PUBLIC RECORD

Dates: 27/11/2023 - 05/12/2023

Medical Practitioner's name:	Dr David SIM
GMC reference number:	2645395
Primary medical qualification:	MB BCh 1980 Queens University of Belfast

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

Summary of outcome

Suspension, 12 months.

Tribunal:

Legally Qualified Chair	Mrs Emma Gilberthorpe
Lay Tribunal Member:	Ms Morgan Phillips
Medical Tribunal Member:	Dr Maria Dyban

Tribunal Clerk:	Mr Andrew Ormsby

Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Andrew Hockton, Counsel, instructed by Carson McDowell LLP
GMC Representative:	Mr Nicholas Hall, 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 & Impairment - 01/12/2023

1. This determination will be handed down in private under the provisions of Rule 41 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). A redacted version will be published at the close of the hearing.

Background

2. Dr Sim qualified at Queen's University Belfast in 1980. In 1986 he attained Membership of the Royal College of Obstetricians and Gynaecologists (MRCOG) and in 1999 he attained Fellowship of the Royal College of Obstetricians and Gynaecologists (FRCOG).

3. Between April 1993 and September 2021 Dr Sim was employed as a Consultant Obstetrician and Gynaecologist at Daisy Hill Hospital (the Hospital), part of Southern Health and Social Care Trust (SHSCT).

4. Between 1993 and April 2023 Dr Sim also held a private obstetrics and gynaecology clinic in Newry.

5. At the time of the events Dr Sim was practising as a Consultant Obstetrician and Gynaecologist at the Hospital.

6. It is alleged that on 13 September 2021 Dr Sim performed an emergency classical caesarean section (CS) and sterilisation on Patient A.

7. It is alleged that the sterilisation was inappropriate.

8. Dr Sim referred himself to the GMC on 14 June 2022.

9. The Responsible Officer at SHSCT also referred Dr Sim to the GMC on 24 June 2022.

The Outcome of Applications Made during the Facts Stage

10. The Tribunal granted a joint application at the outset of the hearing, made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to amend the Allegation.

The Allegation and the Doctor's Response

11. The Allegation made against Dr Sim is as follows:

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

1. On 13 September 2021 you performed an emergency classical caesarean section ('CS') and sterilisation on Patient A. The sterilisation was inappropriate because:

    a. Patient A had not:

        i. consented to the sterilisation; Admitted and Found Proved

        ii. expressed any wish to undergo sterilisation at any time prior to the CS; Admitted and Found Proved

    b. there was no medical reason to perform a sterilisation at the time of the CS; Admitted and Found Proved

    c. the sterilisation was not necessary to:

        i. save Patient A's life; Admitted and Found Proved

        ii. prevent serious harm to Patient A's health; Admitted and Found Proved

d. you did not give Patient A information on effective contraception so that she could make her own decision as an autonomous adult;
Admitted and Found Proved

e. ~~undertaking sterilisation restricted Patient A's rights and freedoms; including her future choice as to whether and when to have more children;~~
Amended under Rule 17(6)

f. to do so was in violation of Patient A's reproductive rights;
Admitted and Found Proved

g. by sterilising Patient A, you ~~caused deliberate damage to~~ occluded Patient A's fallopian tubes to permanently impair their normal function;
Amended under Rule 17(6)
Admitted and Found Proved

h. ~~You caused Patient A direct harm in breach of the established ethical principle of non-maleficence~~. Amended under Rule 17(6)

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

The Admitted Facts

12. At the outset of these proceedings, Mr Hockton on behalf of Dr Sim made admissions to the entirety 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 these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

13. In light of the full admissions made by Dr Sim, 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 Sim's fitness to practise is impaired by reason of misconduct.

Events of 13 September 2021

Patient A

14. Patient A stated in her witness statement, dated 30 July 2023, that she had known Dr Sim since 2006, when her first child was born. She stated that she went on to have numerous children. The events of 13 September 2021 relate to the birth of her son.

15. Patient A stated that on 13 September 2021 she suffered bleeding whilst at home whilst 33 weeks pregnant whereupon she went to the Hospital with her husband [Mr J].

16. Patient A stated that she arrived at the Hospital and was checked by Dr Sim who advised that '*all seemed fine'* but that due to her placenta '*hanging low'*, he wanted to keep her in for observation on the Maternity Ward for at least 24 to 48 hours.

