

PUBLIC RECORD

Dates: 19 July – 22 July 2022, 6 – 7 October 2022

Medical Practitioner's name: Dr Fredrick RUZVIDZO

GMC reference number: 6049155

Primary medical qualification: MB ChB 1997 University of Zimbabwe

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

Summary of outcome

Erasure

Tribunal:

Legally Qualified Chair	Mrs Margaret Obi
Lay Tribunal Member:	Dr Jonathan Davies
Medical Tribunal Member:	Mr John Kelly

Tribunal Clerks:	Mr Matthew Rowbotham Mr Josh Dayco (6 October 2022) Mr Michael Murphy (7 October 2022)
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Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Gordon Jackson, KC, instructed by Oracle Law
GMC Representative:	Mr Ian Brook, 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- 21/07/2022

1. This determination will be read in private. However, as this case concerns Mr Ruzvidzo conviction, a redacted version will be published at the close of the hearing with those matters relating to XXX removed.

Background

2. Mr Ruzvidzo qualified in 1997 with a Bachelor of Medicine and Surgery from the University of Zimbabwe. Prior to the events set out in the Allegation, Mr Ruzvidzo held several medical roles in Zimbabwe, including Senior Surgical Registrar. Mr Ruzvidzo moved to the UK in December 2004. In 2005 Mr Ruzvidzo became a Senior House Officer in surgery at Inverclyde Royal Hospital, Scotland. He subsequently became a member of the Royal College of Surgeons in 2006 and a fellow in 2009. At the time of the relevant events Mr Ruzvidzo was practising as a Locum Consultant Surgeon at Monklands University Hospital ('the Hospital'), Scotland, where he had worked since 2008.
3. The allegation can be summarised as follows. Mr Ruzvidzo was convicted of two offences of sexual assault (contrary to section 3 of the Sexual Offences (Scotland) Act 2009) at Airdrie Sherrif Court on 26 March 2021 following a trial. The complainants were XXX; Ms A and Ms B. Mr Ruzvidzo was sentenced to a 2 year community payback order, 180 hours of unpaid work/activities to be completed within 12 months, and a Sexual Offences Act 2003 certification for 2 years.
4. The background to Mr Ruzvidzo's convictions is set out below and is based on the documentation within the hearing bundle, including Mr Brook's opening note. The Tribunal acknowledged that Mr Ruzvidzo did not accept that all of the events described below took place.

Ms A

5. XXX, Ms A XXX became aware of someone present behind her. She felt a single, wet, kissing sensation to the exposed part of her neck which left a wet patch. She turned and saw the Registrant. She asked him what he was doing and said that she did not XXX to be sexually assaulted. He laughed and walked away.
6. Ms A XXX. She stated that the incident was highly intimate and intrusive. She experienced anxiety which resulted in her being absent from work for approximately 4 weeks, followed by fortnightly counselling provided by her employer.
7. XXX.
8. Additionally, the matter was reported to the police and he attended the police station on 23 January 2020, for the purposes of arrest and interview. During the police interview, he admitted to approaching Ms A, and kissing her on the back of the neck. He was charged with the relevant offence and released to appear at court.

Ms B

9. Ms B described the events that took place during her recorded interview on 9 September 2019 XXX.
10. XXX, Mr Ruzvidzo saw Ms B in a XXX and asked her to come over and give him a hug. She replied saying “I don’t do cuddles” and tried to brush him off. She tried to change the subject, by saying that she had not seen him for a while and asked where he had been. He indicated XXX. Mr Ruzvidzo tried to hug Ms B again, and then he held her hand. Ms B ‘twirled away’ and tried to push him off. Mr Ruzvidzo kissed Ms B’s hand. She kept saying “right — enough — that’s enough”. The whole thing was making her feel uncomfortable, so she left. She went to XXX and spoke to Ms C.
11. Ms B told Ms C that Mr Ruzvidzo was making her feel really uneasy and that this was even worse than normal. MsB felt that he was starting to be quite inappropriate.
12. Ms B was outside XXX and Ms C was in a cupboard next to it when the Registrant appeared behind Ms B again. Ms B said that at that point Ms C warned Mr Ruzvidzo “you can XXX just watch what you are doing”, to which he just laughed. After Ms C walked away, Mr Ruzvidzo came up behind Ms B, put his hands on her hips, and started cuddling

her, from behind. She tried to push him away, and told him to “get away”, but he did it again, and then he put his right hand on her right breast and squeezed it. At this point, she shouted at him to get away. Mr Ruzvidzo immediately apologised.

13. Ms C emerged from a nearby room, and was told what had happened by Ms B. Ms B made her way to XXX, but was followed by Mr Ruzvidzo, who kept trying to hold Ms B’s hand and followed her into the XXX. Ms E repeatedly told Mr Ruzvidzo to leave, but he would not do so. Mr Ruzvidzo persisted in sitting next to Ms B, attempting to hold her hand, crying and apologising. Ms B thought that part of the incident had been witnessed by Ms D.
14. Ms B, during the course of XXX following this incident alleged other inappropriate behaviour and comments. She stated that Mr Ruzvidzo made inappropriate comments to XXX and was “just quite touchy feeling (sic)”. She also stated that when he was trying to hug her, he was pinching the back of her bra strap. His inappropriate comments included “let’s kill [Ms B’s husband] I will give him some insulin”, and “oh did you get it with [Ms B’s husband] last night, what sexual positions do you like?”. She said that he had been spoken to by XXX, who had overheard a conversation in which Mr Ruzvidzo had made a comment about Ms B’s ‘boobs’.
15. During the XXX Ms D XXX and Ms C corroborated Ms B’s account. In her interview, Ms D confirmed that she saw Mr Ruzvidzo with both of his arms wrapped around Ms B, who kept telling him to leave her alone. She also confirmed that Ms C shouted to him that he could get into trouble for that. Ms C stated that she saw Mr Ruzvidzo with his ear up to the door of Ms E’s XXX, clearly attempting to listen to the conversation between Ms D and Ms E. Ms C stated that she held the door shut to prevent Mr Ruzvidzo getting in, until he was escorted away XXX.
16. Mr Ruzvidzo, in XXX, stated that he had hugged Ms B. He explained that he had known her for 10 years. He said he loved and respected her from the bottom of his heart. He did not remember anything about the second event, where he was said to have hugged her from behind. However, he did remember Ms B commenting that she was not comfortable with hugs. Mr Ruzvidzo said he had had a terrible year between the XXX regarding the alleged kissing of Ms A’s neck. He was busy with work, was not coping well with things but work let him escape, a week before the incident involving Ms A, one of his patients had died unexpectedly resulting in a serious adverse event investigation, and XXX before the incident involving Ms B.

