PUBLIC RECORD

Dates: 17/07/2023 - 28/07/2023;
19/09/2023;
02/01/2024 – 04/01/2024

Medical Practitioner's name:	Dr Dharmapragasam INTHIRARAJ
GMC reference number:	4288413
Primary medical qualification:	MB BS 1985 University of Peradeniya

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

Summary of outcome

Erasure

Immediate order imposed

Tribunal:

Legally Qualified Chair	Mrs Julia Oakford
Lay Tribunal Member:	Mrs Joy Hamilton
Medical Tribunal Member:	Dr Anita Clay

Tribunal Clerk:	Mr Michael Murphy (17/07/2023 - 28/07/2023) Mrs Anne Bhatti (19/09/2023) Mrs Jennifer Ireland (02/01/2024 – 04/01/2024)

Attendance and Representation:

Medical Practitioner:	Present and represented Not present but represented from 19/09/2023 - 04/01/2023

Medical Practitioner's Representative:	Mr Stephen Brassington, Counsel, instructed by Weightmans
GMC Representative:	Ms Chloe Hudson, 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 Facts - 19/09/2023

Background

1. Dr Inthiraraj qualified in Sri Lanka in 1985. He obtained a Diploma in Geriatric Medicine in 1997 and a Diploma in the Faculty of Family Planning in 2001. Dr Inthiraraj has been working in General Practice since 2001. At the time of the events in the Allegation Dr Inthiraraj was practising as a locum GP at Woodbridge Medical Centre.

2. The allegation that has led to this hearing are concerns relating to sexually motivated behaviours which have arisen towards two females, Ms A and Patient B. The GMC alleged that following a consultation when Ms A had attended with her young child, on or around 3 July 2018, Dr Inthiraraj accessed Ms A's medical records without her permission and made contact with her when there was no clinical reason for him to do so, and when he knew that she was vulnerable by reason of being the victim of domestic violence. The GMC also alleged that during a consultation with Patient B, on or around 12 September 2018, Dr Inthiraraj performed an examination on her without her consent and when it was not clinically indicated.

3. The initial concerns were raised with the GMC, on 1 October 2018, by Ms C, the manager of Woodbridge Medical Centre. This referral to the GMC was further to complaints

made by Ms A and Patient B to Woodbridge Medical Centre about Dr Inthiraraj's conduct towards them.

The Outcome of Applications Made during the Facts Stage

4. The Tribunal granted Dr Inthiraraj's application, made through his Counsel, Mr Brassington, that the second interpreter for Patient B should be replaced. Its full decision on this application is included at Annex A.

5. The Tribunal granted the GMC's application, made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules') to amend the stem of paragraph 6 of the Allegation by removing the word 'intimate' and to remove paragraph 6(d) in its entirety. Mr Brassington had no submissions to make regarding this. The Tribunal acceded to this application as it considered that it could be made without injustice to either party.

The Allegation and the Doctor's Response

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

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

Ms A

1. On or around 3 July 2018, Ms A attended at Woodridge Medical Centre ('the Medical Centre') for a consultation with you for her child ('the Consultation') and during the Consultation you said words to the effect of:

    a. "oh, you don't look like a XXX"; **Admitted and found proved**

    b. "by the way, I like your top". **Admitted and found proved**

2. Following the Consultation you:

    a. accessed Ms A's medical records on one or more occasion between around 11.13 and 11.24, when:

        i. you did not have Ms A's permission; **To be determined**

        ii. there was no clinical reason for you to do so; **To be determined**

b. made contact with Ms A using the mobile telephone number stored in medical records and you:

i. asked her:

1. how she felt, because you knew that she was going through domestic violence; To be determined

2. if she had had an injection as she was about to go to XXX and XXX; To be determined

or words to that effect;

ii. told her:

1. that if she came back to the Medical Centre that same day you would make an injection for her; To be determined

2. to look after herself; To be determined

3. that she could call you anytime; To be determined

4. that you were here to help; To be determined

or words to that effect;

c. sent Ms A a message by Viber messaging service, at or around 12:22, containing an animal emoji which said "hi". Admitted and found proved

3. There was no clinical reason for you to make contact with Ms A following the Consultation. To be determined

4. At all material times Ms A was vulnerable by reason of her being the victim of domestic violence. To be determined

5. You knew that Ms A was vulnerable by reason of her being the victim of domestic violence because you had accessed her medical records. To be determined

Patient B

6. During a consultation at the Medical Centre on or around 12 September 2018, you carried out an ~~intimate~~ examination of Patient B and: Successful application under Rule 17(6):

   a. you put one of your hands inside Patient B's:

      i. trousers; To be determined

      ii. underwear; To be determined

   b. you inserted one or more of your fingers into Patient B's vagina; To be determined

   c. when Patient B tried to get up from the examination couch you:

      i. pushed her chest back; To be determined

      ii. said:

         1. "cool down, nothing has happened"; To be determined

         2. "enjoy it"; To be determined

         3. "just keep quiet, just have fun"; To be determined

or words to that effect.

~~d. you failed to:~~

~~i. offer Patient B a chaperone; To be determined~~ Successful application under Rule 17(6)

~~ii. wear gloves; To be determined~~ Successful application under Rule 17(6)

~~iii. use lubricating gel; To be determined~~ Successful application under Rule 17(6)

~~iv. maintain adequate medical records, in that you did not record that you had undertaken a vaginal/intimate examination of Patient B. To be determined~~ Successful application under Rule 17(6)

7. The examination referred to at paragraph 6 was:

   a. not clinically indicated; To be determined

   b. carried out without consent. To be determined

8. Your conduct as described at paragraphs 1, 2 and 6 was sexually motivated. To be determined.

The Admitted Facts

7. At the outset of these proceedings, through his counsel, Mr Brassington, Dr Inthiraraj made admissions to some paragraphs and sub-paragraphs 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.

Witness Evidence

8. The Tribunal received written and oral evidence on behalf of the GMC from the following witnesses:

- Ms A, subject of the Allegation;
- Ms C, Practice Manager at Woodbridge Medical Centre and at Belmont Medical Centre;
- Patient B, subject of the Allegation;
- Dr D, GP principal at Woodbridge Medical Centre;
- Ms E, receptionist at Woodbridge Medical Centre at the time of the events.

9. Dr Inthiraraj provided his own witness statement dated 10 April 2023 and also gave oral evidence at the hearing.

Expert Witness Evidence

10. The Tribunal also received evidence from an expert witness, Dr F, a GP, who was not called to give oral evidence by the GMC. Dr F provided a report, dated 28 November 2022, which was directed at assisting the Tribunal in understanding the professional standards to be expected of a GP with regard to Patient B.

Documentary Evidence

11. The documentary evidence the Tribunal received included, but was not limited to, the following:

- Text confirmation of an appointment dated 3 July 2018;
- Missed call to Ms A dated 3 July 2018 at 11.24;
- Call log from Ms A's phone dated 3 July 2018;
- Viber message to Ms A dated 3 July 2018 at 12.22;
- Ms A's email to the GMC, concerning Viber message, dated 27 February 2019;
- Audit trail of Ms A's medical records of 3 July 2018;
- Ms C's referral to GMC;
- Diagram of Medical room;
- Patient B's statement to the police dated 18 March 2021;
- Patient B's medical records;
- Email chain between the GMC and Patient B from 29 March to 5 April 2019;
- Email chain between GMC and Dr D between 3 to 5 March 2020.

12. The Tribunal had regard to all the documentary evidence provided by the parties.

The Tribunal's Approach

13. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Inthiraraj does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred.

14. In addition, the Tribunal was cognisant throughout its deliberations that Dr Inthiraraj was of good character.

15. In its deliberations the Tribunal had regard to the case of *Byrne v GMC (2021) EW HC 2237* which set out that the standard of proof is the balance of probabilities. In this case Mr Justice Morris stated the position at paragraph 22 of this judgment as:

> *'(1) There is only one civil standard of proof in all civil cases, and that is proof that the fact in issue more probably occurred than not.*

(2) There is no heightened civil standard of proof in particular classes of case. In particular, it is not correct that the more serious the nature of the allegation made, the higher the standard of proof required.

