

PRIVATE RECORD

Dates: 07/05/2024 - 09/05/2024

Medical Practitioner's name: Dr James BURROW

GMC reference number: 6029530

Primary medical qualification: MB BS 2001 University of London

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

Summary of outcome

Erasure

Immediate order imposed

Tribunal:

Legally Qualified Chair	Ms Rosemary Rollason
Lay Tribunal Member:	Dr Frances Burnett
Medical Tribunal Member:	Dr Keith Dunnett

Tribunal Clerk:	Mrs Anne Bhatti
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Attendance and Representation:

Medical Practitioner:	Not present, not represented
GMC Representative:	Mr Andrew Molloy, 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 - 08/05/2024

(1) THE FACTS

Background

1. Dr Burrow qualified in 2001 from the University of London. During the events which are the subject of the hearing, Dr Burrow worked as a Consultant Anaesthetist.
2. The allegation that has led to Dr Burrow's hearing can be summarised as follows: on 31 October 2023, at Uxbridge Magistrates' Court, Dr Burrow was convicted of three counts of making indecent photographs/pseudo-photographs of a child, possession of indecent photographs/pseudo-photographs of a child and possession of extreme pornographic images.
3. It is alleged that, on 21 December 2023, at Isleworth Crown Court, Dr Burrow was sentenced to 40 weeks' imprisonment suspended for 18 months, an unpaid work requirement of 125 hours, a Rehabilitation Activity Requirement of 40 days, a Sexual Harm Prevention Order and a Police notification requirement for a period of 10 years.
4. Following information received by the police, Dr Burrow was arrested on 15 November 2022 at his home. Several devices were seized, including a computer tower. The computer tower was subject to forensic analysis and the following images were identified: Category A, eight still and 13 moving images totalling 21; Category B, one still and nine moving, totalling 10; Category C, 111 still and one moving totalling 112; Prohibited images, 18 still and 79 moving totalling 97; and extreme pornography 1686

still and 95 moving, totalling 1781 images. Extreme pornographic images were recovered which portrayed bestiality involving a live animal, namely a horse.

5. During Dr Burrow's police interview, on 15 November 2022 he made no comment. Dr Burrow pleaded guilty to the charges against him at Uxbridge Magistrates Court on 31 October 2023 and sentenced at Isleworth Crown Court on 21 December 2023.

The Outcome of Applications Made during the Facts Stage

Service and proceeding in absence

6. Dr Burrow was neither present nor represented at the hearing. Mr Andrew Molloy, Counsel on behalf of the GMC, made submissions under Rules 15 and 40 of the General Medical Council (Fitness to Practise) Rules 2004, ('the Rules') and Schedule 4, Paragraph 8 of the Medical Act 1983 (as amended) inviting the Tribunal to find that Dr Burrow had been properly served with notification of this hearing. Mr Molloy also applied for the Tribunal to proceed to hear the case in Dr Burrow's absence. The Tribunal determined that the notice of hearing had been served in accordance with the Rules and also granted Mr Molloy's application to proceed in the absence of Dr Burrow, pursuant to Rule 31. The Tribunal's decisions and reasons relating to both of these matters are contained in Annex A.

The Allegation and the Doctor's Response

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

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

1. On 31 October 2023 at Uxbridge Magistrates' Court you were convicted of:
 - a. three counts of making indecent photographs/pseudo-photographs of a child, contrary to Section 1(1)(a) Protection of Children Act 1978; **Admitted and found proved**
 - b. possession of indecent photographs/pseudo-photographs of a child, contrary to Section 160 Criminal Justice Act 1988; **Admitted and found proved**
 - c. possession of extreme pornographic images, contrary to Section 63 Criminal Justice and Immigration Act 2008; **Admitted and found proved**

2. On 21 December 2023 at Isleworth Crown Court you were sentenced to:
 - a. 40 weeks' imprisonment, suspended for 18 months; **Admitted and found proved**
 - b. an unpaid work requirement of 125 hours; **Admitted and found proved**
 - c. a Rehabilitation Activity Requirement of 40 days; **Admitted and found proved**
 - d. a Sexual Harm Prevention Order for a period of 10 years; **Admitted and found proved**
 - e. being subject to Police notification requirements for a period of 10 years. **Admitted and found proved**

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

The Admitted Facts

8. In Dr Burrow's witness statement dated 3 May 2023 states, '*I admit the charges against me (which set out as a matter of fact my conviction and sentence)*'. Mr Molloy submitted that this was an admission of the Allegation by Dr Burrow. The Tribunal determined that this was an admission by Dr Burrow of the entirety of the Allegation. Therefore, 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.