17. XXX.

18. XXX.

The Outcome of Applications Made during the Preliminary Stage

19. The Tribunal granted Mr Ruzvidzo's application, made pursuant to Rule 34(1) of the Fitness to Practise Rules (2004, as amended) ('the Rules') to include statements made in a witness statement. The application was opposed by the GMC. The Tribunal's full determination can be found at Annex A.

The Allegation and the Doctor's Response

20. The Allegation made against Mr Ruzvidzo is as follows:

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

1. On 26 March 2021, at the Airdrie Sheriff Court, you were convicted of 2 offences of Sexual Assault, contrary to section 3 of the Sexual Offences (Scotland) Act 2009, namely that:
 - a. on XXX at XXX, you did sexually assault [Ms A] whilst XXX c/o The Police Service of Scotland in that you did kiss her on the body without her consent; **Admitted and found proved**
 - b. on XXX at XXX, you did sexually assault Ms B whilst XXX c/o The Police Service of Scotland in that you did repeatedly seize her on the body, kiss her on the body and seize her breast without her consent. **Admitted and found proved**
2. On 12 May 2021 you were sentenced to:
 - a. a community payback order:
 - i. 2 year supervision period;
 - ii. unpaid work/activities period of 180 hours, to be completed within 12 months **Admitted and found proved**
 - b. Sexual Offences Act 2003 certification **Admitted and found proved**

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

The Admitted Facts

21. At the outset of these proceedings through his counsel, Mr Gordon Jackson, KC, Mr Ruzvidzo 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.

Witness Evidence

22. Mr Ruzvidzo chose to give oral evidence. Mr Ruzvidzo stated that he accepts the verdicts of the court. However, he cannot remember where on her body he had kissed Ms A and stated that the touching of Ms B's breast had been inadvertent. Mr Ruzvidzo also stated that he has complied with his community payback and supervision orders. He explained that he is still under supervision, which will continue until May 2023. His meetings with his allocated social worker include discussions regarding the triggers for his behaviour in order to ensure that this behaviour is not repeated.

23. During cross examination, Mr Ruzvidzo denied that he had laughed and walked off when his behaviour had been challenged by Ms A. He stated that he apologised to Ms A because she was angry. He also stated that 10 other XXX had been present and none of them had provided statements XXX.

24. Mr Ruzvidzo stated that he did not recognise the pattern of behaviour that had been described by Ms B and Ms C. He had been invited to XXX houses for dinner, met XXX's new-born babies and received awards for his training of doctors and nurses. He stated these things would not have happen if people truly thought he was predatory.

25. Mr Ruzvidzo explained that, at the time of the events, he was managing a busy workload in a deprived area. He stated that he worked very long hours and also took work home with him. At one stage he stated that his workload was described by others as the equivalent of four consultants. Mr Ruzvidzo also explained that shortly before the events XXX and a patient who had been in his care for two years died whilst he was performing

elective surgery. Although Mr Ruzvidzo was exonerated during the subsequent serious adverse event review he stated that the review XXX.

26. Mr Ruzvidzo stated that he takes full responsibility for his actions, and that it was only during the XXX were aware of how ‘overloaded’ he was. Mr Ruzvidzo expressed remorse and shame for his behaviour. He stated that he would ‘probably’ never repeat this behaviour again. When asked by the Tribunal what he meant by ‘probably’ he stated he was subconsciously relying on the observation that had been made by his social worker. When challenged by Mr Brook, Mr Ruzvidzo stated that no one can be 100% sure about anything in life.

Documentary Evidence

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

- the criminal charges;
- a description of the alleged events and the outcome of the court case;
- summary of the police interviews with Ms A, Ms B, Mr Ruzvidzo and Ms C;
- correspondence between Mr Ruzvidzo and NHS Lanarkshire including the transcripts and XXX;
- a letter indicating Mr Ruzvidzo had completed his unpaid work and offender supervision;
- Mr Ruzvidzo’s CV;
- Testimonials on behalf of Mr Ruzvidzo; and
- A witness statement from Mr F, Consultant Colorectal Surgeon at the Hospital, dated 4 December 2021.

Impairment

28. 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 above, Mr Ruzvidzo’s fitness to practise is impaired by reason of his conviction.