(3) The inherent probability or improbability of an event is a matter which can be taken into account when weighing the probabilities and in deciding whether the event occurred. Where an event is inherently improbable, it may take better evidence to persuade the judge that it happened. This goes to the quality of the evidence.

(4) However, it does not follow, as a rule of law, that the more serious the allegation, the less likely it is to have occurred. So whilst the court may take account of inherent probabilities, there is no logical or necessary connection between seriousness and probability. Thus, it is not the case that the more serious the allegation the more cogent the evidence need to prove it.'

16. It then had regard to the case of *Dutta v GMC (2020) EWHC 1974* which set out the following approaches:

- *'Tribunals should base factual findings on inferences drawn from documentary evidence and known or probable facts and use oral evidence to subject the documentary records to critical scrutiny and to consider the witness's personality and motivation. Tribunals should assess the evidence in the round.*
- *Tribunals should not assess a witness's credibility exclusively on their demeanor when giving evidence. A witness's veracity should be tested by reference to the objective fact(s) proved independently of their testimony, in particular by reference to the documents in the case.'*

17. The Tribunal also had regard to the case of *Khan v GMC (2021) EWHC 374* which clarified further approaches as follows:

- *'Tribunals should consider all the evidence before them before coming to a conclusion about a witness's credibility. This could include conflicts in the evidence with another witness, denials of the allegation and reasons why they could not be true or admissions of lying (on oath or otherwise) on a previous occasion.*
- *It is open to Tribunals not to rule out the whole of a witness's evidence based on credibility; credibility can be divisible.*

- *Tribunals must take good character evidence into account in their assessment of credibility and propensity, where relevant. However, they are not required to give a self-direction to that effect in their reasons, if it is clear from the material received orally and in writing, including any direction from a legally qualified Chair, that the Tribunal must have taken good character into account.'*

18. With regard to sexual motivation, the Tribunal had regard to the case of *Basson v GMC (2018) EWHC 505* in which Mr Justice Mostyn defined sexual motive as:

> *'Sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship.'*

19. It also had regard to the case of *Haris v GMC (2021) EWCA Civ 763* ('*Haris*')which confirmed the definition in *Basson* still applied but committees should not take an over engineered approach to the definition of sexual motivation when considering charges of sexual touching; the main concern is the underlying conduct.

The Tribunal's Analysis of the Evidence and Findings

20. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

Ms A

Paragraph 2(a) of the Allegation

21. In its consideration of paragraph 2(a) of the Allegation the Tribunal bore in mind that Dr Inthiraraj made an admission to the stem of this allegation in that he accessed Ms A's medical records on one or more occasion between around 11.13 and 11.24.

Paragraph 2(a)(i) of the Allegation

22. The Tribunal considered whether Dr Inthiraraj had accessed Ms A's medical records without her permission. It accepted that a consultation took place on 3 July 2018 with Dr Inthiraraj concerning Ms A's child, when Ms A was present. The consultation was not for Ms A. The Tribunal considered that at the Consultation there would not have been any reason for Ms A to give Dr Inthiraraj permission to access her medical records. Ms A confirmed in her oral evidence that she would have given permission to Dr Inthiraraj to access her child's medical records for the purpose of the child's Consultation.

23. In his witness statement, Dr Inthiraraj stated that he *'did not have Ms A's express permission, and it is correct I did not seek her explicit consent…'.* He did, however, go on to explain that after the consultation he considered, as Ms A was going to XXX, that she may need immunisations and he therefore accessed the records. The Tribunal did not accept this explanation as being sufficient reason to access Ms A's records. He had in his oral evidence said in a forceful manner that he was a very busy holistic practictioner as were other doctors. The Tribunal found that to do this for an individual patient would be inconsistent with the workload he described having.

24. Having considered the above, the Tribunal was satisfied, on the balance of probabilities, that Dr Inthiraraj did access Patient A's medical records without her permission. Acordingly, it found paragraph 2(a)(i) of the Allegation proved.

Paragraph 2(a)(ii) of the Allegation

25. The Tribunal next considered whether there was 'no clinical reason' for Dr Inthiraraj to have accessed Patient A's medical records. The Tribunal was aware that the Consultation on 3 July 2018 concerned Ms A's child and not Ms A herself.

26. The Tribunal considered Dr Inthiraraj's witness statement in which he says *'I cannot say with certainty therefore what the issues were uppermost in my mind once Ms A and the child had left that prompted me to take a few moments to review Ms A's own medical records…the review of her own medical records was on clinical grounds…'.* In her evidence Ms C told the Tribunal that Ms A's telephone number was on the child's medical record. Nonetheless Dr Inthiraraj opened Ms A's records to ensure he had her personal phone number. The Tribunal found this was not a clinical reason to access her medical records.

27. Dr Inthiraraj told the Tribunal that he gave a selected number of patients his mobile number so that he could be contacted at any time. However, he said that he had never been contacted by any of these patients. The Tribunal considered that Dr Inthiraraj would not have acted in this way with these patients, as he confirmed in his oral evidence that doctors have limited time with patients as they are so busy. It concluded on the balance of probabilities that Dr Inthiraraj wanted to speak to Ms A and was looking for her telephone number.

28. The Tribunal was aware that in her email to the GMC on 25 March 2019 Ms C had stated *'Dr [D] did discuss the concerns with Dr Raj. Dr Raj informed him that he called to ask about the [child]'s health and sms was sent by mistake'.* Dr Inthiraraj's evidence was

inconsistent with this as he maintained that he had telephoned Ms A concerning immunisations and not specifically in relation to her child's health.

29. The Tribunal was therefore satisfied, on the balance of probabilities, that Dr Inthiraraj accessed Ms A's medical records when there was no clinical reason to do so. It there found paragraph 2(a)(ii) of the Allegation proved.

Paragraph 2(b) of the Allegation

30. In its consideration of paragraph 2(b) of the Allegation the Tribunal bore in mind that Dr Inthiraraj made an admission to the stem of this allegation in that he made contact with Ms A using the mobile telephone number stored in medical records. In addition, the Tribunal noted that Dr Inthiraraj accepted that he used his personal mobile phone to contact Ms A as opposed to the practice's land line phone which was on the desk in front of him.

Paragraph 2(b)(i)(1) of the Allegation

31. The Tribunal considered whether Dr Inthiraraj asked Ms A how she felt, because he knew that she was going through domestic violence. It had regard to Ms A's witness statement in which she stated, *'He said it was because he knew I was going through some domestic violence problems. I asked him how he knew about this and he said that he could see everything here and that he could see the records'.*

32. The Tribunal also had regard to Dr Inthiraraj's witness statement in which he said, *'wish to be absolutely clear that I did not say anything to Ms A in relation to matters of domestic violence. Indeed, I do not believe that in reviewing her medical records I came across any information relating to domestic violence at all'.* While Dr Inthiraraj confirmed during his oral evidence that his recollection of the conversation was vague, nonetheless he still denied having discussed domestic violence.

33. Ms A confirmed *'It was on my records that I had experienced a history of domestic violence'.* The Tribunal accepted Ms C's evidence that issues relating to domestic violence would be recorded in a patient's medical records. The Tribunal took account of the evidence which suggested that Dr Inthiraraj had Ms A's medical records open for up to six minutes which it considered to be sufficient time for him to have noticed the domestic violence noted in the medical records. It found it inconceivable that Dr Inthiraraj, as an experienced medical practitioner, would not have seen the entries relating to Ms A's domestic violence.

