mr Sewa Singh

## Attendance and Representation:

Medical Practitioner:	Present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Ms Natalia Cornwall, Counsel

## Attendance of Press / Public

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

## Overarching Objective

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

## Determination on Impairment - 03/11/2022

1. At this review hearing the Tribunal has to decide in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules') whether Dr Sivakumar's fitness to practise is impaired by reason of misconduct.

## Background

2. Dr Sivakumar qualified in 2013 from King's College London. After completing his Foundation training, he practised in various surgical specialties, most recently in Upper GI Surgery at the Royal Hampshire County Hospital, from October 2020 to April 2021. At the time of the events in question, Dr Sivakumar was practising as a Foundation Junior doctor at the University Hospital XXX.

3. In summary, female colleagues, in particular Drs A, B and C, made various allegations of harassment, including physical aggression, against Dr Sivakumar. Initial concerns were raised with the GMC on 17 April 2018 by Professor D, Postgraduate Dean for Health Education England (HEE) XXX. Further allegations against Dr Sivakumar related to matters of probity.

## October 2021 / January 2022 Hearing

4. Dr Sivakumar's case was initially considered by a Medical Practitioners Tribunal ('MPT'), at a hearing which took place in October 2021 and January 2022 ('October 2021 Tribunal'). At that hearing, Dr Sivakumar made admissions to a small number of paragraphs/subparagraphs of the Allegation. The October 2021 Tribunal found that Dr Sivakumar's behaviour towards Dr A at relevant times between August 2013 and March 2016, amounted to harassment. It also found that Dr Sivakumar's behaviour towards Dr A had been physically abusive and, during conversations with Dr A, had been emotionally abusive.

5. The October 2021 Tribunal considered the evidence presented to it in relation to Dr Sivakumar's behaviour towards Dr B and found that he had behaved in a threatening manner on a number of occasions. It also found that Dr Sivakumar had been verbally abusive to Dr B around March 2018.

6. On 9 April 2018 Dr Sivakumar attended a meeting with the Isle of Wight NHS Trust ('the Trust') in respect of the allegations made by Dr B during which Dr Sivakumar was asked

if the issues relating to Dr B ‘were an isolated incident or if there had been any other allegations made in the past’. In response to that question Dr Sivakumar admitted that he had responded “*no, never had an issue like this before*”, or words to that effect. He failed to disclose that he had received a Solicitor’s letter in respect of complaints made by Dr A.

7. The October 2021 Tribunal noted that Dr Sivakumar focused on external factors in his reflections, as opposed to accepting responsibility. The questions he put to Dr A and Dr B in cross-examination sought to deflect blame for his actions onto them, or other extraneous factors, such as being in an unfamiliar situation. Dr Sivakumar denied most of the Allegation at the outset of this hearing, only admitting that he called Dr A ‘a slut’ during the hearing after evidence on this.

8. The October 2021 Tribunal was of the view that Dr Sivakumar was acutely aware of what he had lost, but showed little empathy for those whom his actions had most affected. He wrote: *‘I am faced with the daunting prospect of losing a career that I have worked so hard for, due to some ill choice words and actions at a time when I felt vulnerable and seeking approval and belonging in a new town and group of friends and colleagues.’*

9. The October 2021 Tribunal considered that to characterise his verbal and emotional abuse as ‘ill-chosen words’, or to imply that physical abuse was an error of judgment, was to minimise the gravity of his actions. It bore in mind that the intimidation of Dr A persisted over a long period of time and that it was not accidental.

10. The October 2021 Tribunal considered that Dr Sivakumar’s behaviour could not be excused on the basis that XXX. Immaturity, jealousy or intoxication may provide some explanation, but nothing could justify Dr Sivakumar’s actions. Dr Sivakumar’s harassment of Dr A was then repeated with Dr B, who had to enlist the help of the Deanery and Trust to avoid his behaviour. He continued to make contact with Dr A and Dr B after they had both asked him to cease contact. In the Tribunal’s view, although there is no evidence that Dr Sivakumar’s behaviour had compromised professional standards, his attention should have been on his work, to minimise risk of error. The Tribunal was mindful that doctors need to justify the trust placed in them by less experienced colleagues as well as patients.

11. The October 2021 Tribunal acknowledged that it would be difficult for Dr Sivakumar to demonstrate insight or remediation immediately after the facts he had denied had been found proved. However, it was concerned by his apparent lack of insight into the general impact of physical and verbal abuse on others. The October 2021 Tribunal considered that Dr Sivakumar’s insight was, at best, partial. It considered that most people would find Dr Sivakumar’s actions deplorable, actions that would be strongly condemned by doctors and other members of the public. It was of the view that such behaviour, including abuse (in private), could bring the medical profession into disrepute.

12. The October 2021 Tribunal found that Dr Sivakumar’s conduct fell far short of the standards of conduct reasonably expected of a doctor. His actions were in breach of paragraph 65 of *GMP* which provides that doctors must ensure that their conduct justifies

their patients' trust in them and the public's trust in the medical profession. It found that, cumulatively, his actions amounted to serious misconduct, as did each individual act of physical abuse.