Submissions

On behalf of the GMC

29. Mr Brook submitted that Mr Ruzvidzo had defended himself in court by stating that the incident with Ms A was a friendly gesture, that his touching of Ms B's breast had been inadvertent and that both incidents were part of 'friendly banter'. Mr Brook reminded the Tribunal that during his evidence, Mr Ruzvidzo stated that he had gone to court in order to protect his career. Mr Brook submitted that the court was sure that Mr Ruzvidzo's actions amounted to sexual assault invited the Tribunal to note that although Mr Ruzvidzo indicated that he would appeal no appeal had been lodged.
30. Mr Brook submitted that although Mr Ruzvidzo stated that he accepts the verdict of the court, it was only during oral evidence at this hearing that Mr Ruzvidzo acknowledged that he had sexually assaulted Ms A and Ms B. He further submitted that Mr Ruzvidzo has given various explanations for his conduct, such as XXX and work stress, but at other times had blamed the XXX. Mr Brook invited the Tribunal to take into account that the absence of previous complaints may be due to XXX.
31. Mr Brook submitted that Mr Ruzvidzo's second criminal offence occurred whilst he was still subject to the XXX in relation to the first criminal offence. XXX. Mr Brook submitted that if Mr Ruzvidzo had deeply reflected on his actions, he would not have gone on to re-offend.
32. Mr Brook acknowledged that Mr Ruzvidzo may now not have the finances to attend relevant courses to assist with his remediation. However, he submitted that Mr Ruzvidzo had the opportunity to identify and attend relevant courses following the first incident with Ms A but did not do so. Mr Brook further submitted that there was no independent evidence to demonstrate that Mr Ruzvidzo has kept his skills up to date and no independent information regarding his current state of wellbeing. He also submitted that there was no documentary evidence available to the Tribunal to support Mr Ruzvidzo's assertion that his risk of reoffending has been deemed to be low by the police and social workers.
33. Mr Brook invited the Tribunal to note that none of Mr Ruzvidzo's testimonials mention the XXX. Nor is there any evidence of the support Mr Ruzvidzo stated that he had from other XXX. Mr Brook also reminded the Tribunal that Mr Ruzvidzo has not yet completed his sentence and is still on the Sex Offenders Register.
34. Mr Brook submitted that given the lack of evidence of remediation, and limited insight, the Tribunal could not be satisfied that the sexual assaults would not be repeated.

On behalf of Mr Ruzvidzo

35. Mr Jackson, KC, submitted that at the time of the events Mr Ruzvidzo was not fit to practise. However, the question before the Tribunal is whether Mr Ruzvidzo is currently fit to practise. Mr Jackson submitted that Mr Ruzvidzo is fit to practise, as the testimonials paint a picture of a very good doctor who was going beyond the call of duty in a challenging hospital environment. He submitted Mr Ruzvidzo had earned the respect of his colleagues.
36. Mr Jackson submitted that Mr Ruzvidzo was charged on a summary complaint and received a minimal sentence. He further submitted that given these circumstances, the public would not be horrified if Mr Ruzvidzo were allowed to practise medicine again. He submitted that it is hard to untangle what causes a person to act in a particular way at any given time. He stated that Mr Ruzvidzo accepts full responsibility for his actions. However, at the time of the incidents, there were multiple issues in Mr Ruzvidzo's professional and private life and each formed a part of the background circumstances.
37. Mr Jackson submitted that Mr Ruzvidzo stated that he had been found to be at a low risk of reoffending by the social work team, but that the real test is what is done after this assessment. Mr Jackson submitted that it was clear Mr Ruzvidzo had learnt his lesson and insight had been gained. He submitted that Mr Ruzvidzo's comment that he 'probably' would not be repeat his actions demonstrates that he understands that nothing is 100% certain in life.
38. Mr Jackson submitted that Mr Ruzvidzo is genuinely apologetic for his actions and is horrified by the effects they have caused. Mr Jackson submitted that Mr Ruzvidzo has worked on his insight on a weekly and fortnightly basis with his social worker, and that his evidence is powerful, clear, honest and insightful. Mr Jackson submitted that Mr Ruzvidzo accepts that there is more to do in terms of his insight, but that he has reached the stage where he is now fit to practise.

The Relevant Legal Principles

39. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision on impairment is a matter for the Tribunal's judgement alone. In reaching its decision, the Tribunal will take a holistic view of the

nature of the underlying conduct, Mr Ruzvidzo's insight and remediation, and his risk of repetition.

40. The Tribunal was mindful that a conviction does not automatically mean a doctor is impaired, but that a conviction of sexual misconduct is serious and difficult to remediate. The Tribunal noted that Mr Ruzvidzo was entitled to dispute the charges he faced at court, and that his denial of the charges is not a bar to insight. The Tribunal had regard to the case of *Sayer v General Osteopathic Council [2021] EWHC 370 (Admin) (24 February 2021)* which states:

'attitude to the underlying allegation is properly to be taken into account when weighing up insight'

41. When considering Mr Ruzvidzo's insight, the Tribunal is required to assess Mr Ruzvidzo's apology and expressions of regret, as well as his ability to be self-critical, acknowledge fault and learn meaningful lessons in order to ensure that the behaviour which underlies his convictions is not repeated.

42. The Tribunal must determine whether Mr Ruzvidzo's fitness to practise is impaired today, taking into account Mr Ruzvidzo's behaviour at the time of the events and relevant factors such as whether the matters are remediable, have been remedied and any likelihood of repetition, as stated in the case of *Cohen v General Medical Council [2008] EWHC 581 (Admin) (19 March 2008)*. The Tribunal also had regard to the case of *General Medical Council v Meadow [2006] EWCA Civ 1390 (26 October 2006)*, which states:

'the purpose of FTP proceedings is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise. The FPP thus looks forward not back. However, in order to form a view as to the fitness of a person to practise today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past.'