17. Patient A stated that whilst in bed she *'felt a pop'* and suffered bleeding whereupon she was taken into the Theatre room. She stated that she was feeling panicked, and the anaesthetist was trying to calm her down whereupon the midwife provided her with some consent forms for a CS:

> *'The midwife provided some forms for me to sign and told me it was so I could consent to the emergency caesarean.* […] *I did not read the forms properly, but I signed it since everything was happening so quickly. However, nothing was properly discussed and neither do I recall a sterilisation procedure ever being discussed in any shape or form. I remember I only signed one pink consent form, and as mentioned above, the midwife mentioned it was for the emergency caesarean.'*

18. Patient A went on to give the following account:

> *'I asked for gas and air, and while the anaesthetist was arranging for this, Dr Sim had arrived. He then told the anaesthetist to take away the gas and air, and he looked at me and said words to the effect of 'we're putting you to sleep, as you may have to get a hysterectomy'. A midwife was trying to get a trace of the baby's heartbeat at the same time, and Dr Sim was instructing her to put the baby to sleep. The next thing I remember was I was put to sleep, and at this point I wasn't even sure whether my baby had survived*
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> *The emergency caesarean was completed, and I eventually came around after the anaesthetic had worn off. When I did wake up, I remember I was shaking a lot Dr Sim was present, and so was a midwife and when I kept asking whether I had to undergo the hysterectomy, and whether the baby was okay. Dr Sim responded by*

advising the baby was okay and had been taken to the intensive care unit. He also told me that a hysterectomy was not required
as the bleeding stopped when the baby was delivered, but then he said, 'I sterilised you'. I then said something along the lines of 'what?', when Dr Sim repeated himself and said words to the effect of 'I sterilised you, I put 2 clips on'. I thought I was delirious or dreaming when he had said that sterilised me.

Dr Sim then left the room, and I asked [Mr J] to clarify what Dr Sim had said. [Mr J] confirmed Dr Sim had said that he sterilised me, and that he also had informed [Mr J] before.'

19. Patient A stated, when she got home, her life was turned upside down and that she had been unable to comprehend the events that had happened to her and that she had been sterilised without her consent.

20. Patient A underwent a sterilisation reversal procedure at Craigavon Hospital on 12 July 2022.

21. Patient A further emphasised that overall, the sterilisation was not consented to by her, and neither did she have any knowledge or conversation about this with Dr Sim.

22. Dr Sim did not dispute Patient A's evidence.

Mr J

23. Mr J stated, in his witness statement dated 30 July 2022, that Dr Sim came into the delivery suite and spoke to him to confirm that the baby had been delivered safely and that Patient A's bleeding had been controlled; he also mentioned *'something regarding* [Patient A] *being sterilised'*.

24. Mr J stated that he had *'been busy thinking about [Patient A] and the baby'* and therefore had not *'registered'* what Dr Sim had told him. He stated that he remembered feeling confused and not knowing what this information regarding sterilisation had meant.

25. Further, Mr J stated that he could not recall this [sterilisation] being discussed between Patient A, Dr Sim and himself.

26. Dr Sim did not dispute Mr J 's evidence.

Dr Sim's witness statement

27. In his witness statement, dated 20 November 2023, Dr Sim stated that he had cared for Patient A during numerous pregnancies between 2006 and 2021.

28. Patient A had attended an appointment with him on 31 December 2019 during which they discussed sterilisation.

29. Dr Sim stated that on 20 April 2021 he undertook a private sector 'booking appointment' with Patient A. During that appointment Dr Sim's advised Patient A regarding elective caesarean section and that a tubal ligation could be performed at the same time.

30. Dr Sim stated that Patient A had attended the Hospital on the morning of 12 September 2021 with a mild painless antepartum bleed at the time of a passing motion.

31. Dr Sim stated that Patient A woke at 01:10 hours the following morning, 13 September 2021, with a large vaginal bleed and was immediately transferred to theatre. He stated that she was tachycardic and with a falling blood pressure and that the anaesthetic team were resuscitating her as he arrived. He stated that he deferred CS for a few minutes to allow Patient A to be further resuscitated and that it was at that point that he had a discussion with Patient A about her condition and his surgical plan. Dr Sim stated that he explained to the patient the need for a general anaesthetic and emergency CS due to life threatening haemorrhage. He explained the possibility of having to perform a hysterectomy to control excess bleeding. Consent had already been obtained by a colleague for CS and potential hysterectomy.

32. Dr Sim went on to state that once Patient A had been successfully anaesthetised, he performed a classical CS to the right edge of the placenta and delivered her baby boy, born in fair condition, and placenta. He then successfully closed the uterus, and performed a 'time out' to ensure that the haemostasis was secure.

33. Dr Sim states that it was at this point, in the context of the 'time-out', that he remembered that sterilisation had been discussed with Patient A antenatally. He stated that he did not have his private notes but recollected that Patient A had wished to be sterilised:

'I did not have access to her private notes, however, it was my recollection that she had wished to be sterilised. The issue had not been re-explored upon admission, either through discussion or formal documented consent , because imminent delivery had not been considered likely. I spoke to her husband during this time out to update him on her condition. I also asked him if he was aware of her wishes re sterilisation. He was not aware of her wishes.'