13. In determining whether or not Dr Sivakumar's fitness to practise was impaired by reason of his misconduct, the October 2021 Tribunal took into account that there was no evidence to suggest Dr Sivakumar had repeated his misconduct, nor was there any evidence of continuing of harassing or abusive behaviour. Indeed, by way of reparation, Dr Sivakumar sought to apologise to Dr A and Dr B in the hearing.

14. However, the October 2021 Tribunal considered that Dr Sivakumar did not appear to understand the seriousness of his misconduct or its enduring impact. His denial of most paragraphs of the Allegation meant that several doctors including Dr A and Dr B (both deemed vulnerable) were required to attend the Tribunal hearing and be questioned. The October 2021 Tribunal noted that Dr Sivakumar reflected that he had *'refrained from social interactions that can be misconstrued or manipulated in a fashion that would suggest my intentions are anything other than well intended'*. The October 2021 Tribunal considered from this the implication was that others had misconstrued his behaviour whilst he failed to take responsibility and sought to deflect blame. In its view, therefore, Dr Sivakumar's minimisation and denial indicated a lack of genuine remorse or desire to change.

15. In reaching its decision on impairment, the October 2021 Tribunal determined that there was a significant risk of future harm to others based on Dr Sivakumar's lack of insight or remediation. In its view, Dr Sivakumar had breached fundamental tenets of the medical profession, including the need to be open, act with integrity, assist colleagues and prioritise the needs of patients.

16. The October 2021 Tribunal concluded that the need to maintain public confidence in the medical profession and to declare standards of behaviour meant that Dr Sivakumar's fitness to practise was impaired by reason of his misconduct. It was of the view that members of the public would not have confidence in doctors if a Tribunal regarded such misconduct as leaving fitness to practise unimpaired.

17. The October 2021 Tribunal concluded that a finding of current impairment was required to protect the public, maintain public confidence in the medical profession and promote standards and conduct for doctors. Accordingly, the October 2021 Tribunal determined that Dr Sivakumar's fitness to practice was impaired by reason of misconduct.

18. In reaching a decision on sanction, the October 2021 Tribunal identified aggravating factors which included:

- Dr Sivakumar's behaviour related to two unrelated individuals;
- In relation to Dr A, Dr Sivakumar's harassment was persistent and continued over several months; and included repeated acts of violence, in front of other people and behind closed doors;

- Dr Sivakumar’s misconduct in relation to Dr B occurred on several occasions and lasted for several months;
- Dr Sivakumar’s harassment of Dr A and Dr B had a significant and enduring impact;
- Dr Sivakumar harassed Dr A and Dr B in the workplace, as well as outside, in person and by electronic means.

19. It also identified mitigating factors which included:

- Dr Sivakumar’s misconduct occurred over seven years ago;
- There was no evidence of repetition of the misconduct since the events;
- Dr Sivakumar made apologies to Dr A and Dr B during the Tribunal;
- Dr Sivakumar provided detailed reflections on his abusive behaviour;
- Dr Sivakumar undertook anger management and other courses;
- Dr Sivakumar started to develop some insight into the impact of his misconduct;
- Testimonials from several colleagues which indicated the respect they had for Dr Sivakumar.

20. The October 2021 Tribunal found that Dr Sivakumar was repeatedly violent to Dr A and harassed both Dr A and Dr B over a period of time. Although he had begun to consider why he acted as he did, as well as to develop some insight into the impact of his actions, the October 2021 Tribunal also identified an element of detachment in Dr Sivakumar’s written reflections and concluded that he had failed to accept full responsibility for his actions.

21. The October 2021 Tribunal did not consider that Dr Sivakumar had demonstrated sufficient recognition of the reasons for his behaviour, or its potential to cause enduring harm or the actual impact on Dr A or Dr B, who both had to give evidence to the Tribunal and answer questions in cross-examination. In its view, Dr Sivakumar’s insight was, at best, very recent and partial.

22. The October 2021 Tribunal considered that suspension would have a deterrent effect; it should send a strong signal to the medical profession and the wider public that misconduct of this kind is unprofessional and potentially career-ending. It considered that the criteria in paragraph 97 of the SG were satisfied in this case. This was because there was no evidence to demonstrate that remediation was unlikely to be successful. There were no previous unsuccessful attempts to engage. Dr Sivakumar had provided evidence that he was willing to engage with others in order to better understand his misconduct. The October 2021 Tribunal was satisfied that there was no evidence of repetition of similar behaviour since the incidents over seven years ago. It was satisfied that Dr Sivakumar had begun to develop some insight and it did not consider that there was a significant risk of repetition of the misconduct found.

23. In view of Dr Sivakumar’s efforts to remediate and develop insight, albeit very recent and partial, the October 2021 Tribunal accepted that Dr Sivakumar’s actions were not fundamentally incompatible with his continued registration on the medical register. It determined that a period of suspension would be sufficient to satisfy the public interest,

mark the gravity of Dr Sivakumar’s misconduct, and declare and uphold standards and maintain public trust and confidence in the medical profession.