43. The Tribunal was also mindful of the need to protect the public and uphold public confidence in the medical profession by upholding proper standards of conduct and behaviour. When considering the public interest in this case, the Tribunal had regard to the case of *Yeong v The General Medical Council [2009] EWHC 1923 (Admin) (28 July 2009)* which states:

‘Where a FTPP considers that the case is one where the misconduct consists of violating such a fundamental rule of the profession [...] thereby undermining public confidence in the medical profession, a finding of impairment of fitness to practise may be justified on the grounds that it is necessary to reaffirm clear standards of professional conduct so as to maintain public confidence in the practitioner and in the profession.’

44. The Tribunal was mindful that there is no legal definition of impairment but noted that certain features considered in the case of *CHRE v NMC and P Grant [2011] EWHC 927 (Admin)* may be present when impairment is found. These features include:

‘a) [...]
b) Whether the registrant has in the past brought and/or is liable in the future to bring the profession into disrepute;
c) Whether the registrant has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession.
[...]’

The Tribunal’s Determination on Impairment

45. The Tribunal considered that there were two elements in this case when determining Mr Ruzvidzo’s impairment: his personal fitness to practise and the wider public interest.
46. The Tribunal reminded itself that Mr Ruzvidzo’s criminal offences resulted in a 2-year community payback order, 180 hours of unpaid work/activities to be completed within 12 months, and a Sexual Offences Act 2003 certification for 2 years. The Tribunal noted that in the context of criminal offences Mr Ruzvidzo’s conditions were towards the lower end of the scale for offences of this type. However, the Tribunal concluded that for the purposes of regulatory proceedings any conviction for sexual assault is inherently serious.
47. The Tribunal noted that Mr Ruzvidzo’s convictions demonstrate that he crossed XXX boundaries on two separate occasions. The second incident, involving Ms B, was whilst Mr Ruzvidzo was XXX and indicates an escalating pattern of inappropriate sexual behaviour towards XXX. Furthermore, during the second incident, Mr Ruzvidzo demonstrated a significant degree of persistence. He did not deny that it was made clear to him that he was making Ms B uncomfortable, and he had to be asked to leave on

several occasions. The Tribunal did not accept that Mr Ruzvidzo was justified in his actions because he wanted to apologise to Ms B. The Tribunal noted that Mr Ruzvidzo's behaviour demonstrated a high degree of wilfulness which is likely to have made the incident even more upsetting for Ms B.

48. Ms A stated that at the time of the sexual assault she had a pre-existing fear of people coming up behind her and that the incident had left her feeling violated and dirty. She stated the incident caused her anxiety and stress which led to 4 weeks sickness absence. It had also caused a previous condition, Fibromyalgia, to flare up. She had not experienced the condition for 5 years prior to the sexual assault. Ms B described, XXX being used to taking herself away from the situation, if it was just Mr Ruzvidzo and herself XXX. She stated that Mr Ruzvidzo made her feel uneasy.
49. It was within the context described above that the Tribunal assessed Mr Ruzvidzo's fitness to practise from his personal perspective.
50. Whilst Mr Ruzvidzo's insight could be said to be developing, the Tribunal concluded that he has a considerable way to go before achieving the level of insight which would demonstrate full understanding of the impact of his actions. The Tribunal acknowledged that Mr Ruzvidzo had expressed remorse and had repeatedly apologised for his behaviour. However, the statement of case that was presented on Mr Ruzvidzo's behalf during XXX stated that he had 'deeply reflected' on the incident involving Ms B. The Tribunal also noted that Mr Ruzvidzo states in his witness statement that he has attended numerous hourly sessions with his social worker where they discuss his offending behaviour and the impact on Ms A and Ms B. During these sessions he stated that he is robustly challenged about his offences and his behaviour. The Tribunal acknowledged that Mr Ruzvidzo's witness statement indicated that he had given some thought to the impact of his behaviour but during his oral evidence he demonstrated only limited insight. Despite being 'robustly challenged' in his sessions with his social worker Mr Ruzvidzo's insight was superficial. The Tribunal was not satisfied that Mr Ruzvidzo has any meaningful understanding of why he acted the way he did and had taken insufficient steps to develop that understanding. Although Mr Ruzvidzo stated that he accepted full responsibility for his actions he appeared to be unable to recognise XXX between himself and his victims and the impact this would have XXX. He also appears to have been oblivious to XXX warnings about his behaviour XXX. No meaningful explanation for this was provided. In these circumstances, the Tribunal conclude that there was a risk of repetition.

51. Mr Ruzvidzo informed the Tribunal that his social worker has assessed his risk of reoffending to be low. The Tribunal was not provided with a copy of the social workers' risk assessment, and therefore no information about the criteria and basis underpinning the assessment. The Tribunal concluded that in the absence of meaningful insight and remediation, it was not satisfied that the risk was low. In reaching this conclusion the Tribunal also noted that despite an apology and an assurance that he would not repeat his behaviour following the incident involving Ms A he went on to commit a further sexual offence XXX less than 5 months later.
52. The Tribunal noted that Mr Ruzvidzo was under stress due to his workload, the XXX and the unexpected death of one of his patients. However, as he acknowledged these factors do not excuse his behaviour. XXX.
53. The Tribunal concluded that Mr Ruzvidzo had breached paragraph XXX, 37 and 65 of *Good Medical Practice (2013, as amended) ('GMP')*, which state:

'XXX

37 You must be aware of how your behaviour may influence others within and outside the team.

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

These breaches were significant as they resulted in two criminal convictions for sexual assault and therefore Mr Ruzvidzo's behaviour fell far below the standard expected of a registered doctor.

54. Overall, the Tribunal considered that there was little evidence that Mr Ruzvidzo had properly focussed his attention on remediation for the purposes of these proceedings and the insight he demonstrated during his oral evidence was limited.
55. In terms of the wider public interest, the Tribunal noted that there were no concerns regarding Mr Ruzvidzo's care for patients.