34. Dr Sim stated that it was with previous discussions in mind that he considered the following factors:

'(i) the benefit in undertaking tubal ligation in the context of the emergency caesarean section under general anaesthetic was that it would avoid a separate operation at a future date; (ii) there was an assumption on my part that the patient would not wish to countenance the risks of a further pregnancy in circumstances where she now had two separate uterine scars following two difficult emergency caesarean sections with major blood loss having developed in each; (iii) she had narrowly avoided a hysterectomy in the context of total blood loss of 3400 ml; and (iv) it was my recollection of my previous discussion with Patient A that had she had to undergo a caesarean section, that she would undergo a sterilisation at the same time'

35. Dr Sim reflected that his decision to sterilise Patient A was a significant lapse of judgement and offered his sincere apologies to Patient A. He stated that it was with utmost regret that his actions had undermined Patient As trust in him. Dr Sim stated that he had made assumptions about the patient's wishes based upon his recollection of previous discussion with Patient A:

'I consider that I made assumptions about the patient's wishes based upon my recollection of previous discussions with Patient A, as well as my assessment of the risks of future pregnancy. My approach in this regard could be justifiably criticised as paternalistic. I accept that I was mistaken in relation to the issue of consent and very much regret this. I apologise unreservedly to Patient A. I did not intend to harm Patient A, and at the time, considered that the tubal ligation was not only in accordance with her wishes, but also in her best interests.'

36. Dr Sim went on to reflect on his decision to proceed with sterilisation and stated that he had attempted to reconstruct his thinking at the time of the events, which took place during events in which Patient A had developed a life-threatening complication of pregnancy

in the early hours of the morning and that the situation was highly pressurised. He stated that it is possible these factors may have adversely affected his judgement at the time.

Witness Evidence

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

- Patient A, dated 30 July 2023; and
- Mr J [Patent A's husband], dated 30 July 2023

38. Dr Sim provided his own witness statement, dated 20 November 2023.

39. Dr Sim did not give oral evidence at the hearing.

40. The Tribunal also received evidence on behalf of Dr Sim in the form of testimonials from the following witnesses who were not called to give oral evidence:

- Mr C, retired General Surgeon at the Hospital and current Corporate Lead for Appraisal and Revalidation at SHCT, dated 16 November 2023;
- Mr D, Consultant Nephrologist at the Hospital, dated 15 November 2023;
- Dr E, Consultant Obstetrician and Gynaecologist and Clinical Director for governance at the Hospital, dated 15 November 2023;
- Dr F, retired Consultant Obstetrician and Gynaecologist at the Hospital, dated 20 November 2023;
- Dr G, Consultant Paediatrician, previously Clinical Director of Paediatrics & Obstetrics at the Hospital, dated 21 November 2023; and
- Dr H, Consultant Anaesthetist at the Hospital, dated 21 November 2023.

Expert Witness Evidence

41. The Tribunal also received written expert witness reports, dated 1 November 2022, and a supplementary report dated 25 August 2023, from expert witness Dr I, Consultant Obstetrician and Gynaecologist, who had been called by the GMC to assist the Tribunal in understanding the professional standards to be expected of a reasonably competent Consultant Obstetrician & Gynaecologist and the care that Patient A received.

42. Dr I reviewed the relevant documents and examined the background to the events on 13 September 2021 and provided his opinion.

43. Dr I concluded, in his report dated 1 November 2022, that, if Dr Sim had sterilised Patient A without her consent, then in his opinion, Dr Sim's actions fell seriously below the standard expected of a reasonably competent Consultant Obstetrician & Gynaecologist:

> *'If it is the case that Dr Sim deliberately sterilised Patient without her consent, then in my opinion his actions fell seriously below the standard expected of a reasonably competent Consultant Obstetrician Gynaecologist. I consider that this action falls seriously below the standard expected since to operate without consent is a violation of the patient's right to autonomy in making decisions about her medical care.'*
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> […]
>
> *'If it is the case that Dr Sim deliberately sterilised Patient without her consent, then in my opinion the overall standard of care fell seriously below the standard expected of a reasonably competent Consultant Obstetrician Gynaecologist. I consider that the violation of the patient's reproductive rights by a specialist in women's healthcare to fall so far below the standard expected that it was shockingly bad.'*

Documentary Evidence

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

- Email from Dr Sim self-referring concerns to the GMC, dated 14 June 2022;
- Referral from SHSCT, dated 22 June 2022;
- SHSCT Investigation Report, 'Investigation into consent for sterilisation at time of an emergency C-Section on 13/09/2021 in Daisy Hill Hospital', dated 29 September 2022;
- Root Cause Analysis Report, 10 February 2023; and
- Medical Records of Patient A, various dates.

Submissions

Submissions on behalf of the GMC

45. Mr Hall submitted that Dr Sim's conduct constituted misconduct and that the doctor's practice was impaired by all three limbs of the overarching objective.

46. Mr Hall referred to case law and referenced relevant paragraphs of *Good Medical Practice* ('GMP 2013') which he submitted Dr Sim had breached through his actions.

47. Mr Hall highlighted the expert opinion of Dr I and GMC Guidance *'Decision making and Consent'* and asserted that Dr Sim's conduct in sterilising Patient A without her consent was *'shockingly bad'*.

48. Mr Hall submitted that Dr Sim had recognised the seriousness of his behaviour and referenced the doctor's witness statement and reflections.

49. Mr Hall submitted that it remained clear that Patient A did not consent to sterilisation and that she had not expressed any wish for sterilisation and referred to the impact upon the patient who had been left feeling violated.