34. The Tribunal noted that Ms A had made her statement on 5 February 2019. Dr Inthiraraj made a statement on 10 April 2023. The Tribunal considered that Ms A had been consistent in both her written and oral evidence and had no reason to fabricate evidence. Dr Inthiraraj said that due to the passage of time he could not exactly recall what had been said and that he did not have access to Ms A's medical records when writing his statement. Although he was of good character the Tribunal considered Ms A's evidence to be more credible, consistent and compelling.

35. The Tribunal was therefore satisfied, on the balance of probabilities, that Dr Inthiraraj asked Ms A how she felt, because he knew that she was going through domestic violence. It therefore found paragraph 2(b)(i)(1) of the Allegation proved.

Paragraph 2(b)(i)(2) of the Allegation

36. The Tribunal next considerd whether Dr Inthiraraj asked Ms A if she had had an injection as she was about to go to XXX and XXX. It had regard to Dr Inthiraraj's witness statement in which he says *'it may well be that I indicated that she could return to the health centre for the purposes of immunisations'*. It also had regard to Ms A's witness statement in which she said *'Dr Inthiraraj asked me if I had had an injection. He said that that as I was going to XXX and XXX...'*.

37. The Tribunal considered that it was clear from both witness statements that there was a discussion relating to immunisation injections. As such, it found on the balance of probabilities paragraph 2(b)(i)(2) of the Allegation proved.

Paragraph 2(b)(ii)(1) of the Allegation

38. The Tribunal next considered whether Dr Inthiraraj told Ms A that if she came back to the Medical Centre that same day he would make an injection for her. It had regard to Ms A's witness statement in which she stated Dr Inthiraraj told her *'if I came back to the Medical Centre now, that same day, he would make an injection for me'.*

39. The Tribunal noted that in his oral evidence, Dr Inthiraraj said that he was not qualified to give immunisations. In his witness statement he said that *'she could return to the health centre for the purposes of immunisations'*. The Tribunal heard oral evidence from Dr Inthiraraj that it would not be Dr Inthiraraj's responsibility to undertake immunisations for patients.

40. The Tribunal accepted Ms A's evidence and found it more compelling than Dr Inthiraraj's evidence as she was consistent in her written and oral evidence, and had no reason to fabricate her evidence. In his oral evidence Dr Inthiraraj did not directly address this part of the Allegation but instead explained how immunisations were given at that practice.

41. The Tribunal found, on the balance of probabilities, that Dr Inthiraraj told Ms A that if she came back to the Medical Centre that same day he would make an injection for her. Accordingly, if found paragraph 2(b)(ii)(1) of the Allegation proved.

Paragraph 2(b)(ii)(2) of the Allegation

42. The Tribunal next considered whether Dr Inthiraraj told Ms A to look after herself. In her witness statement, Ms A said *'He told me to look after myself'.* In Dr Inthiraraj's witness statement he said *'it would not be uncommon for me to offer reassurance to a patient of any sort that they should look after their health and to emphasise that the practice was there to support them'.*

43. Based on the evidence received, the Tribunal was satisfied on the balance of probabilities that Dr Inthiraraj told Ms A to look after herself. It therefore found paragraph 2(b)(ii)(2) of the Allegation proved.

Paragraphs 2(b)(ii)(3) and (4) of the Allegation

44. The Tribunal next considered whether Dr Inthiraraj told Ms A that she could call him anytime and that he was there to help. In her witness statement, Ms A said *'Dr Inthiraraj then said that if I needed any help that I could call him anytime. He said he was here to help'.* In his oral evidence, Dr Inthiraraj confirmed that he wanted Ms A to use his number to easily access medical advice from him when she was in XXX. Further, he said that he had himself suffered from XXX when in XXX and knew how badly it could effect someone and he wanted her to be able to seek medical advice.

45. Based on the evidence revieved, the Tribunal was satisfied on the balance of probabilities that Dr Inthiraraj told Ms A that she could call him anytime and that he was there to help. It therefore found paragraphs 2(b)(ii)(3) and (4) of the Allegation proved.

Paragraph 3 of the Allegation

46. The Tribunal next considered whether there was no clinical reason for Dr Inthiraraj to make contact with Ms A following the Consultation.

47. The Tribunal had regard to its findings above and although Dr Inthiraraj did talk to Ms A about immunisation, in addition to other subjects, there was no specific clinical reason for him to contact her. The Tribunal found that that Dr Inthiraraj used the 'guise' of immunisation to start a conversation with Ms A. The Consultation had related to Ms A's child and not Ms A herself so there was no reason to follow up. Further, Ms C's email to the GMC dated 25 March 2019 stated that Dr Inthiraraj had told Dr D that he had telephoned about the child.

48. The Tribunal was therefore satisfied, on the balance of probabilities, that there was no clinical reason for Dr Inthiraraj to make contact with Ms A following the Consultation. Accordingly, it found paragraph 3 of the Allegation proved.

Paragraph 4 of the Allegation

49. The Tribunal next considered if at all material times Ms A was vulnerable by reason of her being the victim of domestic violence.

50. In her witness statement Ms A said *'It was on my records that I had experienced a history of domestic violence'.* In addition to this she stated, in her oral evidence, that various agencies who deal with victims of domestic abuse were involved with her and thought the telephone call from Dr Inthiraraj might have been one of those.The Tribunal had no reason not to believe Ms A's evidence and accepted that she was vulnerable by reason of being a victim of domestic abuse.

51. Accordingly, the Tribunal found paragraph 4 of the Allegation proved.

Paragraph 5 of the Allegation

52. The Tribunal next considered whether Dr Inthiraraj knew that Ms A was vulnerable by reason of her being the victim of domestic violence because he had accessed her medical records. In her witness statement Ms A said *'He said it was because he knew I was going through some domestic violence problems. I asked him how he knew about this and he said that he could see everything here and that he could see the records. From this I understood that after I had left the Medical Centre Dr Inthiraraj had checked my history'.*

53. The Tribunal found that domestic violence was noted in Ms A's medical records. Dr Inthiraraj accepted that he had opened her medical records and the Tribunal considered it is more likely than not that he had seen the references to domestic violence. The Tribunal has already found that Dr Inthiraraj knew how Ms A felt, because he knew that she was going through domestic violence.

54. The Tribunal was therefore satisfied, on the balance of probabilities, that Dr Inthiraraj knew that Ms A was vulnerable by reason of her being the victim of domestic violence because he had accessed her medical records. Accordingly, the Tribunal found paragraph 5 of the Allegation proved.

Patient B

Paragraph 6 of the Allegation

55. The Tribunal accepted that the paragraphs of the Allegation relating to Patient B related primarily to her account of an examination which Dr Inthiraraj vehemently denied. The Tribunal therefore had to carefully consider all the evidence and decide on credibility taking into account Dr Inthiraraj was a doctor of good character.

56. In its consideration of paragraph 6 of the Allegation, the Tribunal bore in mind that Patient B told the Tribunal that her motivation for giving evidence at these proceedings was to stop Dr Inthiraraj from acting in the same way as he did with her, with anyone else. In her evidence Patient B stated that when she returned to XXX her husband asked her why she had done nothing if Dr Inthiraraj had indeed done what she said.

57. The Tribunal found that Patient B had initially been reluctant to engage in the process and had not given full details of what she alleged had occurred in the consultation with Dr Inthiraraj. However, when she had finally engaged she had emailed the GMC, given a statement to the police, provided statements and given oral evidence at the hearing. She had shown determination in giving evidence despite delays and interpreter issues.

58. The Tribunal also bore in mind that Patient B did not speak fluent English and that all of her oral evidence was given through an interpreter. In addition the statements she made had been in Punjabi and interpreted into English.

59. The Tribunal acknowledged that there were issues with interpretation in this case resulting in the first two interpreters leaving the hearing as they could not interpret to the

standard required. The third interpreter did on one occasion appear to not fully interpret what was said, when this was pointed out it was corrected. However, the Tribunal considered that the interpretation was sufficiently clear throughout so that the Tribunal could understand Patient B's evidence and do justice to the case.