56. However, the Tribunal concluded that Mr Ruzvidzo’s actions had brought the profession into disrepute and breached fundamental tenets of the profession which include ensuring that his behaviour justifies the trust of the public. Due to Mr Ruzvidzo’s lack of insight there is an ongoing risk that these breaches will be repeated. In these circumstances, the Tribunal concluded that rather than uphold trust and confidence in the profession, a finding of no impairment would serve to undermine it. Reasonable, well-informed members of the public would be extremely concerned if a doctor who had been convicted of sexual assault and has been placed on the sex offenders register for 2 years was deemed to be fit to practise without restriction. In reaching this conclusion the Tribunal noted that Mr Ruzvidzo will remain on the sex offenders register until May 2023.

57. The Tribunal determined Mr Ruzvidzo’s fitness to practise is impaired.

Determination on Sanction - 07/10/2022

58. This determination will be read in private. However, as this case concerns Mr Ruzvidzo conviction, a redacted version will be published at the close of the hearing with those matters relating to XXX removed.

59. Having determined that Mr Ruzvidzo’s fitness to practise is impaired by reason of conviction, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

The Evidence

60. The Tribunal has taken into account the evidence received during the earlier stages of the hearing, where relevant, in reaching a decision on sanction.

61. The Tribunal has also taken into account the additional evidence provided, on behalf of Mr Ruzvidzo, at this stage of the proceedings:

- CPD courses attended by Mr Ruzvidzo;
- Letter from Professor F dated 29 September 2022;
- Document entitled “Journal Club Mr Ruzvidzo & Prof F” (‘Journal Club document’);
and
- XXX

Submissions

On behalf of the GMC

62. Mr Brook submitted that erasure from the medical register is the appropriate sanction in this case. He outlined the background circumstances and reminded the Tribunal of its findings at the impairment stage. He also referred the Tribunal to the relevant paragraphs of the Sanctions Guidance (November 2020 edition) ('the SG') and relevant caselaw.
63. Mr Brook queried the relevance of the recent CPD courses that Mr Ruzvidzo has undertaken and the list of papers that he discussed with Mr F as set out in the Journal Club document. He invited the Tribunal to note that the courses had all been undertaken at the end of September 2022. He submitted that appropriate courses should have been taken much sooner and, in any event, it was doubtful that Mr Ruzvidzo had had time to properly reflect on the learning outcomes.
64. XXX
65. XXX
66. Mr Brook submitted that conditions would not be appropriate. He further submitted that a period of suspension would be inadequate to protect the public from any risk of repetition and would undermine public confidence. Mr Brook referred the Tribunal to paragraph 109 of the SG which provides a non-exhaustive list of factors which may indicate that erasure is the appropriate sanction. He invited the Tribunal to conclude that Mr Ruzvidzo's sexual assault convictions justify erasure and submitted that such a sanction would be a fair outcome.

On behalf of Mr Ruzvidzo

67. Mr Jackson KC, submitted that a period of suspension would be the appropriate and proportionate sanction in this case. He reminded the Tribunal that a community-based penalty rather than a custodial penalty was imposed by Airdrie Sheriff Court and there were no patient safety concerns in this case. He noted that in the *Arunchalam* case Kerr J set aside the erasure decision and substituted it for a 12 month suspension order. He

submitted that as in the *Arunchalam* case, Mr Ruzvidzo's conduct was "*nowhere near the top of the scale.*"

68. Mr Jackson referred the Tribunal to the various documents that had been produced as evidence at this stage of the proceedings. He submitted that Mr Ruzvidzo was entitled to plead not guilty during the criminal proceedings on legal advice and that what matters, is his current level of insight. He acknowledged that not all the CPD undertaken by Mr Ruzvidzo is directly relevant to his criminal convictions but submitted that they demonstrate his commitment to clinical practice. He referred the Tribunal to the letter from Prof F. Mr Jackson invited the Tribunal to conclude that Mr Prof F is aware of the issues in this case and the need to protect the public, XXX, and the profession. He submitted that it is significant that, despite the challenges, Prof F is willing to mentor Mr Ruzvidzo and support his return to practice.
69. Mr Jackson submitted that Mr Ruzvidzo had done everything that could be asked of him. He has accepted that his behaviour was unacceptable and has taken these proceedings extremely seriously. He is a good clinical doctor and erasing him from the medical register would be unnecessary and disproportionate.

The Tribunal's Approach to Sanction

70. The Tribunal bore in mind that the decision as to the appropriate sanction, if any, to impose in this case is a matter for the Tribunal exercising its own judgement based on the nature and gravity of Mr Ruzvidzo's convictions.
71. In reaching its decision, the Tribunal has taken into account the SG and GMP. It has also taken into account the overarching objective, which is to protect the public and includes:
- the protection and promotion of health, safety, and well-being of the public;
 - promoting and maintaining public confidence in the profession; and
 - promoting and maintaining proper professional standards and conduct for the members of the profession.
72. Throughout its deliberations, the Tribunal bore in mind the need to balance the interests of the public with those of Mr Ruzvidzo and impose no greater restriction on his ability to practise his chosen profession than is necessary to achieve its objectives; otherwise

known as the principle of proportionality. Mr Ruzvidzo's interests include his personal, financial, and professional interests. The Tribunal also bore in mind that, although sanctions may have a punitive effect, the purpose of sanctions is to protect the public which includes the wider public interest.