50. Mr Hall submitted that it was concerning that Dr Sim had drawn an assumption that Patient A would consent to sterilisation based upon his previous discussions with her, when those previous discussions had taken place in December 2019 and April 2021; a considerable time before the events in question. Mr Hall stated that *'it was concerning that two conversations some time back were taken by the doctor to convey Patient A's consent'*. Furthermore, he stated that since these conversations no further conversations about sterilisation had taken place, despite the doctor having seen Patient A on four more occasions.

51. Mr Hall concluded by submitting that a well-informed member of the public would find Dr Sim's actions to be shocking and would be seriously concerned regarding doctors and the general reputation of the profession.

<u>Submissions on behalf of Dr Sim</u>

52. Mr Hockton submitted that this case was very much out of the ordinary and that the highly unusual events took place in the context of an emergency situation with very significant risk to mother and baby.

53. At the outset of his submissions Mr Hockton reminded the Tribunal that Dr Sim's formal title was Mr Sim as the doctor is a Consultant Obstetrician.

54. Mr Hockton submitted that Dr Sim believed that he was acting in the patient's best interests, and whilst this belief was not irrational, and indeed was logical, it was unfortunately wrong. He stated that the doctor's actions in carrying out an inappropriate sterilisation was not motivated by malice but was rather the result of a genuine belief that he was acting in accordance with the patient's wishes and in the patient's best interests.

55. Mr Hockton stated that Dr Sim had, at an early stage, recognised his failings and that, at the initial Trust investigation, the doctor did not seek to minimise his failings and recognised the significance of his breach of patient autonomy.

56. Mr Hockton highlighted the expert opinion of Dr I and noted that the expert opinion agreed that, in light of the risk of uterine rupture, the risk of placenta covering scars, the risk of future heavy bleeding and need for hysterectomy, many clinicians would agree that such risks would be a reason to recommend against future pregnancy.

57. Mr Hockton submitted that the doctor did not seek to excuse his conduct but asked that the context of the events be considered.

58. Further, Mr Hockton emphasised that this was an isolated event in the context of an unblemished 40-year career and was not characteristic of the doctor's practice or conduct. He asked that the Tribunal consider the Trust investigation while noting that it is not bound by decisions elsewhere.

59. Mr Hockton referred to the case of *Grant* and asserted that it did not apply to the present circumstances as Dr Sim was not a risk to patient safety as this was an isolated case where the doctor got things wrong. Further, he asserted that the doctor was no risk in the future as the events involved an unfortunate error but not a deliberate error and did not involve a breach of a fundamental tenet and no public interest which required *'that something be done'*.

60. Mr Hockton also referred to the case of *GMC v Calhaem* [2007] EWHC 2606 (Admin) in particular the dicta that a single act/omission may amount to misconduct if particularly grave but is less likely to amount to misconduct than multiple acts or omissions.

61. Mr Hockton submitted that, notwithstanding the admitted failures in this case, the threshold for serious misconduct had not been met. However, if the Tribunal did find misconduct it should take into account the significant remediation and positive testimonials, he noted the seniority of the providers of the testimonials.

62. Mr Hockton concluded by stating that, if a finding of misconduct were made, he would invite the Tribunal not to find that Dr Sim was impaired, but rather consider a warning.

The Tribunal's Approach

63. The Tribunal reminded itself that at this stage of proceedings, there is no burden nor standard of proof and the decision as to impairment is a matter for the Tribunal's judgement alone.

64. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted in relation to a finding of impairment based on misconduct: first, whether the facts as found proved amounted to misconduct, which in this context connoted a serious departure from generally accepted professional standards, and then whether the finding of that misconduct should lead to a finding of current impairment of fitness to practise.

65. The Tribunal must determine whether Dr Sim's fitness to practise is impaired today, taking into account Dr Sim's conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and whether there is any likelihood of repetition. The Tribunal was also obliged to consider whether a finding of impairment was required on public interest grounds alone.

66. Whilst there is no statutory definition of impairment, the Tribunal had regard to the case of *CHRE v NMC and Grant* [2011] EWHC 927 where Dame Janet Smith's observations in the Fifth Report of the Shipman Inquiry were endorsed. Dame Janet Smith suggested that questions of impairment could be considered in the light of the following considerations:

> *'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:*
>
> > *a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d. ….'

67. The Tribunal had regard to the case of *Cohen v GMC [2008] EWHC 581 (Admin)*, and took into account whether the '*conduct which led to the charge is easily remediable; that, second, it has been remedied; and, third, that it is highly unlikely to be repeated*'.