24. The October 2021 Tribunal was concerned to ensure that Dr Sivakumar had sufficient time, before any review, to further remediate and develop further insight. It concluded that a nine-month suspension was the most appropriate and proportionate sanction in Dr Sivakumar’s case. It considered that nine months was sufficient to uphold proper standards and to maintain public confidence in the medical profession.

25. The October 2021 Tribunal directed a review of Dr Sivakumar’s case, to be convened shortly before the end of his suspension, at which Dr Sivakumar will have the opportunity to demonstrate any further remediation or development of insight; show that he has maintained his medical knowledge and skills and continued professional development (CPD); and is fit to return to practice safely.

#### Today’s Review Tribunal

#### **The Evidence**

26. The Tribunal has taken into account all the documentary evidence received. This included but was not limited to:

#### Available to the October 2021 Tribunal

- Report of Ms E of The Communication Skills Associates, dated September 2018;
- Discharge letter from Dr F, Psychologist, dated 21 October 2021;
- Letter from Dr G, NHS Practitioner Health, dated 24 September 2022;
- Dr Sivakumar’s personal reflections in relation to XXX, between September 2018 and November 2021;
- Certificates of attendance on training courses as evidence of CPD which included a Professional Boundaries Course on 13 July 2021, together with his reflections and learning from the course; and Conflict Resolution Course Level 1 and 2, dated 9 August 2021 and 1 September 2021;
- Dr Sivakumar’s Junior Doctor Award – November 2020;
- Testimonial from clinical colleagues attesting to his clinical work and character;

#### Available to this Tribunal

- Record of Determinations of the MPT hearing held on 25 October 2021 - 19 November 2021 and 20 – 21 January 2022;
- Dr Sivakumar’s further reflections, dated 29 July 2022; and
- Reports of Dr H, Dr Sivakumar’s Clinical Supervisor, 20 April 2022 and 14 October 2022, in which he raised no concerns about Dr Sivakumar’s clinical practice whilst he shadowed Dr H at matchdays.

## Submissions

27. On behalf of the GMC, Ms Cornwall, Counsel, submitted that the GMC was neutral on the issue of impairment. It was a matter for the Tribunal, based on its own independent judgement alone. Ms Cornwall submitted that whilst Dr Sivakumar appeared to have moved forward, the GMC did have some concern in respect of his use of the words *'our troublesome relationship'* in his reflective statement dated 29 July 2022.

28. Dr Sivakumar submitted his fitness to practise was no longer impaired.

29. He reiterated his apology to Dr A and Dr B, and their families, for his actions and the impact his actions had on all those involved. He said that he realised the impact of his actions had been significant at the previous Tribunal hearing stating that it made him genuinely upset. Dr Sivakumar submitted that during his suspension, he has had time to think about his actions, the impact on those involved, and reflect on the circumstances that led to him being in this position. He said he fully accepted responsibility for his actions, which were totally unacceptable, and did not represent him as a man and as a doctor. Dr Sivakumar said that his actions had brought into question the position of privilege which doctors hold and brought the profession into disrepute.

30. Dr Sivakumar submitted there was no excuse for his actions stating *'it's as simple as that'* and there were *'no circumstances where my behaviour was appropriate'*. He said he was *'deeply sorry'* to Dr A and Dr B, adding that he had learnt his lesson and that he is a different person from 10 years ago, who now knows his values.

31. He referred the Tribunal to XXX and the courses he has attended, including anger management and professional boundaries courses. Dr Sivakumar stated that the courses had given him the tools he needs to deal with the troubles life brings.

32. Dr Sivakumar confirmed that the defence bundle he had produced today was the same defence bundle that had been placed before the October 2021 Tribunal, but he included it again as a point of reference. He said that insofar as remediation is concerned, he has worked on looking inwardly at himself and his behaviours. He said that whilst he had done some courses these had been exhausted and he could not do more in that respect, added to the fact that he could not afford to do further courses. As his national training registration was removed, Dr Sivakumar said he tried to keep his skills training fairly broad and, in this respect, referred the Tribunal to his studies for his FRCS examination, the multi-specialty recruitment questions, and the matchday crowd doctoring. He confirmed his aspiration of becoming a military doctor.

33. In response to Ms Cornwall's comments on the use of the words *'our troublesome relationship'* in his reflective statement, Dr Sivakumar said that he used this term because they were in relationships and were friends and colleagues, and it was to describe a joint relationship but not joint responsibility. In response to the use of the words *'out of*

character’, Dr Sivakumar stated that he had acted out of character as it was not the way he had been brought up to act. He stated that he comes from a close-knit family, and his sister was present at the hearing to support him. He stated that he had been brought up to respect women. He stated that he is not normally an angry person. He said that the courses he had attended had taught him about the power dynamics of relationships, that he does not take failure well, and how to deal with that in a better way. Dr Sivakumar added that those who know him and have grown up with him were shocked and appalled at his behaviour and could not believe he had acted in that way.