The Tribunal's Determination on Sanction

The Nature and Gravity of Mr Ruzvidzo's Conduct

73. The Tribunal noted that Mr Ruzvidzo is a competent surgeon and that there is a public interest in permitting a good doctor to continue in practice (or return to practice) for the public good provided that that aim is consistent with the overarching objective. Therefore, the Tribunal acknowledged that the loss of Mr Ruzvidzo's clinical skills, on a temporary or permanent basis, would be a detriment to the public. The Tribunal also noted that Mr Ruzvidzo's convictions stand out as significant errors of judgement within the context of an otherwise unblemished career. However, Mr Ruzvidzo sexually assaulted XXX. The first incident involved the trespassing into Ms A's personal space and an unwanted kiss which caused significant distress and the second incident, involving Ms B, included touching, and squeezing her breast. The second incident occurred whilst Mr Ruzvidzo XXX and only 9 months later. As the Tribunal has previously stated, this indicates an escalating pattern of inappropriate sexual behaviour XXX. Furthermore, Mr Ruzvidzo demonstrated a high degree of wilfulness and persistence, during the second incident, which was particularly upsetting for Ms B.
74. Within the context of criminal proceedings the sexual assaults committed by Mr Ruzvidzo are towards the lower end of the scale for offences of this type. However, the Tribunal concluded that his convictions are inherently serious when considered from the perspective of XXX regulation. XXX . Mr Ruzvidzo's actions, in sexually assaulting XXX, is inherently serious as his actions significantly undermined XXX and the profession as a whole.
75. Before considering what action, if any, to take in respect of Mr Ruzvidzo's registration, the Tribunal considered and balanced the mitigating and aggravating factors in this case.

Mitigating Factors

76. The Tribunal acknowledged that Mr Ruzvidzo was working under stressful circumstances due to his workload, XXX and the unexpected death of one of his patients. The Tribunal also acknowledged that Mr Ruzvidzo had made efforts to keep his knowledge and skills up to date and had demonstrated, through his informal mentorship with Prof F, a willingness to return to practice. The Tribunal noted that Prof F stated in his letter, dated 29 September 2022, that, “[in] the hope of returning him to full clinical practice, I have acted as a social support and more recently have agreed to act as a mentor for him”. Furthermore, Mr Ruzvidzo is a person of previous good character and other than these proceedings, no adverse regulatory findings have been made against him.
77. The Tribunal did not consider that the features mentioned above could be properly characterised as mitigating factors for the following reasons:
- XXX;
 - whilst the Tribunal noted Prof F’s positive comments about Mr Ruzvidzo’s abilities, this case does not relate to his clinical competence, and in any event, there is an expectation that a medical practitioner will keep their clinical skills and knowledge up to date;
 - none of the courses that Mr Ruzvidzo has undertaken appear to relate to the behaviour that underlies his convictions. The CPD provided relates to general mandatory training for NHS employees rather than addressing Mr Ruzvidzo’s offending and behaviour. Furthermore, to the extent that some of the courses may have been relevant, the Tribunal noted that it was not provided with any written reflections with regard to the learning that Mr Ruzvidzo had achieved;
 - there is also an expectation that doctors will be of good character and uphold high standards of personal behaviour at all times.
78. However, the Tribunal acknowledged that the above features form part of the background circumstances.
79. The Tribunal noted that Prof F acknowledged that a return to practice is a decision which rests with this Tribunal. However, the Tribunal gave little weight to Prof F “hope” that Mr Ruzvidzo would be able to return to practice not least because there was no indication despite the submission from Mr Jackson that he was fully aware of the circumstances of this case and the gravity of the sexual assaults.

80. XXX As the Tribunal stated in its impairment determination there was little evidence that Mr Ruzvidzo had properly focussed his attention on remediation for the purposes of these proceedings and his insight was limited.
81. Furthermore, XXX.
82. XXX The Tribunal noted that Mr Ruzvidzo had been practising in the UK since 2005 and, in any event, the sexual assault of XXX went far beyond any behaviour which could be regarded as culturally acceptable from his perspective.
83. The Tribunal identified the following mitigating factors:
- Mr Ruzvidzo now accepts full responsibility for his convictions for sexual assault;
 - The behaviour which underlies Mr Ruzvidzo’s convictions does not raise any patient safety concerns;
84. The Tribunal concluded that these factors were significantly outweighed by the aggravating factors set outlined below.

Aggravating Factors

85. The Tribunal identified the following aggravating factors:
- Mr Ruzvidzo has persistently demonstrated a lack of insight. This finding is based on the absence of sufficiently meaningful reflection with regard to the impact of his behaviour on the victims, his personal standing as a registered medical professional and the wider public interest;
 - XXX;
 - XXX;
 - The second sexual assault occurred during XXX and demonstrated a persistent and escalating pattern of behaviour.

The Tribunal’s Determination on Sanction

86. Having identified the aggravating and mitigating factors, the Tribunal reminded itself that it must consider each of the sanctions available, starting with the least restrictive.

No action

87. 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.
88. The Tribunal concluded that, in view of the nature and seriousness of Mr Ruzvidzo's convictions and its findings on impairment, it would be insufficient and inappropriate to take no further action. The Tribunal was satisfied that the background circumstances, the mitigating factors, and his competence as a surgeon do not amount to exceptional circumstances which would justify no action being taken on Mr Ruzvidzo's registration. Furthermore, taking no action would undermine rather than promote and maintain public confidence and proper professional standards in the profession.