60. The Tribunal considered that Dr Inthiraraj's consultation with Patient B initially involved the examination of her abdomen which she consented to as she gave implied consent by pulling up her sweatshirt.

61. In his evidence, Dr Inthiraraj was consistent that he did not carry out an intimate examination of Patient B and said in his witness statement:

> *'do not accept that I proceeded to carry out an intimate examination of Patient B. The examination was limited to the abdominal area. Accordingly, at no stage did I put my hands inside Patient B's trousers and underwear. I did not insert any of my fingers into Patient B's vagina'*

62. The Tribunal noted that Patient B's evidence showed some inconsistencies as she said she attended the consultation with Dr Inthiraraj for constipation on one account but for leaking urine in another account. It also found that she had lied to the Tribunal about her personal relationships albeit she did admit to the Tribunal that what she had said was not true. However, she was consistent in her oral evidence, the statement to the police, her written statements and her email to the GMC about the core elements of the allegation relating to an examination.

63. The Tribunal accepted Patient B's evidence that she had been visibly upset following the consultation, as witnessed by Ms E. It had regard to the witness statement of Dr D which said that Patient B *'was very upset and disturbed by what had happened'.* The Tribunal considered that it could be likely that something happened, other than the examination of her abdomen, that made her upset.

<u>Paragraphs 6(a)(i) – (ii)</u>

64. The Tribunal considered whether Dr Inthiraraj carried out an examination by putting one of his hands inside Patient B's trousers and underwear.

65. It had regard to Patient B's witness statement in which she said *'I remember Dr Inthiraraj touching my stomach but then straight away putting his hands down, inside my trousers and underwear'*. In addition in her supplemental witness statement she said *'Dr Inthiraraj only put one hand down my trousers, not both hands'*. Patient B gave consistent evidence to the police which involved attending the British Embassy in Dehli. She repeated this evidence to the GMC and in oral evidence to this Tribunal.

66. The Tribunal was aware that in some respects her evidence became more detailed over time but nevertheless considered that the core elements of her evidence were consistent. Indeed, when she initially made a denial she was prepared to admit this. She did not fabricate evidence but kept to the facts as to what she said occurred.

67. The Tribunal acknowledged that Dr Inthiraraj vehemently denied this in his written statement, *'at no stage did I put my hands inside Patient B's trousers and underwear'*. In his oral evidence to the Tribunal he continued to emphatically deny that he had done this.

68. The Tribunal determined that Patient B's was consistent throughout giving detailed evidence of what had occurred. The Tribunal balanced this against Dr Inthiraraj's complete denial. The Tribunal considered that Patient B had no reason to fabricate evidence against Dr Inthiraraj and despite difficulties with interpretation was prepared to continue giving her evidence over a number of days and when questioned maintained what had occurred.

69. Despite Dr Inthiraraj being of good character, the Tribunal found Patient B's evidence to be more credible and compelling for the reasons set out above.

70. The Tribunal was satisfied, on the balance of probabilities, that Dr Inthiraraj did put one of his hands inside Patient B's trousers and underwear. Accordingly, the Tribunal found paragraphs 6(a)(i) to (ii) proved.

Paragraph 6(b) of the Allegation

71. The Tribunal next considered whether Dr Inthiraraj inserted one or more of his fingers into Patient B's vagina.

72. In Patient B's witness statement, she said, *'I felt him put what felt like two of his fingers into my vagina'*. In addition, in her witness statement to the police, Patient B stated that Dr Inthiraraj *'put his two fingers inside my vagina'*. Patient B also emailed the GMC, on 5

April 2019, and stated *'But I didn't know he remove my tshirt from my tummy Nd insert his finger in my Utrex'.* The Tribunal was aware that Patient B's first language was Punjabi and understood, '*my Utrex'*, to mean her vagina.

73. The Tribunal acknowledged that Dr Inthiraraj vehemently denied this in his written statement, *'I did not insert any of my fingers into Patient B's vagina…'*. In his oral evidence to the Tribunal he continued to emphatically deny that he had done this.

74. The Tribunal determined that Patient B was consistent throughout giving detailed evidence of what had occurred. The Tribunal balanced this against Dr Inthiraraj's complete denial. The Tribunal considered that Patient B had no reason to fabricate evidence against Dr Inthiraraj and despite difficulties with interpretation was prepared to continue giving her evidence over a number of days and when questioned maintained what had occurred.

75. In Dr F's expert report he states, '*Dr Inthiraraj's history taking did not form the basis for undertaking a vaginal examination'*. He also went on to state that a vaginal examination would not be considered, *'on this basis without further assessment or investigation'*.

76. As previously stated, the Tribunal was aware that in some respect Patient B's evidence became more detailed over time but nevertheless the Tribunal considered that the core elements of her evidence were consistent. Indeed, when she initially made a denial she was prepared to admit this. She did not fabricate evidence but kept to the facts as to what she said occurred.

77. The Tribunal considered this to be consistent evidence by Patient B and to be more compelling than Dr Inthiraraj's complete denial. It also took account of the evidence of distress of Patient B following the consultation indicating something untoward may have happened during the consultation.

78. Despite Dr Inthiraraj being of good character, the Tribunal found Patient B's evidence to be more credible and compelling for the reasons set out above.

79. The Tribunal was satisfied that, on the balance of probabilities, Dr Inthiraraj inserted one or more of his fingers into Patient B's vagina. Accordingly, it found paragraph 6(b) of the Allegation proved.

Paragraph 6(c)(i) of the Allegation

80. The Tribunal next considered if when Patient B tried to get up from the examination couch Dr Inthiraraj pushed her chest back.

81. The Tribunal had regard to Patient B's email to the GMC, on 5 April 2019, in which she stated *'he presses me with other arm then I one time speak help me then he covered my mouth with arm'.* The Tribunal also had regard to Patient B's witness statement in which she says *'Dr Inthiraraj pushed me back on my chest'* which is similar to what she said during her police interview. In addition, in her oral evidence she maintained words to the effect that he, when trying to put fingers in he pushed across her '*boobs*'.

82. Dr Inthiraraj in his witness statement stated, '*I did not push her chest back*'.

83. The Tribunal found Patient B's evidence to be consistent, that she had no reason to fabricate her evidence and therefore the Tribunal preferred her evidence over Dr Inthiraraj's denial.

84. Despite Dr Inthiraraj being of good character, the Tribunal found Patient B's evidence to be more credible and compelling for the reasons set out above.

85. In all the circumstances, the Tribunal was satisfied that, on the balance of probabilities, Dr Inthiraraj pushed Patient B's chest back when she tried to get up from the examination couch. Accordingly, it found paragraph 6(c)(i) of the Allegation proved.

Paragraph 6(c)(ii)(1 to 3) of the Allegation

86. Whilst the Tribunal considered each of paragraphs 6(c)(ii)(1 to 3) separately it bore in mind that it's reasons for each arise from the same facts. The Tribunal considered whether Dr Inthiraraj said *'cool down, nothing has happened, enjoy it and just keep quiet, just have fun', w*hen Patient B tried to get up from the examination couch.

87. The Tribunal had regard to the supplemental witness statement of Patient B in which she says *'I have remembered that when Dr Inthiraraj said something like cool down, nothing has happened.. …also said something like 'enjoy it', 'just keep quiet, just have fun'.* This aligns with what Patient B said during her police statement in that Dr Inthiraraj *'was saying "Cool down, cool down"'*. In addition to this, in her oral evidence Patient B stated that Dr Inthiraraj told her to '*calm down*', to try and enjoy it and that she can still hear those words in her ears.

88. Dr Inthiraraj stated, *'I did not say any of the words that have been alleged against me'*.

89. The Tribunal accepted Patient B's evidence as credible as opposed to Dr Inthiraraj's compete denial.

90. Despite Dr Inthiraraj being of good character, the Tribunal found Patient B's evidence to be more credible and compelling for the reasons set out above.

91. Having regard to the above evidence, the Tribunal was satisfied that, on the balance of probabilities that paragraph 6(c)(ii)(1 to 3) of the Allegation was proved.