68. The Tribunal also had regard to the principle that any finding of misconduct going to fitness to practise must relate to serious misconduct as described *in Remedy UK Ltd v General Medical Council [2010] EWHC 1245 (Admin)*, as *'sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise'.*

69. Further, the Tribunal also had regard to the case of *Meadow v General Medical Council* [2006] EWCA Civ 1390 in which Auld LJ quoted Collins J approvingly in the case of *Nandi v General Medical Council* [2004] EWHC 2317 (Admin) where he said that serious misconduct would be *'conduct which would be regarded as deplorable by fellow practitioners'.*

70. The Tribunal accepted the above advice of the Legally Qualified Chair (LQC).

The Tribunal's determination on impairment

Misconduct

71. In reaching its determination as to whether Dr Sim's admitted and proven actions amounted to misconduct, the Tribunal had regard to GMP, in particular the following:

'17 You must be satisfied that you have consent or other valid authority before you carry out any examination or investigation, provide treatment or involve patients or volunteers in teaching or research.'

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

72. The Tribunal also noted the GMC Guidance document *'Decision making and consent'* (2020), in particular the following paragraphs:

'11 […] *You should be aware of how your own preferences might influence the advice you give and the language you use. When recommending an option for treatment or care to a patient you must explain your reasons for doing so, and share information about reasonable alternatives, including the option to take no action.* […]*.'*

'31 You must be clear about the scope of decisions so that patients understand exactly what they are consenting to. You must not exceed the scope of a patient's consent, except in an emergency […].'

'48 You must respect your patient's right to decide […].'

'57 You should review a patient's decision immediately before providing treatment or care and, if treatment is ongoing, make sure there are clear arrangements in place to review decisions regularly, allowing patients opportunity to ask questions and discuss any concerns. […].*'*

'63 In an emergency, if a patient is unconscious or you otherwise conclude that they lack capacity and it's not possible to find out their wishes, you can provide treatment that is immediately necessary to save their life or to prevent a serious deterioration of their condition. If there is more than one option, the treatment you provide should be the least restrictive of the patient's rights and freedoms, including their future choices.'

73. The Tribunal noted that it had not received any evidence that Dr Sim had discussed alternative contraception with Patient A short of sterilisation. The Tribunal considered that Dr Sim's actions in failing to provide information on alternative contraception and inappropriately sterilising Patient A, without her consent, clearly did not abide by GMP and GMC Guidance on Consent.

74. The Tribunal noted that the chronology of the sequence of events was not entirely transparent, but noted that Dr Sim's actions in sterilising Patient A after having successfully delivered her baby via CS was carried out after the patient's bleeding had been stemmed, and after the serious medical emergency had passed.

75. The Tribunal considered that Dr Sim's conversation with Mr J [Patient's A's husband] about sterilisation during the 'time out', should have indicated to the doctor that he could not be confident that he had the requisite consent to carry out the sterilisation.

76. This is further supported by the medical notes in which Dr Sim has stated 'known *to me, plan was to do [tubal ligation] at [caesarean section discussed with] husband but my decision to proceed*'.

77. The Tribunal noted that Dr Sim believed that it was in Patient A's best interests to be sterilised in light of possible complications from any future pregnancy and that the doctor mistakenly assumed that this was in accordance with Patient A's wishes.

78. However, the Tribunal concluded that Dr Sim could not have feasibly considered that Patient A had given her explicit consent to such a serious procedure. Dr Sim did not revisit the issue of sterilisation with Patient A after April 2021.

79. It also noted the absence of any signed consent form for sterilisation.

80. In the circumstances, the Tribunal considered that Dr Sim's actions in inappropriately sterilising Patient A, upon the assumption that it would be in her best interests, and upon the incorrect recollection that Patient A wished to be sterilised, and without the patient's documented consent were serious departures from the requirements of GMP and GMC Guidance on Consent as set out in the paragraphs quoted above. They fell far below an appropriate professional standard and clearly amounted to misconduct which was serious.

Impairment

81. Having found that the facts found proved amounted to misconduct, the Tribunal went on to consider whether, as a result of that misconduct, Dr Sim's fitness to practise is currently impaired.

82. The Tribunal bore in mind that its task was to consider Dr Sim's current fitness to practise. This involved necessarily looking at his past misconduct and also considering what, if anything Dr Sim had done to remediate the misconduct and any insight gained.

83. The Tribunal took into account the evidence of remediation that Dr Sim had provided. However, it noted that the remediation consisted of a single thirty-minute online CDP course regarding consent. It considered that this remediation was somewhat limited.

84. The Tribunal noted that Dr Sim developed timely insight and apologised for his actions. However, it considered that the doctor's reflections were limited and did not provide details of what he would do differently in the future to ensure he has obtained informed consent.

85. In the circumstances, the Tribunal considered that the doctor had limited insight into his misconduct.

86. The Tribunal concluded that given both the limited insight and limited remediation there remained, although unlikely, a residual risk of repetition.

87. The Tribunal bore in mind that Dr Sim had admitted the Allegation in its entirety and had apologised and expressed his remorse to both the profession and Patient A for his actions.

88. XXX.

89. The Tribunal gave weight to the testimonials it had been provided with and took into account Dr Sim's previously unblemished 40 years of practice.

90. The Tribunal determined that the questions raised by Dame Janet Smith's observations in the Fifth Report of the Shipman Inquiry and endorsed in the *Grant* case, as stated above, were engaged in this case.