Conditions

89. The Tribunal next considered whether it would be sufficient to impose conditions on Mr Ruzvidzo's registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable, and measurable.
90. The Tribunal had regard to the relevant paragraphs of the SG. Paragraph 81 of the SG states that conditions are likely to be the most appropriate and proportionate sanction in cases involving the doctor's health, issues relating to the doctor's performance, where there is evidence of shortcomings in a specific area or areas of the doctor's practice and or where the doctor lacks the necessary proficiency in English. None of these features apply to the circumstances of this case and there are no patient concerns. Whilst the Tribunal recognised that paragraph 81 does not exhaustively limit the circumstances in which conditions might be appropriate, it concluded that it would not be possible to formulate any conditions which would adequately address Mr Ruzvidzo's inability or unwillingness to maintain professional boundaries. As a consequence, conditions would not protect XXX, maintain trust and confidence in the profession or uphold proper standards of conduct and behaviour.
91. The Tribunal determined that it would be neither sufficient nor appropriate to direct the imposition of conditions on Mr Ruzvidzo's registration.

Suspension

92. The Tribunal then went on to consider whether imposing a period of suspension would be appropriate and proportionate. In doing so, the Tribunal had regard in particular to the following paragraphs of the SG:

'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.

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

...

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.'

93. The Tribunal, in considering the relevant factors in paragraph 97 of the SG, acknowledged that there is no evidence of repetition since Mr Ruzvidzo's conviction and sentence. The Tribunal also acknowledged that it is inherently difficult to demonstrate remediation following a conviction for sexual misconduct because it fundamentally undermines trust and confidence in the medical profession. However, the Tribunal concluded that such conduct is capable of being remedied provided that the medical practitioner is willing and able to demonstrate meaningful insight and persuade a tribunal that the sexual misconduct is firmly in the past and is highly unlikely to be repeated.

94. The Tribunal noted that there was no evidence to indicate that Mr Ruzvidzo would be incapable of demonstrating remediation. Equally, there was no evidence before the Tribunal that Mr Ruzvidzo had taken full advantage of the opportunity to demonstrate that he had properly reflected on his behaviour and that as a consequence the risk of repetition was low. The Tribunal did not accept Mr Jackson’s submission that Mr Ruzvidzo had done all that could be reasonably asked of him. For the reasons stated in the impairment determination the Tribunal found the level and scope of Mr Ruzvidzo’s insight to be superficial. Mr Ruzvidzo’s written reflections in his witness statement contained broad statements but lacked detail and he was unable to expand on his understanding of the concerns raised by his convictions when he gave oral evidence. The Tribunal was not provided with any further reflections or oral evidence at this stage of the proceedings. It is not for this Tribunal to dictate the ways and means that Mr Ruzvidzo could demonstrate insight as it can take many forms. The Tribunal concluded that the efforts that Mr Ruzvidzo had made had been insufficient and/or ineffective. In the absence of sufficient insight there remains an ongoing risk of repetition.
95. None of the factors set out in paragraphs 97 (e), (f) or (g) are present such that they undermine the Tribunal’s conclusion that the sexual assault of XXX demonstrates a significant departure from the principles of GMP and is fundamentally incompatible with continued registration. The Tribunal concluded that rather than maintaining trust and confidence in the profession and upholding standards of conduct and behaviour a suspension order would serve to undermine both of these aspects of the public interest. Furthermore, the mitigating factors and background circumstances including Mr Ruzvidzo’s competence as a surgeon, carry little weight in this context.
96. The Tribunal concluded that Mr Ruzvidzo’s convictions are so serious that even the maximum period of suspension would be insufficient to maintain public confidence in the profession and uphold proper professional standards and conduct for the members of the profession.
97. For these reasons, the Tribunal determined that suspension would not be an appropriate sanction.

Erasure

98. The Tribunal, having concluded that a suspension order would be insufficient to protect the wider public interest, determined that the appropriate and proportionate sanction is

erasure. In reaching this conclusion the Tribunal took into account paragraphs 108 and 109 (a), (b), (c), (d), (g), (i) and 150 of the SG:

“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...

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’).

...

g. Offences involving violence.

i. Putting their own interests before those of their patients (see Good medical practice paragraph 1: – ‘Make the care of [your] patients [your] first concern

...

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.'

99. The Tribunal concluded that the above paragraphs are relevant to this case and demonstrate that Mr Ruzvidzo's actions fundamentally undermine the concept of medical professionalism. The sexual assault of XXX, one of whom experienced significant harm, seriously undermines the public's trust and confidence in the medical profession and inevitably brings the profession as a whole into disrepute. Mr Ruzvidzo XXX for whatever reason put his own interests above his professional obligations by violating XXX's dignity and autonomy. Mr Ruzvidzo's actions demonstrate a deliberate disregard for the principles set out in GMP. There is evidence before the Tribunal that this is a deep seated attitudinal failing, as the sexual assaults occurred on two separate occasions within a 9 month period, the second incident occurred whilst Mr Ruzvidzo XXX, and he did not initially recognise the magnitude of his criminal behaviour.

100. In these circumstances, the Tribunal concluded that the only proportionate sanction is erasure.

101. The Tribunal has therefore directed that Mr Ruzvidzo's name be erased from the Medical Register.

Determination on Immediate Order - 07/10/2022

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

Submissions

2. Mr Brook submitted that an immediate order of suspension is necessary in this case in order to protect public confidence in the medical profession.
3. Mr Jackson KC, submitted that he is neutral on the ground of an immediate order being imposed due to this making no difference to Mr Ruzvidzo's practice as he is currently unable to do so.

The Tribunal's Determination

4. In its deliberations, the Tribunal took the view that its findings so far and its sanction of erasure would be undermined if an immediate order of suspension were not made. It determined that an immediate order is necessary in order to protect the public and is in the wider public interest, given the nature and gravity of Mr Ruzvidzo's criminal convictions and the ongoing risk of repetition.
5. The Tribunal therefore determined to impose an immediate order of suspension.
6. This means that Mr Ruzvidzo's registration will be suspended from today. The substantive direction, as already announced, will take effect 28 days from when written notice of this determination has been served upon Mr Ruzvidzo ,unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.
7. The interim order currently imposed on Mr Ruzvidzo's registration will be revoked when the immediate order takes effect.
8. That concludes the case.