### **The Relevant Legal Principles**

34. In a review case, in practical terms, there is a persuasive burden upon the doctor to demonstrate that all the concerns which have been identified have been adequately addressed, and that remediation has taken place. If so, a Tribunal might then conclude that the doctor’s fitness to practise is no longer impaired.

35. The Tribunal reminded itself that the decision in relation to impairment is a matter for the Tribunal’s judgement alone. As noted above, the October 2021 Tribunal set out the evidence that a future Tribunal may be assisted by. This Tribunal is aware that it is for the doctor to satisfy it that he would be safe to return to unrestricted practice.

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

37. In reaching its decision, the Tribunal bore in mind that its primary responsibility is to the statutory overarching objective which is as follows:

- To protect, promote and maintain the health, safety and well-being of the public;
- To promote and maintain public confidence in the medical profession;
- To promote and maintain proper professional standards and conduct for members of that profession.

### **The Tribunal’s Determination on Impairment**

38. The Tribunal considered the evidence before it, as well as the submissions made by Ms Cornwall and Dr Sivakumar.

39. The Tribunal noted that in directing a review hearing, the October 2021 Tribunal stated that Dr Sivakumar would have the opportunity to demonstrate any further remediation or development of insight; also to show that he has maintained skills, continued professional development and is able to return to practice safely.



40. The Tribunal noted that the new evidence from Dr Sivakumar was limited to a short reflective statement, two letters from XXX Constabulary and two reports from Dr H after Dr Sivakumar acted as a matchday observer on a number of occasions.

41. In relation to maintaining his skills and continued professional development, the Tribunal was satisfied with the information provided by Dr Sivakumar in his reflective statement and in his oral submission to the Tribunal. However, there was no evidence of up to date CPD. Whilst the Tribunal accepted that Dr Sivakumar may have financial constraints, the Tribunal considered that there are a number of free courses and webinars available online.

42. The Tribunal was concerned that Dr Sivakumar had not provided any up to date, objective evidence of his remediation or development of his insight. Dr Sivakumar said in his oral submissions that he had exhausted all training courses. Whilst the Tribunal accepts that it is difficult to identify and/or complete further courses, it did consider that Dr Sivakumar could have undertaken other courses during his period of suspension such as free online courses. In addition, Dr Sivakumar could have documented his reflections and remediation in a journal. Specifically, he could have now recorded his reflections upon the evidence which he said was new to him during the October 2021 Tribunal hearing.

43. The Tribunal was troubled by the letters from XXX Constabulary, which appeared to be an attempt by Dr Sivakumar to produce evidence relating to the original Allegation, and perhaps an indication that he may not fully accept some of the findings of the October 2021 Tribunal.

44. The Tribunal noted that whilst the defence bundle was impressive in terms of the evidence Dr Sivakumar provided to the 2021 Tribunal, it was not sufficient to re-produce the same defence bundle for this reviewing Tribunal as evidence of further remediation and insight. The Tribunal considered that this was important, given the October 2021 Tribunal found Dr Sivakumar's insight was 'at best partial', and there was a need for further remediation and development of insight. The October 2021 Tribunal based its findings having assessed all of the evidence at that hearing, including the contents of the defence bundle. The only additional evidence to this Tribunal was Dr Sivakumar's brief reflective statement and the reports from Dr H.

45. The Tribunal noted that these events took place some years ago and that there is no evidence to suggest that Dr Sivakumar has repeated his misconduct. He has apologised to Dr A and Dr B for his actions. The Tribunal was of the view that Dr Sivakumar has clearly made progress with regard to remediating his misconduct. He has provided written and oral evidence to the effect that he accepts that his actions were inappropriate. This is a positive step and indicative of an increased level of insight on his part.

46. However, the Tribunal considered that Dr Sivakumar has further progress to make with regard to demonstrating and evidencing his insight. The Tribunal has taken account of Dr Sivakumar's overall evidence and that in relation to remediation, he focused inwardly on

himself and his own behaviour. Dr Sivakumar spoke about how his actions had impacted on Dr A and Dr B and on the reputation of the profession. Whilst the Tribunal is encouraged by this, it found it significant that when trying to explain why his behaviour was ‘out of character’, he was unable to explain what led him to behave in the way he did, what the triggers were for such behaviour, and how his learning from the courses he attended would ensure he would not act in this way in the future. The Tribunal was also concerned with the use of the phrase ‘our troublesome relationships’ in Dr Sivakumar’s reflective statement. The explanation given by Dr Sivakumar in his submissions did not satisfy the Tribunal that he was fully accepting the responsibility of his actions.