Paragraph 7(a) of the Allegation

92. The Tribunal next considered if the examination of Patient B was not clinically indicated.

93. The Tribunal had regard to Dr F's expert report in which he stated that:

> *'Dr Inthirajaj's history taking did not form the basis for undertaking a vaginal examination… no abnormal mass was identified by Dr Inthirajaj on abdominal examination, that, in my opinion, no reasonably competent general practitioner would proceed with a vaginal examination on this basis without further assessment or investigation, such as specific blood tests or an abdominal ultrasound examination. To proceed during a first consultation to a vaginal examination on this basis would not be consistent with guidance and would not be consistent with GMC Good Medical Practice…'*

94. The Tribunal accepted Dr F's opinion that a vaginal examination would not have been clinically indicated based on the information in Patient B's medical notes.

95. Accordingly, the Tribunal found paragraph 7(a) of the Allegation proved.

Paragraph 7(b) of the Allegation

96. The Tribunal next considered if Dr Inthiraraj carried out an examination on Patient B without her consent.

97. The Tribunal had regard to Dr F's expert report, he stated that,

> *'Dr Inthirajaj's medical record does not refer to taking consent from Patient [B]… There is no evidence that Dr Inthirajaj obtained any explicit consent from Patient [B] for any form of intimate examination, nor that Dr Inthirajaj recorded obtaining explicit consent*'.

98. Patient B's evidence was clear that she only consented to Dr Inthiraraj examining her abdomen. She gave implied consent to this by lifting up her sweatshirt. Having found that Dr Inthiraraj did put his hand down her trousers and underwear and inserted one or more fingers into her vagina it was clear that this was without Patient B's consent.

99. Accordingly, the Tribunal found paragraph 7(b) of the Allegation proved.

Paragraph 8 of the Allegation

100. Finally, the Tribunal considered if Dr Inthiraraj's conduct in relation to paragraphs 1, 2 and 6 was sexually motivated.

101. The Tribunal defined sexually motivated behaviour in line with the case of '*Basson'*, namely that it means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship. The GMC contended that Dr Inthiraraj's actions amounted to sexual assault.

102. The Tribunal first considered whether the pattern of behaviour, in paragraphs 1 and 2 of the Allegation, amounted to Dr Inthiraraj trying to pursue a future sexual relationship with Ms A. The Tribunal considered having regard to its findings that there was no other reason to contact and communicate with Ms A in the way he did other than to pursue a future sexual relationship.

103. The Tribunal had regard to the nature of its findings in relation Patient B in paragraph 6 of the Allegation. Having considered the case of '*Haris*' the Tribunal concluded the facts spoke for themselves and the only reasonable inference it could draw was that Dr Inthiraraj's actions and behaviour were in pursuit of sexual gratification.

104. The Tribunal was satisfied, on the balance of probabilities that Dr Inthiraraj's conduct at paragraphs 1, 2 and 6 of the Allegation was sexually motivated.

105. Accordingly, the Tribunal found paragraph 8 of the Allegation proved.

The Tribunal's Overall Determination on the Facts

106. The Tribunal has determined the facts as follows:

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

Ms A

1. On or around 3 July 2018, Ms A attended at Woodridge Medical Centre ('the Medical Centre') for a consultation with you for her child ('the Consultation') and during the Consultation you said words to the effect of:

    a. "oh, you don't look like a XXX"; **Admitted and found proved**

    b. "by the way, I like your top". **Admitted and found proved**

2. Following the Consultation you:

    a. accessed Ms A's medical records on one or more occasion between around 11.13 and 11.24, when:

        i. you did not have Ms A's permission; **Determined and found proved**

        ii. there was no clinical reason for you to do so; **Determined and found proved**

    b. made contact with Ms A using the mobile telephone number stored in medical records and you:

        i. asked her:

            1. how she felt, because you knew that she was going through domestic violence; **Determined and found proved**

            2. if she had had an injection as she was about to go to XXX and XXX; **Determined and found proved**

or words to that effect;

ii. told her:

1. that if she came back to the Medical Centre that same day you would make an injection for her; **Determined and found proved**

2. to look after herself; **Determined and found proved**

3. that she could call you anytime; **Determined and found proved**

4. that you were here to help; **Determined and found proved**

or words to that effect;

c. sent Ms A a message by Viber messaging service, at or around 12:22, containing an animal emoji which said "hi". **Admitted and found proved**

3. There was no clinical reason for you to make contact with Ms A following the Consultation. **Determined and found proved**

4. At all material times Ms A was vulnerable by reason of her being the victim of domestic violence. **Determined and found proved**

5. You knew that Ms A was vulnerable by reason of her being the victim of domestic violence because you had accessed her medical records. **Determined and found proved**

Patient B

6. During a consultation at the Medical Centre on or around 12 September 2018, you carried out an ~~intimate~~ examination of Patient B and:**(successful application under Rule 17(6)**:

a. you put one of your hands inside Patient B's:

i. trousers; **Determined and found proved**

ii. underwear; **Determined and found proved**

b. you inserted one or more of your fingers into Patient B's vagina; Determined and found proved

c. when Patient B tried to get up from the examination couch you:

i. pushed her chest back; Determined and found proved

ii. said:

1. "cool down, nothing has happened"; Determined and found proved

2. "enjoy it"; Determined and found proved

3. "just keep quiet, just have fun"; Determined and found proved

or words to that effect.

~~d. you failed to:~~

~~i. offer Patient B a chaperone;~~ ~~To be determined~~ (successful application under Rule 17(6)

~~ii. wear gloves;~~ ~~To be determined~~ (successful application under Rule 17(6)

~~iii. use lubricating gel;~~ ~~To be determined~~ (successful application under Rule 17(6)

~~iv. maintain adequate medical records, in that you did not record that you had undertaken a vaginal/intimate examination of Patient B.~~ ~~To be determined~~ (successful application under Rule 17(6)

7. The examination referred to at paragraph 6 was:

a. not clinically indicated; Determined and found proved

b. carried out without consent. Determined and found proved

8. Your conduct as described at paragraphs 1, 2 and 6 was sexually motivated. **Determined and found proved**

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

Determination on Impairment - 03/01/2024

107. Dr Inthiraraj was not present, but his counsel, Mr Brassington, confirmed that he continued to represent him, and it was not a situation where the Tribunal needed to make a determination on proceeding in absence.

108. 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 as set out before, Dr Inthiraraj's fitness to practise is impaired by reason of misconduct.

Submissions

109. On behalf of the GMC, Ms Hudson submitted Dr Inthiraraj's actions amounted to serious misconduct and that his fitness to practise is currently impaired. Throughout her submissions, Ms Hudson referred the Tribunal to the relevant authorities on determining misconduct and impairment. She referred to paragraphs of Good Medical Practice (2013) ('GMP'), in particular paragraphs 1, 53, 65. She also submitted that the supplemental GMC guidance Confidentiality: good practice in handling patient information (2017) ('Confidentiality Guidance') was engaged, and in particular paragraphs 119 and 120.

110. Ms Hudson submitted that the features of this case involved sexually motivated conduct towards two different women, escalating in seriousness, which clearly calls for a finding of impairment. She submitted that Dr Inthiraraj has fallen far, far short of the standards to be expected from a doctor with this very grave misconduct, and there can be no doubt that his fitness to practise is currently impaired.

111. Ms Hudson reminded the Tribunal that remediation is difficult in cases of sexual misconduct. She submitted that the Tribunal has heard nothing from Dr Inthiraraj to demonstrate insight or remediation.

112. Ms Hudson submitted that proper professional standards would be undermined if a doctor could act in this way without impairment being found. She submitted that Dr Inthiraraj has breached a fundamental tenet of the profession and brought the profession into disrepute by his behaviour.