ANNEX A – 21/07/2022

Determination on the Admission of Evidence

1. This annex will be read in private. However, as this case concerns Mr Ruzvidzo's conviction, a redacted version will be published at the close of the hearing with those matters relating to XXX removed.
2. At the outset of the hearing Mr Jackson, KC, on behalf of Mr Ruzvidzo invited the Tribunal to include parts of a witness statement made by Prof F, a colleague of Mr Ruzvidzo. It states:

'Although I did not appreciate it at the time, I am of the opinion that the combination of a heavy workload, the unexpected death of a patient during surgery and the XXX all contributed to a XXX at the time of the incidents. I can confirm that Mr Ruzvidzo did not approach me at that time to inform me XXX. It is only with the benefit of hindsight that I am able to make some sense of what I believe to have been a factor in Mr Ruzvidzo's XXX. [Emphasis added]'

Submissions

On behalf of the GMC

3. Mr Brook submitted that the underlined sentences, in the paragraph quoted above, amounts to opinion evidence but does not fall within the sphere of Prof F professional experience and is therefore inadmissible. In the alternative, he submitted that the underlined sentences amount to mere speculation.
4. Mr Brook invited the Tribunal to note that no psychiatric evidence had been disclosed.

On behalf of Mr Ruzvidzo

5. Mr Jackson submitted that the underlined sentences should be admitted into evidence. He stated that the opinions expressed by Prof F are not the expert opinions of a psychiatrist following a clinical assessment and have not been presented as such. Mr Jackson submitted that the opinions are the valid comments of a colleague which may, in

Prof F's view, have played a part in Mr Ruzvidzo's functioning at the time of the incidents. He further submitted that Prof F's opinion is based on what he had seen of Mr Ruzvidzo.

6. Mr Jackson submitted that the first disputed sentence contains important independent evidence of a number of factors which, taken together, may have had a bearing on Mr Ruzvidzo's clinical practice at the relevant time. These include his large workload, the unexpected death of a patient and XXX. Mr Jackson further submitted that the reference to 'XXX' should be considered in the context as a whole and should not be considered as a term of art. Similarly, Mr Jackson submitted that the reference to XXX should also be seen in this context with the benefit of hindsight.
7. Mr Jackson submitted that if admitted, it would be up to the Tribunal to decide what, if any weight, should be attributed to Prof F's opinions.

Legal advice

8. The Tribunal had regard to paragraph 34(1) of the Fitness to Practise Rules (2004, as amended) ('the Rules'), which states:

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

9. The Tribunal was mindful that it must address the relevance of the statement first, before going on to decide whether it would be fair to admit it. If the Tribunal finds that the opinions of Prof F would not assist it in determining the issues in this case, they would not be relevant and therefore it would not be fair for this evidence to be admitted.
10. The Tribunal noted that Prof F was providing evidence as a non-expert witness who, in describing facts, expressed an opinion on matters within the competence of lay people generally.
11. The Tribunal had regard to the cases of *DN v London Borough of Greenwich, Court of Appeal, 8 December 2004*, and *Multiplex Constructions (Uk) Ltd V Cleveland Bridge Uk Ltd & Ors (2006)* in which the opinion evidence of witnesses of fact were allowed, as the evidence was based on their own experiences and not from their expertise.

12. The Tribunal was mindful that if it admitted the opinion evidence of Prof F as a separate issue it would have to determine what weight, if any, to give to this evidence.

The Tribunal's determination

13. The Tribunal noted that, whilst Prof F is a senior clinician, he is not an expert in XXX. However, it considered that it was reasonable for Prof F to express opinions on the stressors that Mr Ruzvidzo may have faced, albeit with the benefit of hindsight. These factors are reasonably related to facts within his knowledge and are based on his own experience.
14. The Tribunal also concluded that it would be fair for the opinion evidence to be admitted as it supports the evidence of Mr Ruzvidzo. Furthermore, no injustice would be caused to the GMC by admitting the evidence.

ANNEX B – 22/07/2022

Determination on Adjournment

1. On the fourth and final scheduled day of this hearing, the Tribunal considered whether to adjourn the proceedings in accordance with Rule 29(2) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'), which states:

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

2. The Tribunal was mindful that it had concluded the impairment stage of the hearing at midday on the fourth day and found Mr Ruzvidzo's fitness to practise impaired. It noted that it would need to proceed to a third stage, but considered that it would not be fair to do so as there is a likely prospect that it would not conclude that stage in the allotted time.

Submissions

On behalf of the GMC

3. Mr Brook submitted that there may be an opportunity to complete the stage three sanction submissions before adjourning, but accepted the Tribunal's viewpoint that it may be best to hear submissions at the same time as having the opportunity to consider them.
4. Mr Brook submitted that Mr Ruzvidzo is currently under an interim order of suspension, and that this would continue until the hearing reconvenes, without the need for this Tribunal to make a further order.

On behalf of Mr Ruzvidzo

5. Mr Jackson, KC, submitted that in fairness to Mr Ruzvidzo he would prefer submissions to be made when the hearing reconvenes.
6. Mr Jackson had no observations on Mr Ruzvidzo's current interim order of suspension.

The Tribunal's determination

7. After taking submissions, the Tribunal determined that there was insufficient time to conclude this hearing.
8. The Tribunal found that it would be beneficial to adjourn at this stage, before the start of the sanction stage and counsel submissions. It found that there would not be time to fully consider the submissions and any potential new evidence. Furthermore, any considerations may not be sufficiently retained over the course of time until the hearing resumes, which the Tribunal considered would be unfair.