47. The Tribunal noted paragraph 364 of the Impairment Determination produced by the 2021 Tribunal, which states:

*‘364. In determining impairment, the Tribunal concluded that there is significant risk of future harm to others based on Dr Sivakumar’s lack of insight or remediation. He has breached fundamental tenets of the medical profession, including the need to be open, act with integrity, assist colleagues and prioritise the needs of patients.’*

48. The Tribunal considered that Dr Sivakumar is on the right path to addressing the concerns identified by the October 2021 Tribunal. He has developed further insight into the concerns identified in this case. The evidence before the Tribunal is limited, and in the main, was developed and provided to the previous Tribunal hearing. In the absence of any recent objective evidence, the Tribunal could not be satisfied Dr Sivakumar has sufficiently or adequately remediated his misconduct. The Tribunal considers there still remains a risk of future harm to others based on Dr Sivakumar’s lack of sufficient or adequate insight into the reasons why he behaved in the way he did and what he would do to prevent behaving in such a way in the future.

49. In the circumstances, this Tribunal has therefore determined that Dr Sivakumar’s fitness to practise remains impaired by reason of misconduct.

### **Determination on Sanction - 18/11/2022**

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

2. Prior to hearing submissions on sanction, the Tribunal received a request from Dr Sivakumar for his sister, Dr I, to be allowed to assist him during this stage of the proceedings. Dr Sivakumar explained that he was not making an application for his sister to be his representative, but for her to be present at the hearing with her camera turned on. Ms Cornwall raised no objection. In view of the fact that Dr Sivakumar is not legally represented, and noting that the GMC have no objection, the Tribunal acceded to Dr Sivakumar’s request.

### **The Evidence**

3. The Tribunal has taken into account the background to the case and the evidence received during the earlier stage of the hearing where relevant to reaching a decision on what action, if any, it should take with regard to Dr Sivakumar's registration.

4. Dr Sivakumar provided further documents which included:

- his extensive revision notes (undated);
- letter from the GMC Case Advisor to Dr Sivakumar dated 7 July 2022 setting out details of this review hearing and information to be provided at the review hearing;
- his reflective diary for the period 5 August 2022 to 5 November 2022;
- his written submissions to this Tribunal in relation to these events and the steps he had taken to remediate and develop insight into the concerns.

5. In his written submissions, Dr Sivakumar explained that as a result of significant financial constraints, due to him not being able to secure any employment, he was unable to afford legal advice. He stated that he was led to believe by the GMC Case Advisor, in July 2022, that he would only be asked questions regarding his suspension, his insight, and remediation undertaken over the past nine months. Dr Sivakumar apologised for not being able to fully reflect on his insight at this review hearing. He added that his focus was on his views as of this present moment, how he had moved forward, and his insight into why his behaviour was unacceptable and how he would prevent such occurrences in the future. Dr Sivakumar explained that the defence bundle, placed before the October 2021 Tribunal, was only included at this review hearing for completeness as it was his understanding that that bundle would not be available to this Tribunal. He said that he wanted to show to this Tribunal how his thoughts had progressed since his initial reflections immediately after his IOT hearing in 2018.

6. Dr Sivakumar said that, for this review hearing, when asked by the Case Advisor to prepare a reflective piece, he prepared his reflections based initially on his 'voice note diary'. He said that he was not aware he could make further submissions beyond this, and that his oral submissions at the impairment stage of this hearing came from his reflective diary. Dr Sivakumar said that his reflective diary, which he prepared only for his own benefit, helped him to rationalise his thoughts and to understand the situation better.

7. Dr Sivakumar reiterated that he carried out extensive work through formal courses, and he reminded the Tribunal that he had been XXX. He said that he regularly reviewed his notes from the XXX and put into practice the techniques that he has learnt.

8. Dr Sivakumar accepted that his actions were wrong stating, in relation to the letter from XXX Constabulary, *'this was in no way a reflection of diverting blame or responsibility. I should not have done what I did, and it was wrong. The reports were submitted as mentioned for a point of record,...'* He went on to say *'My actions were unacceptable, and I accept full responsibility for my actions.'* In relation to his actions being out of character, Dr Sivakumar

referred to the testimonials provided by his clinical colleagues whom, he stated, spoke highly of his good character, of someone who goes out of his way to help others, make sure friends get home safe at the end of an evening, a person who is trusted by colleagues of different ages, ethnicities and genders, and a person who can be relied upon. Dr Sivakumar reiterated that these events took place almost ten years ago and that he now is not the person he was then, and his actions were out of character. He added that at this review hearing, he did not comment on triggers for his behaviours as *'I wanted to focus on my current state of mind, and how I had changed as a person and as a man.'* Dr Sivakumar said that at this review hearing, he wanted to demonstrate his understanding of how to prevent such occurrences happening again and how to become a better person.

9. Dr Sivakumar stated that there were no concerns about his clinical skills. He said that he had attempted to *'keep up my manual dexterity skills through using a laparoscopic box training and doing various jobs – painting, carpentry etc.'* and *'kept abreast of surgical techniques using the websurg website and the college website as resource.'* adding that he had submitted a paper in order to keep up his academic writing skills. In addition, he stated that he was a member of the Royal College of Surgeons (RCS) and continued to receive the annals with the latest research and papers.