113. On behalf of Dr Inthiraraj, Mr Brassington reminded the Tribunal that it must approach impairment as a two-stage exercise. Firstly, determining whether or not the facts found proved amount to misconduct, and then if the Tribunal does find misconduct, it should move to determine whether or not those acts of misconduct currently impair Dr Inthiraraj's fitness to practice.

114. Mr Brassington submitted that the Tribunal will have little difficulty determining that this amounts to serious professional misconduct on the findings that it has made. He submitted that Dr Inthiraraj does not accept the findings of fact, as the Tribunal have determined them to be, and in those circumstances, he submitted that he could not make positive submissions that there was not current impairment on the basis of the Tribunal's findings.

The Relevant Legal Principles

115. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof, and the decision of impairment is a matter for the Tribunal's judgement alone.

116. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct and that the misconduct was serious ('serious misconduct'), and then whether the finding of serious misconduct could lead to a finding of impairment.

117. The Tribunal must determine whether Dr Inthiraraj'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.

118. In relation to misconduct, the Tribunal bore in mind the case of *Roylance v General Medical Council (No.2)* [2000] 1 A.C. 311, which provided:

'Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a [medical] *practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word professional which links the misconduct to the profession* [of medicine]. *Secondly, the misconduct is qualified by the word serious. It is not any professional misconduct which would qualify. The professional misconduct must be serious.'*

119. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the *Fifth Shipman Report*, as adopted by the High Court in *CHRE v NMC and Paula Grant* [2011] EWHC 297 Admin. The Tribunal noted that any of the following features are likely to be present when a doctor's fitness to practise is found to be impaired:

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 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. …'

120. The Tribunal received no further evidence at this stage but considered all of the evidence received at the Facts Stage where relevant.

121. The Tribunal reminded itself that Dr Inthiraraj was of previous good character, but having regard to the findings of sexual motivation, it gave no weight to this.

The Tribunal's Determination on Impairment

Misconduct

122. In determining whether Dr Inthiraraj's fitness to practise is impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amount to serious misconduct.

123. The Tribunal had regard to paragraphs 1, 53 and 65 of GMP, which provide:

> *'1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.*
>
> …
>
> *53 You must not use your professional position to pursue a sexual or improper emotional relationship with a patient or someone close to them.*
>
> …
>
> *65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.'*

124. The Tribunal considered each paragraph and stem of the Allegation separately in the context of the overall findings to determine whether there was serious misconduct or not.

Ms A

125. The Tribunal considered Dr Inthiraraj's actions as found proved in relation to Ms A.

126. The Tribunal first considered Dr Inthiraraj's conduct towards Ms A during the consultation with her child. It considered his comments about Ms A's nationality and clothing amounted to serious misconduct. It was of the view that taken in isolation these comments were not serious, but formed a pattern of inappropriate behaviour towards Ms A.

127. In relation to accessing Ms A's medical records, the Tribunal acknowledged that Dr Inthiraraj had no clinical reason to access the records Ms A, and he did not have Ms A's permission to access her records. It noted that Dr Inthiraraj has provided no meaningful explanation for his actions.

128. The Tribunal had regard to paragraphs 119 and 120 of the Confidentiality Guidance, which state:

> *'119 You must make sure any personal information about patients that you hold or control is effectively protected at all times against improper access, disclosure or loss. You should not leave patients' records, or other notes you make about patients, either on paper or on screen, unattended. You should not share passwords.*
>
> *120 You must not access a patient's personal information unless you have a legitimate reason to view it.'*

129. Dr Inthiraraj then contacted Ms A on his personal mobile phone using the number stored in her medical records. In the call, he alluded to her returning to the surgery for him to arrange and administer any required immunisations for her upcoming trip to XXX. He told Ms A that she could call him any time and that he was there to help, or words to that effect. He subsequently sent a message containing an animal emoji, saying '*Hi*'.

130. The Tribunal found that Dr Inthiraraj's actions in this respect amounted to serious misconduct and formed part of the overall pattern of behaviour to pursue a future sexual relationship with Ms A.

131. The Tribunal also found that undertaking this course of conduct in the knowledge of Ms A's vulnerability as a victim of domestic violence was seriously below the standards reasonably to be expected of a doctor.

132. The Tribunal concluded that the findings relating to Ms A were serious and inappropriate behaviours in order to pursue a future sexual relationship with Ms A. It therefore determined that Dr Inthiraraj's conduct in relation to Ms A fell so far short of the standards reasonably to be expected of a doctor as to amount to serious misconduct.

Patient B

133. The Tribunal next had regard to Dr Inthiraraj's actions as found proved in relation to Patient B.

134. The Tribunal considered that both individually and collectively Dr Inthiraraj's actions amounted to serious misconduct. It found that when viewed together the actions were extremely serious.

135. The Tribunal also took into account that medically there was no justifiable reason for Dr Inthiraraj to undertake an intimate examination of Patient B. The Tribunal acknowledged that these actions were undertaken without Patient B's consent, and that this was seriously below the expected standard. It had regard to Dr F's expert report, dated 28 November 2022, in which he stated that:

> *'If the various accounts of Dr Inthirajaj's care are accepted, then Dr Inthirajaj's care of [Patient B] on 12th September 2018 was seriously below the standard expected. This was because on 12th September 2018 Dr Inthirajaj did not take adequate consent from Patient [B] and used coercion and force during his interaction with her, and: either undertook a vaginal examination which was not indicated and did not record doing so; or, inserted his fingers into Patient [B]'s vagina for a reason other than examination. All of these aspects of Dr Inthirajaj's care were seriously below the standard expected.'* [sic]

136. The Tribunal has found that Dr Inthiraraj had breached paragraphs 1 and 65 of GMP, as set out above, as well as paragraph 17, which states:

> ***'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.'*

137. The Tribunal has concluded that Dr Inthiraraj's conduct fell so far short of the standards reasonably to be expected of a doctor as to amount to extremely serious misconduct.

Sexual motivation

138. The Tribunal found Dr Inthiraraj's conduct in relation to both Ms A and Patient B to be sexually motivated. It considered that this, by its very nature, therefore could only be serious misconduct.

Impairment by reason of misconduct

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

140. The Tribunal considered whether Dr Inthiraraj's misconduct was capable of being remediated, has been remediated, and whether it was likely to be repeated. It looked for evidence of insight and remediation and balanced those against the three limbs of the statutory overarching objective, namely:

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

141. Dr Inthiraraj denied most of the Allegation at the Facts Stage and, through his counsel Mr Brassington, did not accept the findings of fact by the Tribunal. The Tribunal accepted, and bore closely in mind, that this denial does not equate to a lack of insight. However, the Tribunal considered that Dr Inthiraraj has not shown he has considered the seriousness of the facts found proven, nor recognised the impact on Ms A or Patient B. Even though he denied the sexual aspects of the Allegation, he could have shown insight into why a doctor should not have acted as the Tribunal found. He has not demonstrated an understanding of how this type of misconduct might adversely affect public confidence in, and the reputation of, the medical profession.

142. The Tribunal considered whether Dr Inthiraraj has taken any remedial action. The Tribunal accepted that in relation to Ms A, he had shown some limited insight as he stated in his statement:

> *'I do wish to state that looking back on this matter, and with the benefit of hindsight, I recognise that there were aspects of my contact with Ms A which were unwise in that they could be perceived to be overly informal and to that extent inappropriate and unprofessional.'*

143. The Tribunal considered that Dr Inthiraraj's actions could not be easily remedied, indeed, his actions would be extremely difficult, but not completely impossible, to be

remediated. Dr Inthiraraj has not provided any evidence of remediation to the Tribunal. The Tribunal therefore concluded that there remained a significant risk of repetition.

144. The Tribunal considered the case of *Grant.* It was mindful that Dr Inthiraraj's actions had put Patient B at unwarranted risk of harm, as in effect it was a sexual assault. The Tribunal considered Patient B's oral evidence, when she told the Tribunal that she '*could still hear the words he had used in her ears*' which were '*cool down nothing has happened*'; '*enjoy it*' and '*just keep quiet, just have fun*'. In addition, the Tribunal received evidence that Patient B was '*distressed*' immediately after the consultation, and '*was very upset and disturbed by what had happened*' approximately two weeks later. The Tribunal found that there remains a risk of repetition.