91. The Tribunal considered that Dr Sim's misconduct breached a fundamental tenet of the profession, namely patient autonomy.

92. It also considered that Dr Sim had undertaken an unnecessary and inappropriate sterilisation which had unnecessarily put Patient A's health at risk of harm and had negatively

affected her psychological well-being. The Tribunal considered that Dr Sim's misconduct had brought the medical profession into disrepute.

93. In addition, the Tribunal concluded that public confidence in the medical profession would be undermined and that there would be a failure to uphold professional standards if a finding of impairment was not made.

94. The Tribunal considered, in light of the misconduct, that a finding of impairment was necessary to protect, promote and maintain the health, safety and well-being of the public; to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards and conduct for members of the profession.

95. Accordingly, the Tribunal determined that Dr Sim's fitness to practise was impaired by reason of his misconduct.

Determination on Sanction - 05/12/2023

1. This determination will be handed down in private under the provisions of Rule 41 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). A redacted version will be published at the close of the hearing.

2. Having determined that Dr Sim'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 Sim's registration.

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 Sim's registration.

4. The Tribunal received further evidence on behalf of Dr Sim including:

- 'Reflection on GMC Consent Form', undated, but stated to have been sent to the GMC in January 2023;
- Patient A's post-natal notes relating to previous pregnancies, various dates; and

- 'Your guide to contraception – Helping you choose the method of contraception that's best for you', Sexual Health Charity FPA Leaflet, Public Health England Copyright, May 2020.

Submissions

Submissions on behalf of the GMC

5. In making his submissions on sanction, Mr Hall submitted that the appropriate sanction was one of suspension. He referred the Tribunal to the relevant paragraphs of the *Sanctions Guidance* [2020] ('SG') in relation to both conditions and suspension.

6. Mr Hall stated that plainly there were no exceptional circumstances to warrant no action and no action would not meet the public interest.

7. Addressing conditions, Mr Hall submitted that the Tribunal's findings on Dr Sim's impairment were such that the facts of the case would not fit within the criteria and that conditions would not therefore be appropriate and not show condemnation or maintain public confidence in the profession. He further noted that Dr Sim had retired from practice.

8. Mr Hall submitted that a fundamental tenet had been breached and that Dr Sim's sterilisation of Patient A *'falls squarely'* for a serious breach of GMP.

9. Further, Mr Hall noted Dr Sim's limited insight and residual risk of repetition.

10. Having highlighted the seriousness of the circumstances, Mr Hall also noted that there was substantial mitigation in this case. He submitted that Dr Sim's conduct did however fall short of being fundamentally incompatible with continued registration in the circumstances.

11. Mr Hall stated that it was the GMC's case that the doctor had been open and honest and engaged fully with both the local investigation and the GMC investigation. He noted mitigation and stated that erasure would be disproportionate.

12. Mr Hall therefore concluded that, on the basis of the Tribunal's previous findings, a long period of suspension *'at the upper end of the spectrum'*, nine to twelve months, would

be the most appropriate and proportionate sanction to impose and would be a deterrent to behaviour unbefitting for a doctor and would uphold the overarching objective.

13. Mr Hall stated that, in light of the Tribunal's finding regarding residual risk regarding the doctor's misconduct, a review hearing should be directed at the end of the suspension period.

Submissions on behalf of Dr Sim

14. Mr Hockton submitted that the appropriate sanction was one of either no action or one of a short period of suspension.

15. Mr Hockton focused on the mitigating factors in this case and submitted that Dr Sim's misconduct was an isolated case and entirely out of character for the doctor.

16. Mr Hockton stated that Dr Sim had made full admissions at the outset of the hearing and had self-referred to GMC in circumstances where the local investigation had made no formal findings against him. He asserted that this was strong evidence of insight and remorse.

17. Mr Hockton invited the Tribunal to have regard to the very unusual circumstances of the case which arose after lengthy previous contact between Patient A and Dr Sim relating to previous pregnancies during which considerable trust had developed. He stated that the doctor had clearly thought that he was acting in the patient's best interests. He emphasised that this was a *'serious mistake but an honest mistake'*.

18. Mr Hockton asserted that Dr Sim's treatment of Patient A's previous pregnancies had included discussion of contraception and discussions around family planning matters.

19. Mr Hockton submitted that the incident took place during an emergency situation, during the Covid pandemic, and that both mother and baby survived, in no small measure, due to the actions of Dr Sim who had provided life saving treatment.

20. Mr Hockton submitted that Dr Sim was *'bitterly disappointed'* by his decision making, as stated in his reflections.

21. Mr Hockton advised that the Trust investigation found that Dr Sim's insight and reflection were of a high quality at an early stage. It found that Dr Sim had reflected

considerably both during the investigation and during his discussion with the Department Clinical Director.

22. Mr Hockton asserted that remediation is specifically relevant in clinical cases where there might be some repetition, but this was an isolated case and there was not a technical issue but was rather a *'one-off clinical case'* based on an honest mistake made by the doctor.