10. In conclusion, Dr Sivakumar submitted that there was no public safety concern as there were no concerns about his clinical practice; and he has apologised repeatedly and sincerely to both Dr A and Dr B for his actions and will be forever remorseful for his actions and the impact they had on them both. In relation to character, Dr Sivakumar submitted that he was not innately a bad person but had made bad decisions due to poor coping mechanisms when dealing with rejection and jealousy, though this was not an excuse. He submitted that he has rectified this through XXX, reflection, attendance at anger management courses, professional boundaries courses, and through CBT therapy.

11. In relation to insight, Dr Sivakumar said that this was a continual process evolving with time, and that reflections can be different day to day, and insight gained each day. Dr Sivakumar stated, however, that he considered he had gained complete insight into the cause and the impact of his actions, stating that these would never be repeated. Dr Sivakumar referred to the testimonials provided by his clinical colleagues attesting to his good character and which, he submitted, supported that his actions were completely out of character. He said that since these matters which occurred some ten years ago, he has matured and was a different person now, and there had been no recurrence of these matters since.

12. In relation to the public interest, Dr Sivakumar submitted that he is a good clinician, and he presented no risk to public safety. He said that the risk of repetition is low, adding that he was now XXX. Dr Sivakumar said that he is a hard working and a good surgeon, who was on track to complete his surgical training. Dr Sivakumar stated that the public should not be deprived of an otherwise good doctor and that it was in the public interest to allow him to return to clinical practice. He said that any further punishment would not serve the public

interest. Dr Sivakumar submitted that, in all the circumstances, he has demonstrated that he has remediated his misconduct.

13. Ms Cornwall addressed the Tribunal in relation to the further evidence provided by Dr Sivakumar, and confirmed that whilst the GMC had not objected to the Tribunal receiving the additional evidence, it had been explained to Dr Sivakumar that the Tribunal was not procedurally able to re-open its determination on impairment, and much of Dr Sivakumar's evidence appeared to seek to do just that. The Tribunal had been provided with a copy of an email sent to Dr Sivakumar from the GMC dated 16 November 2022 to that effect. Ms Cornwall submitted that it was a matter for the Tribunal if it found any of the new evidence relevant to it at the sanction stage.

14. The Tribunal noted Ms Cornwall's submissions and explained to Dr Sivakumar that the determination on impairment had been handed down on 3 November 2022, and we are now moving to consider the issue of sanction.

### Submissions

15. On behalf of the GMC, Ms Cornwall, submitted to the Tribunal that the decision as to the appropriate sanction is a matter for the Tribunal based on its independent judgement. She reminded the Tribunal of the findings of the October 2021 Tribunal. She also referred to this Tribunal's findings in its determination on impairment that Dr Sivakumar had not demonstrated adequate insight into the reasons why he behaved in the way he had.

16. Ms Cornwall referred the Tribunal to the overarching objective and also to paragraphs of the Sanctions Guidance ('SG'). She submitted that the Tribunal needed to balance the aggravating and mitigating features identified in the case. Ms Cornwall submitted that in the absence of any exceptional circumstances, this case could not be closed by taking no action. She added that conditions would not be sufficient, nor would they adequately address the public interest given the nature of the concerns in this case. She referred the Tribunal to paragraphs 93 and 97 (a), (e), (f) and (g) of the SG which she submitted are engaged. She reminded the Tribunal of its finding that Dr Sivakumar has some way to go to demonstrate he had sufficient insight into the concerns. She acknowledged that Dr Sivakumar had shown some insight and was heading in the right direction.

17. Ms Cornwall submitted that the appropriate sanction is a further period of suspension which would allow Dr Sivakumar time to develop further insight into his misconduct. She acknowledged that this is not a case where Dr Sivakumar's registration is fundamentally incompatible with his continued registration on the medical register. She invited the Tribunal to impose a further period of suspension upon Dr Sivakumar's registration.

18. Dr Sivakumar referred the Tribunal to his written submissions and welcomed any questions from the Tribunal. He apologised for his apparent lack of understanding of the process since the last hearing, referencing the letter he received from the GMC in July 2022. He said that he was not seeking to blame anyone for his lack of understanding but clarified

the reason for submitting the evidence from the October 2021 Tribunal to the reviewing Tribunal on 3 November 2022.

19. Dr Sivakumar said that over the past nine months, he has thought a lot about his actions that had led to him being suspended. He expressed regret and apologised for his actions. He stated that he had made terrible decisions and behaved inappropriately. He has worked on how to remedy the situation, and that his reflective writing before the Tribunal demonstrates that he now has insight. He stated that he truly appreciates what he has done and that it will never be repeated again.

20. In relation to the impact of this case and any further sanction, he submitted that there was no element of risk to the public, which he said is evidenced by his appraisals and other documentary evidence. He said he was genuinely sorry for his actions. He said he has worked really hard since the last hearing to understand his actions and has sought to address the concerns. He said he has remediated and appreciated the impact of his actions. He said that these matters took place some nine to ten years ago and he is now a very different person. In relation to public confidence, he said there is no risk of repetition, he now has good personal relationships, was stable in his life, had used the time to work on himself and reflect on his actions. He said he had done all he could do to remedy the issues identified in this case.