145. The Tribunal determined that Dr Inthiraraj's actions have undoubtedly brought the profession into disrepute, by virtue of the extremely serious nature of the misconduct. It further noted its earlier conclusion that Dr Inthiraraj's misconduct breached fundamental tenets of the profession, as evidenced by his serious departure from the principles set out in GMP.

146. The Tribunal took into account the statutory overarching objective. Overall, the Tribunal concluded that a finding of impairment was justified and appropriate to protect and promote the safety and wellbeing of the public, to promote and maintain public confidence in the profession, and to promote and maintain proper professional standards.

147. The Tribunal considered that the nature and circumstances of the misconduct are such that public confidence in the profession would be seriously undermined if a finding of impairment were not made. It was necessary to reaffirm clear standards of professional conduct, and to mark the unacceptability of Dr Inthiraraj's serious misconduct.

148. The Tribunal therefore determined that Dr Inthiraraj's fitness to practise is currently impaired by reason of misconduct.

Determination on Sanction - 04/01/2024

149. Having determined that Dr Inthiraraj's fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

Submissions

150. On behalf of the GMC, Ms Hudson submitted that the only appropriate sanction in this case is one of erasure, in light of the very serious sexual misconduct that this Tribunal has found proved. She referred the Tribunal to the Sanctions Guidance (2020) ('the SG') throughout her submissions.

151. Ms Hudson submitted that Dr Inthiraraj's behaviour is completely incompatible with registration, and it is such a serious departure from the principles set out in GMP that suspension would not be appropriate.

152. Ms Hudson identified the aggravating factors of the case. In respect of Ms A, she submitted that there was a pattern of behaviour, building in its seriousness, which involved Dr Inthiraraj accessing records to which he had no entitlement, given his position was treating her child and not Ms A herself, which demonstrates that he does not understand professional boundaries between himself and patients. Further, he has demonstrated no understanding of the Confidentiality Guidance, because what he wanted was a sexual relationship with Ms A. In respect of Patient B, Ms Hudson submitted that this was digital penetration of a patient using coercion and force, and it was repeated abuse of his professional position.

153. Ms Hudson submitted that there are multiple serious departures from the principles set out in GMP and all of this behaviour was Dr Inthiraraj putting his own interests before those of Patient B and Ms A. She submitted that he has caused Patient B in particular serious harm, causing her to have very serious and understandable consequences from his actions. She submitted that Dr Inthiraraj put his own interests before patients because this was done for his own sexual gratification, involved a vulnerable victim, and an abuse of the special position of trust a doctor occupies. Ms Hudson submitted that the Tribunal have no evidence of any insight, no evidence of apology, and given what has been found, the only appropriate sanction is one of erasure.

154. On behalf of Dr Inthiraraj, Mr Brassington first drew the Tribunal's attention to its finding in respect of impairment, particularly to paragraph 35. He submitted that Dr Inthiraraj

does not lack insight into why doctors should not behave in the manner which has been alleged and found proved against him. He submitted that Dr Inthiraraj has no doubt in his mind about that issue, but he maintains that he did not act in the way found proved. Mr Brassington submitted that Dr Inthiraraj has acknowledged in his witness statement about his '*unboundaried*' behaviour in respect of Ms A, and his poor record keeping in respect of Patient B, which shows that Dr Inthiraraj has understood where he believes he has gone wrong and made acknowledgements of it. He submitted that it would be incorrect to suggest that because he denies the allegations and maintains that denial that he does not understand the consequence of sexual misconduct by doctors. On questioning, however, Mr Brassington accepted that there is no direct evidence before the Tribunal to demonstrate that Dr Inthiraraj has insight into the matters identified by the Tribunal.

155. Mr Brassington submitted that as to the appropriate sanction to impose, the Tribunal must do no more than that which is necessary to achieve the statutory purpose. He submitted that to do more would be to punish Dr Inthiraraj and that is not the purpose of sanction. He submitted that the Tribunal should not immediately jump to erasure and must approach the matter in ascending order of gravity of sanction. Mr Brassington made no specific submission as to the appropriate sanction for the Tribunal to impose in this case.

The Relevant Legal Principles

156. The Tribunal reminded itself that the decision as to the appropriate sanction to impose, if any, was a matter for it alone, exercising its own judgment. In reaching its decision on sanction, the Tribunal had regard to the SG. It bore in mind that the purpose of a sanction is not to be punitive, but to protect patients and the wider public interest, although it noted that any sanction imposed may have a punitive effect. It reminded itself that in deciding what sanction, if any, to impose, it should consider the sanctions available, starting with the least restrictive.

157. Throughout its deliberations, the Tribunal had regard to the overarching objective, which includes the protection of the public, the maintenance of public confidence in the profession, and the promotion and maintenance of proper professional standards and conduct for members of the profession. It applied the principle of proportionality, balancing Dr Inthiraraj's interests with the public interest.

The Tribunal's Determination on Sanction

158. The Tribunal first identified what it considered to be the aggravating and mitigating factors in this case.

Aggravating

159. The Tribunal first gave consideration to its assessment of Dr Inthiraraj's insight. It noted the submissions made by Mr Brassington that Dr Inthiraraj did understand why doctors should not act in the way the Tribunal has found he did towards Ms A and Patient B, although he accepted no evidence had been adduced to demonstrate this. It also took account of his submission regarding areas of insight he had shown, regarding his behaviour towards Ms A being '*unboundaried*' and his record keeping in respect of Patient B. However, it was of the view that these areas of insight did not go to the heart of the facts found proved. The Tribunal therefore maintained its view that Dr Inthiraraj has not made any attempt to remediate, in particular since the findings of fact determination was handed down in September 2023.

160. The Tribunal further considered that this was a serious case of sexual misconduct. Dr Inthiraraj behaved in a predatory manner to both Ms A and Patient B and this was an abuse of the position of trust a doctor holds. It also had regard to Ms A's particular vulnerability as a victim of domestic violence.

Mitigating

161. The Tribunal considered that Dr Inthiraraj did cooperate with the GMC and MPTS through the investigation process and at the Facts Stage of the hearing. However, it attached limited weight to this as cooperation with the regulator is a requirement, and he has not engaged with subsequent stages of the hearing.

162. The Tribunal also had regard to Dr Inthiraraj's previous good character. However, given the seriousness of the findings of fact and its assessment of impairment, it gave no weight to this.

163. The Tribunal balanced the aggravating and mitigating factors throughout its deliberations and went on to consider each sanction in order of ascending severity, starting with the least restrictive.

No action

164. The Tribunal first considered whether to conclude the case by taking no action. It noted that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

165. The Tribunal was satisfied that there were no exceptional circumstances in Dr Inthiraraj's case which could justify it taking no action. Further the Tribunal considered that concluding the case by taking no action would be insufficient to protect the public interest and would not mark the seriousness of Dr Inthiraraj's conviction.

Conditions

166. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Inthiraraj's registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable. The Tribunal noted that conditions may be workable where a doctor has insight into their misconduct, is likely to comply with conditions, and where a doctor is likely to respond positively to remediation or retraining. The Tribunal considered that none of these apply in Dr Inthiraraj's case.

167. The Tribunal further considered that no workable or measurable conditions could be formulated which would address the seriousness of Dr Inthiraraj's misconduct. It concluded that conditions would be insufficient to maintain public confidence in the profession or to promote and maintain standards for members of the profession.