23. Mr Hockton emphasised that that there was no real risk of repetition, not least because the doctor had retired, but also because of the isolated nature of the misconduct. There was no suggestion that this is anything other than an isolated lapse and did not raise concern that Dr Sim was a danger in his practice overall.

24. Mr Hockton also reminded the Tribunal of XXX which were a factor in the doctor's decision to retire and relinquish his licence to practise. Further, he stated that XXX and that this case had shaken the doctor's confidence and he reflected upon it each day.

25. Mr Hockton submitted that the finding of impairment made by the Tribunal had a declaratory effect in and of itself, and that the Tribunal might consider that a finding of misconduct was sufficient to mark the opprobrium of this case.

26. Mr Hockton stated that conditions would not be appropriate due to the circumstances of the case.

27. Mr Hockton submitted that the imposition of a short period of suspension with no review might be appropriate to send out a message but that a longer period of suspension would be otiose and serve no useful function at all.

The Tribunal's Determination on Sanction

28. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement. There is no burden or standard of proof at this stage. It recognises that every case will necessarily turn on its own facts.

29. In reaching its decision, the Tribunal has given careful consideration to SG generally and to all the paragraphs outlined in submissions. It has borne in mind that the purpose of a sanction is not to be punitive although it may have a punitive effect.

30. The Tribunal has borne in mind that in deciding what sanction, if any, to impose, it should consider the sanctions available, starting with the least restrictive.

31. Throughout its deliberations, the Tribunal has taken into account the overarching objective, and applied the principle of proportionality, balancing Dr Sim's interests with the public interest.

32. The Tribunal has taken into account its earlier determinations on the facts and on impairment, the SG and GMP, the submissions of Mr Hall on behalf of the GMC, and the submissions of Mr Hockton on behalf of Dr Sim.

33. The Tribunal accepted the legal advice given by the LQC.

Mitigating and Aggravating Factors

34. The Tribunal first considered the mitigating factors.

35. The Tribunal noted that Dr Sim's inappropriate sterilisation of Patient A was a single isolated incident in an otherwise unblemished 40-year career. Dr Sim was a conscientious and excellent Consultant Obstetrician as evidence by his testimonials.

36. The Tribunal took account of Dr Sim's early admission of the facts in the case, his self-referral to the GMC and the fact that he had fully complied with both the initial Trust investigation and GMC investigation in an open and honest way.

37. The Tribunal noted the emergency situation that arose in the early hours of the morning which resulted in an emergency CS.

38. XXX.

39. Further, the Tribunal bore in mind that the doctor accepted responsibility for his actions from the outset and never sought to minimise his involvement. Dr Sim had expressed remorse and apologised at an early stage. He had sought to develop insight and remediate, although, the Tribunal considered that the doctor had yet to develop full insight or remediate completely.

40. The Tribunal considered that there were no aggravating factors.

No Action

41. The Tribunal considered each sanction in ascending order of seriousness starting with the least restrictive.

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

43. The Tribunal determined that to take no action would be inappropriate. The Tribunal did not consider that there were any exceptional circumstances that would justify such a course for such serious misconduct.

44. It would not be sufficient, proportionate or in the public interest to conclude the case by taking no action given the serious departure from several paragraphs of GMP and GMC Guidance on Consent.

Conditions

45. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Sim's registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable.

46. The Tribunal reminded itself that the hearing involved a public interest aspect and considered that an imposition of conditions on Dr Sim's registration would not send a sufficient message to the public or the profession as to the inappropriateness and seriousness of his misconduct. The Tribunal also noted that Dr Sim has now retired from practice and relinquished his licence to practise.

47. In the circumstances the Tribunal determined that a period of conditional registration would neither be workable nor send a marker to adequately protect public confidence in the profession or to uphold proper standards of conduct for members of the profession.

Suspension

48. The Tribunal then went on to consider whether imposing a period of suspension on Dr Sim's registration would be appropriate and proportionate.

49. The Tribunal acknowledged that suspension has a deterrent effect and can be used as a declaratory signal to the doctor, the profession, and to the public about what is regarded as behaviour unbefitting of a registered doctor.

50. The Tribunal took account of the following paragraphs of the SG which indicate circumstances in which it may be appropriate to impose a sanction of suspension and the duration of any such suspension:

> *'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.*
> > […]
> > *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.'*
>
> *'99 The length of the suspension may be up to 12 months and is a matter for the tribunal's discretion, depending on the seriousness of the particular case.'*
>
> *'100 The following factors will be relevant when determining the length of suspension:*
>
> > *b the seriousness of the findings and any mitigating or aggravating factors*
> >
> > *c ensuring the doctor has adequate time to remediate.'*

51. The Tribunal also considered paragraph 102 of the SG which includes a table which gives examples of aggravating factors that would be relevant to the length of suspension, under broad categories, dependent on the nature of the case. It identified the most relevant factors as the following:

- *The extent to which the doctor departed from the principles of Good medical practice; and*
- *The extent to which the doctor's actions risked patient safety or public confidence.*

52. The Tribunal went on to consider the sanction of erasure and further noted the following paragraph of the SG:

> *'109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).*
>
> > *a A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor. …'*

53. The Tribunal concluded in all the circumstances, that though serious, Dr Sim's misconduct was not fundamentally incompatible with continued registration. It considered that erasure would therefore be disproportionate and noted that Dr Sim's misconduct was capable of remediation. His misconduct had been partly remediated and he had some insight into its consequences. The Tribunal did consider that there was a residual risk of repetition of the misconduct although this was small.