21. Dr Sivakumar said that the NHS had invested a huge amount of time and money in him, and he wished to return to clinical practice and give back to the profession. He said that any further sanction would do little to benefit the profession and the public. He submitted that a further, short period of suspension of two weeks was appropriate.

22. Dr Sivakumar, in response to questions from the Tribunal, said that he was more calm and measured in his responses to those he interacted with, and was generally more empathetic and understanding of how his words could impact on others. He said that he recognised when he was at risk of becoming annoyed with a situation or with someone, stating that he would now step back and '*sleep on it*' rather than respond immediately. He added that he regularly referred to his learning from the anger management courses he had attended, and he kept a diary of issues that had occurred and how he had dealt with those.

23. About the ongoing process, Dr Sivakumar said that reflection is an evolving process and his thoughts and work over the past five years or so will stay with him for the rest of his life. He said that whatever the Tribunal determine to be the appropriate period of suspension, his reflections would continue beyond that period and would change on an ongoing basis. Dr Sivakumar stated that it hurt him to hear at the October 2021 Tribunal how his actions had impacted upon both Dr A and Dr B, and their families and friends. He said that doctors are in a privileged position and patients give themselves to doctors. He said he wanted to show the Tribunal how he had used the nine months to further consider his reflections and to learn from them.

## The Tribunal's Determination

24. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own judgement.

25. In reaching its decision, the Tribunal has taken account of the SG. It has borne in mind that the purpose of sanctions is not to be punitive, but to protect patients and the wider public interest, although they may have a punitive effect. It has also taken account of the submissions made by Ms Cornwall and by Dr Sivakumar.

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

#### No action

27. The Tribunal first considered whether to conclude Dr Sivakumar's case by taking no action with regard to his registration, allowing the order to lapse on expiry. The Tribunal has already determined that Dr Sivakumar's fitness to practise remains impaired by reason of his misconduct. It determined that, in the absence of any circumstances which could be regarded as exceptional, it would be inappropriate to take no action at this point.

#### Conditions

28. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Sivakumar's registration. It had regard to paragraph 85 of the SG, which states:

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

29. The Tribunal has already determined that Dr Sivakumar's insight in relation to his misconduct is limited. It has also found that it could not exclude the risk of Dr Sivakumar repeating his misconduct. The matters before the Tribunal are serious with the misconduct including Dr Sivakumar behaving in an abusive manner towards Dr A and Dr B.

30. The Tribunal, therefore, determined that it would not be possible to formulate workable conditions that would adequately address Dr Sivakumar's misconduct.

#### Suspension

31. The Tribunal then went on to consider whether suspending Dr Sivakumar's registration would be appropriate and proportionate. The Tribunal has borne in mind the SG in relation to suspension including paragraphs 91, 92 and 93, in which it states:



*'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).'*

32. It also had regard to paragraph 97 of SG which sets out factors indicating that suspension might be the appropriate response:

*'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.*

.....

*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.'*

33. The Tribunal has noted the evidence provided by Dr Sivakumar, as summarised at paragraphs 5 - 12 above and it has taken this into account. The Tribunal also had regard to the testimonials provided by his clinical colleagues attesting to his clinical work and good character. The Tribunal has not been provided with any evidence to suggest that Dr Sivakumar has repeated his misconduct. It noted that Dr Sivakumar's actions had not directly caused harm to patients nor had any impact on patient safety.

34. The Tribunal took into account that Dr Sivakumar has shown some remorse and he has acknowledged that his actions and behaviour were unacceptable. In his oral and written



submissions to the Tribunal, Dr Sivakumar said that he recognised the impact his actions had on Dr A and Dr B. It is encouraged by the steps he has taken on the journey to remediation.

35. However, the Tribunal reminded itself that the misconduct in this case includes protracted periods of abusive behaviour and harassment. Dr A endured verbal, written, emotional and physical abuse and harassment from August 2013 to March 2016. Dr B was subjected to verbal, written, emotional and threatening abuse and harassment from May 2017 to March 2018. The Tribunal had not been provided with any further evidence from Dr Sivakumar that he understands nor fully appreciates the impact his actions had on Dr A and Dr B. He has not reflected on his role as an abuser. The Tribunal determined that Dr Sivakumar has minimised the gravity of his offences. He stated on more than one occasion that the events occurred nine to ten years ago and that he is a different person now, but the last event was less than five years ago.