Suspension

168. The Tribunal then went on to consider whether a period of suspension would adequately protect the public, maintain public confidence in the profession and uphold proper standards for its members. In considering whether to impose a period of suspension on Dr Inthiraraj's registration, the Tribunal had regard to paragraphs 91, 92, 93 and 97(a) and (f) of the SG which provide:

> *'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.*

…

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.*

…

f *No evidence of repetition of similar behaviour since incident.'*

169. The Tribunal had regard to its findings that Dr Inthiraraj's conduct constituted breaches of GMP including paragraphs 1, 53 and 65 and its finding that his actions breached a fundamental tenet of the profession. The Tribunal was satisfied that the identified breaches represented a significant departure from GMP.

170. In considering whether Dr Inthiraraj's conduct was fundamentally incompatible with continued registration, the Tribunal took into account the serious nature of the misconduct it has found. Dr Inthiraraj, in behaving in the manner he did, showed a blatant disregard for patients and put his own interests above the need of his patients. The Tribunal viewed this as a serious abuse of the position of trust held by a doctor.

171. The Tribunal also had regard to its findings on Dr Inthiraraj's failure to demonstrate insight and attempt to remediate his behaviour. There was therefore no basis or evidence upon which the Tribunal could place any reliance that Dr Inthiraraj would be prepared to engage in remediation or that any such engagement would be successful.

172. The Tribunal was of the view that because of the seriousness of Dr Inthiraraj's conduct, together with the absence of any evidence of insight, remediation or remorse from Dr Inthiraraj, it could not conclude that suspension was the appropriate sanction. It would not protect the public interest nor meet the statutory overarching objective. The Tribunal was satisfied that the circumstances of Dr Inthiraraj's case were such that his misconduct is fundamentally incompatible with continued registration.

Erasure

173. The Tribunal therefore went on to consider whether the sanction of erasure was appropriate and proportionate.

174. The Tribunal had regard to paragraphs 108, 109(a) to (f), 109 (i), 142, 143, 146, 147(b), 148, 149 and 150 of the SG and considered they were particularly relevant in Dr Inthiraraj's case:

> *'108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.*
>
> *109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).*

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

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

c Doing serious harm to others (patients or otherwise), either deliberately or through incompetence and particularly where there is a continuing risk to patients …

d Abuse of position/trust (see Good medical practice, paragraph 65: 'You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession').

e Violation of a patient's rights/exploiting vulnerable people …

f Offences of a sexual nature…

…

i Putting their own interests before those of their patients…

…

142 Trust is the foundation of the doctor-patient partnership. Doctors' duties are set out in paragraph 53 of Good medical practice and in the explanatory guidance documents Maintaining a professional boundary between you and your patient and Ending your professional relationship with a patient.

143 Doctors must not use their professional position to pursue a sexual or improper emotional relationship with a patient or someone close to them.

…

146 Using their professional position to pursue a sexual or improper emotional relationship with a vulnerable patient is an aggravating factor that increases

the gravity of the concern and is likely to require more serious action against a doctor.

147 *If a doctor has demonstrated predatory behaviour, motivated by a desire to establish a sexual or inappropriate emotional relationship with a patient, there is a significant risk to patient safety, and to public confidence and/or trust in doctors. More serious action is likely to be appropriate where there is evidence of (this list is not exhaustive):*

…

b use of personal contact details from medical records to approach a patient outside their doctor-patient relationship.

148 *More serious action, such as erasure, is likely to be appropriate where a doctor has abused their professional position and their conduct involves predatory behaviour or a vulnerable patient, or constitutes a criminal offence.*

149 *This encompasses a wide range of conduct from criminal convictions for sexual assault and sexual abuse of children (including child sex abuse materials) to sexual misconduct with patients, colleagues, patients' relatives or others. …*

150 *Sexual misconduct seriously undermines public trust in the profession. The misconduct is particularly serious where there is an abuse of the special position of trust a doctor occupies, or where a doctor has been required to register as a sex offender. More serious action, such as erasure, is likely to be appropriate in such cases.'*

175. For the reasons previously set out in the determination, the Tribunal was satisfied that Dr Inthiraraj's conduct engaged each of the above paragraphs.

176. The Tribunal considered that a sanction of erasure was the only sanction that would mark the seriousness of Dr Inthiraraj's misconduct, and be sufficient to uphold the statutory overarching objective, to maintain public confidence in the profession, the regulator and the regulatory process, and uphold proper professional standards.

177. The Tribunal has therefore directed that Dr Inthiraraj's name be erased from the Medical Register.

Determination on Immediate Order - 04/01/2024

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

Submissions

179. On behalf of the GMC, Ms Hudson submitted that an immediate order should be imposed in this case to prevent any further repetition. She submitted that, given the multiple breaches of GMP, the Tribunals findings of extremely serious misconduct and the breaching of fundamental tenets of the profession, there is no other determination the Tribunal can make than to restrict Dr Inthiraraj's access to patients.

180. On behalf of Dr Inthiraraj, Mr Brassington made no submissions.

The Tribunal's Determination

181. In reaching its decision, the Tribunal considered the relevant paragraphs of the SG and exercised its own independent judgement. In particular, it took account of paragraphs 172, 173 and 178, which state:

> *'172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.*
>
> *173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided*

poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.

…

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.'

182. The Tribunal determined that, given the serious nature of the misconduct, it is necessary and otherwise in the public interest to make an order suspending Dr Inthiraraj's registration with immediate effect, to prevent any further repetition and to protect the public, uphold and maintain professional standards and maintain public confidence in the profession.

183. This means that Dr Inthiraraj's registration will be suspended from today. The substantive direction, as already announced, will take effect 28 days from the date on which written notification of this decision is deemed to have been served, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

184. The interim order is hereby revoked.

185. That concludes this case.

ANNEX A – 19/07/2023

1. On behalf of Dr Inthiraraj, Mr Brassington, made an application for a different interpreter to be found to translate for Patient B.

Submissions

2. Mr Brassington informed the Tribunal that he had significant concerns about the interpreter being used to translate for Patient B and that he had heard nothing to show that they were aware of their duty as an interpreter. He stated that the expedition of this case does not outweigh the fairness to Dr Inthiraraj or to Patient B.

3. As such, Mr Brassington submitted that a different interpreter should be found as the current interpreter did not have a sufficient grasp of the English language in order to say the affirmation. He stated that the current interpreter did not interpret sufficiently and that he could not cross examine Patient B with this interpreter.

4. Mr Brassington submitted that it would be a breach of the rules of natural justice to allow the current interpreter to remain as he had no confidence that she was providing appropriate and competent interpretations. He contended that to continue with the current interpreter could lead to a breach of Article 6 of the European Convention of Human Rights as a fair hearing could not be achieved.

5. On behalf of the GMC, Ms Hudson agreed with Mr Brassington it is important for Patient B and for Dr Inthiraraj that the interpretation is conducted properly. She told the Tribunal that the GMC uses interpreters from a recognised agency who should ensure that the interpreters are competent. Ms Hudson submitted that the current interpreter needed more time to be afforded the chance to show if she is able to fulfil the role to interpret faithfully.

The Tribunal's decision

6. The Tribunal considered the submissions from both Mr Brassington and Ms Hudson. The Tribunal considered the overarching objective and its duty to ensure that there is a fair hearing and that justice is achieved.

7. The Tribunal was aware that this was the second interpreter in this case where there had been issues over their competence to fulfil their role as an interpreter. The first interpreter had already struggled with fulfilling her role and had been replaced by the GMC.

8. In its deliberation, the Tribunal accepted that Mr Brassington had lost confidence in the current interpreter. The Tribunal itself also had significant concerns with her ability to translate and her lack of familiarity with her role and the affirmation. In addition, the Tribunal found that the interpreter spoke to Patient B but did not appear to translate what was said.

9. Due to the current interpreter's inability to pronounce some of the English words in the affirmation and the apparent lack of interpreting a conversation with Patient B, the Tribunal concluded that it is in the interests of fairness, to the GMC, Dr Inthiraraj and Patient B, for her to be replaced with a different interpreter.

10. The Tribunal therefore determined to grant Dr Inthiraraj's application to change the interpreter.