54. The Tribunal determined that a period of suspension would be sufficient to uphold all three limbs of the overarching objective and would send a message to the profession and the wider public. Further, it considered that a period of suspension was the appropriate and proportionate sanction in this case.

55. In considering the length of suspension the Tribunal acknowledged the fact that Dr Sim's misconduct had been a single isolated incident in an otherwise unblemished 40-year career, the doctor had made an early admission, had self-referred to the GMC, and had expressed remorse and apologised to Patient A and the wider profession.

56. The Tribunal took into account the serious nature of Dr Sim's misconduct, and serious departure from GMP. It noted the negative effect on Patient A's health and wellbeing and also bore in mind that Patient A had surgery to reverse the inappropriate sterilisation. Despite the many mitigating factors identified, the Tribunal considered that the appropriate period of suspension was for twelve months.

57. The Tribunal concluded that this period would send a clear message to the medical profession and to the wider public that his misconduct was unacceptable.

58. The Tribunal determined that a reasonable and fully informed member of the public would regard a twelve-month suspension as a sufficient marker of the gravity of this particular case.

59. The Tribunal determined to direct a review of Dr Sim's case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought.

60. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Sim to demonstrate how he has remediated and developed full insight into his misconduct.

61. Dr Sim will be able to provide any information that he considers might assist in demonstrating that his fitness to practise is no longer impaired.

Determination on Immediate Order - 05/12/2023

1. Having determined that a twelve-month suspension was the appropriate sanction, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Sim's registration should be subject to an immediate order.

Submissions

Submissions on behalf of the GMC

2. Mr Hall submitted that the imposition of an immediate order was appropriate in this case.

3. Mr Hall submitted that, although Dr Sim's misconduct had been partly remediated, there was still a residual risk of repetition, albeit small, and there had been serious departures from GMP and a negative effect on Patient A.

4. Mr Hall stated that, having considered the Tribunal's findings, and given the residual risk that the doctor posed to members of the public and to uphold public confidence, it was appropriate to impose an immediate order.

Submissions on behalf of Dr Sim

5. Mr Hockton submitted that an immediate order was not necessary.

6. Mr Hockton referenced the case of *Davey v General Dental Council* [2015] WL 6757832. Mr Hockton drew the Tribunal's attention to various parts of the *Davey* judgment, and noted that in this case, despite a finding of misconduct, it was found that an immediate order was not necessary on the grounds simply of the public interest. He submitted that Dr Sim does not pose a risk to patient safety and that it was not necessary to impose an immediate order.

7. Mr Hockton also referenced *Ashton v GMC* [2013] EWHC 943 (Admin) which highlights factors which Medical Practitioner Tribunals should take into account when deciding whether to impose an immediate order.

8. Mr Hockton reminded the Tribunal that if an immediate order were imposed it would remain in place for the duration of any appeal and could in effect *'double'* any suspension.

9. Mr Hockton referred to the facts of the case and submitted that there was 'clearly' no risk to patient safety as the doctor was not working and that the primary sanction of twelve-months suspension sufficiently sends out a message to the public.

10. Mr Hockton concluded by emphasising that no interim order had been applied in this case and that there was no suggestion that any repetition since the index event gave rise to the finding of misconduct.

The Tribunal's Determination

11. In reaching its decision, the Tribunal has exercised its own judgement, and has taken account of the principle of proportionality. The Tribunal has borne in mind that it may impose an immediate order where it is satisfied that it is necessary for the protection of members of the public, is in the public interest, or is in the best interests of the practitioner.

12. The Tribunal had regard to the following paragraphs of the SG:

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

13. The Tribunal also had regard to Section 38(1) of the Medical Act:

> *'(1) On giving a direction for erasure or a direction for suspension under section 35D(2), (10) or (12) above, or under [paragraph 5A(3D) or 5C(4) of Schedule 4] 3 to this Act, in respect of any person the [Medical Practitioners Tribunal] 4 if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the best interests of that person, may order that his registration in the register shall be suspended forthwith in accordance with this section'*

14. The Tribunal took account of its findings that Dr Sim had incomplete insight and limited remediation and that there was a residual risk of repetition, albeit it small.

15. However, the Tribunal also bore in mind that no interim order had been imposed on his registration, there had been no repetition since the Allegation. It acknowledged that the

doctor had relinquished his licence to practise and had indicated that he had now retired with no intention to return to practice.

16. In the circumstances the Tribunal considered that, whilst there was a very small risk of repetition, the public interest had been met by the imposition of the substantive order of a twelve-month suspension and it was not satisfied that the imposition an immediate order was necessary to protect the public or to mark the public interest.

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

18. That concludes this case.