36. The Tribunal considered that Dr Sivakumar has failed to address concerns over the seriousness of his behaviour. His evidence is limited in this regard and there is no significant evidence of remediation or insight into his misconduct in this respect or in respect of the wider public interest. The Tribunal has already determined that it could not be satisfied that Dr Sivakumar would not repeat his misconduct. Whilst Dr Sivakumar has written some reflective statements, has reviewed his notes from the courses he attended, the Tribunal considered that there is still a barrier in his understanding of how his behaviour impacted on others. Dr Sivakumar has persistently failed to fully demonstrate insight into his misconduct. Dr Sivakumar still has some way to go before he could satisfy the Tribunal, to an adequate standard, that he is fit to return to unrestricted practice.

37. The Tribunal is satisfied that the factors set out under paragraph 97(a), (e), (f) and (g) of the SG are engaged in this case at this review hearing. It therefore determined that a further suspension was the appropriate and proportionate response in this case.

### **Erasure**

38. In view of the seriousness with which it viewed Dr Sivakumar's misconduct, the Tribunal considered whether erasure would be an appropriate sanction. The matters in this case are serious, such that a doctor's persistent failure to demonstrate insight into the concerns identified can be regarded as incompatible with continued registration and would justify the sanction of erasure. In this case, Dr Sivakumar behaved in an abusive manner towards Dr A and Dr B over a protracted period of time. Dr Sivakumar submitted that these matters occurred some ten years ago. However, the Tribunal notes that the events relating to Dr A took place from August 2013 to March 2016, and those relating to Dr B took place from May 2017 to March 2018. His misconduct was a significant departure from GMP. Dr Sivakumar has provided limited new evidence of remediation in relation to the findings made by the October 2021 Tribunal in his reflections.

39. Having regard to paragraphs 107 – 109 of the SG, whilst some of the matters in paragraph 109 are applicable, the Tribunal, taking all matters in the round and standing back

and looking at section 1(1A) and 1(1B) of the Medical Act 1983, considered that erasure would, at present, be disproportionate on the facts and findings of this case. It is satisfied that suspension remains the appropriate sanction in this case.

### Length of suspension

40. As to the length of the further period of suspension, the Tribunal noted paragraph 100 and 102 of the SG. It considered that based on the evidence before it, that a period of 6 months would be appropriate and sufficient to allow Dr Sivakumar to demonstrate sufficient remediation.

### Review

41. The Tribunal determined to direct a review of Dr Sivakumar's case. A review hearing will convene before the end of the period of suspension. The Tribunal reminds Dr Sivakumar that at the review hearing, **the onus will be on him to demonstrate the extent to which he has remediated his misconduct** and that he is safe to return to unrestricted practice. The Tribunal considered that the reviewing Tribunal might be assisted by receiving:

- evidence that Dr Sivakumar has reflected on the Tribunal's findings and developed further insight into his misconduct. This may take the form of a reflective statement and might cover in some detail, for example:
  - he has developed further insight into his misconduct as identified by the October 2021 Tribunal and this Tribunal;
  - the impact of his misconduct on the reputation of, and public confidence in, the medical profession;
  - evidence that he has kept his medical knowledge and skills, XXX, up to date;
  - evidence that he has grasped fully the gravity of the offences, including the level of his abusive behaviour, which led to his misconduct;
  - reflection on the potential long-term effects on victims of abusive behaviour;
  - how he would avoid such a situation or similar situations from recurring.
- any other relevant evidence Dr Sivakumar wishes to present to the reviewing Tribunal.

42. The Tribunal has determined to impose a further period of suspension on Dr Sivakumar's registration for six months. The MPTS will send Dr Sivakumar a letter informing him of his right of appeal and when the direction and the new sanction will come into effect. The current order of suspension will remain in place during the appeal period, should Dr Sivakumar decide to appeal.

43. That concludes the case.

ANNEX A – 18/11/2022

Adjournment

1. After announcing its decision and handing down its determination on impairment, the Tribunal informed Dr Sivakumar and Ms Cornwall that it has determined, of its own motion, to adjourn this hearing under Rule 29(2) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'), which states:

*“Where a hearing of which notice has been served on the practitioner in accordance with these Rules has commenced, the Committee or Tribunal considering the matter may, at any stage in their proceedings, whether of their own motion or upon the application of a party to the proceedings, adjourn the hearing until such time and date as they think fit.”*

2. The Tribunal decided that there was insufficient time to conclude this hearing within the allocated time. The Tribunal was mindful that it was undesirable to adjourn a hearing, however, it was aware that having just handed down its determination on impairment, this was a natural point to adjourn the proceedings. The Tribunal also noted that an adjournment at this stage would allow Dr Sivakumar, who is unrepresented, sufficient time to prepare for the sanction stage and produce further information, should he wish to do so.
3. The Tribunal advised Dr Sivakumar and Ms Cornwall that following inquiries made with MPTS Case Management, a reconvened hearing could be accommodated on either 11, 18 or 25 November 2022, and invited them to comment. Both Dr Sivakumar and Ms Cornwall accepted the Tribunal's decision to adjourn and advised they were available on 18 November 2022.
4. The Tribunal was mindful that Dr Sivakumar's substantive sanction of suspension is due to expire on 25 November 2022.
5. The Tribunal therefore determined to adjourn this hearing until 18 November 2022.