(2) IMPAIRMENT

Witness Evidence

9. The Tribunal did not receive any witness evidence on behalf of the GMC.
10. Dr Burrow provided written submissions and a witness statement, both dated 3 May 2024. Dr Burrow was neither in attendance nor represented at the hearing and therefore did not give oral evidence. A summary of Dr Burrow's witness statement is set out below.
11. Dr Burrow stated that he accepted full and absolute responsibility for his actions and did not seek to go behind the conviction. Dr Burrow stated that he has never had any sexual interest in children or images of them. He stated that he had never proactively searched for or believed that he was downloading such images. Dr Burrow emphasised that he accessed the images but had not created them.

12. Dr Burrow had not attended this hearing because he was concerned about any further press reporting arising from this hearing. He thought that his attendance in person might cause further press interest.
13. Dr Burrow stated that he searched for legal pornographic material, using peer to peer file sharing software. Using the same software, he downloaded numerous files with a view to looking at it later, only to discover subsequently that some of those files, '*a tiny minority*', were of an illegal nature. Dr Burrow stated that when he discovered offending images, he immediately deleted them. The images were then forensically recovered by the police, which he understood reflected that he had deleted them.
14. Dr Burrow accepted that he searched for pornographic material but stated that he did not search indecent images of children ('IIOC'). He said that, during Covid 19, for personal reasons he sought out legal pornography. At some stage he received threatening messages electronically, suggesting that somebody or an organisation had placed software on his personal computer and would release his search history to friends and family. Dr Burrow said that he was concerned that this was genuine, because the messages referred to passwords which he knew were his. In light of these messages, he decided to use the file sharing software to search for legal pornographic material.
15. Dr Burrow stated that '*extremely naively*' he tended to download material from people who appeared to have a faster internet connection and to download the whole amount from individual rather than going through each file. He would only view the material on occasion. The vast majority was not illegal, but he did notice some were IIOC. Dr Burrow stated that the offence concerning the extreme pornographic images related to 1,787 images; all of these came from one single file. He recalls seeing it, being shocked and immediately deleting it.
16. Dr Burrow stated that IIOC were only found on the computer where he had the file sharing software and not any other of his devices.
17. From the date of his arrest to the date of sentencing, he had to XXX and was not permitted to have unsupervised contact with children. These restrictions were withdrawn following his sentence.
18. Dr Burrow stated that the hospital where he had been employed did not admit or treat any child except in rare circumstances. When the matters first came to light, he went on

sick leave. Following his conviction, he resigned from his employment and is not currently working.

19. Dr Burrow stated that he had completed the 125 hours of unpaid work. The Rehabilitation Activity Requirement (RAR) of 40 hours was spread over the 18 months for which his sentence had been suspended and he continued to meet with the probation service in this regard. He has XXX which has helped him reflect and gain further insight into what he did. He said he was ashamed of his actions and devastated at the impact they have had on his family, friends, colleagues and the negative impact on the reputation and public confidence in the profession.

Documentary Evidence

20. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to: Statement of DC A dated 21 July 2023; Police report dated 9 October 2023; Dr Burrow's letter to the Crown Court Judge, undated; transcript of sentencing hearing on 21 December 2023; and Certificate of conviction dated 21 December 2023.

Submissions

On behalf of the GMC

21. On behalf of the GMC, Mr Molloy submitted that impairment was a matter for the Tribunal. He submitted that there was no strict burden or standard of proof regarding the issue of impairment in these circumstances by virtue of section 35C, subsection 2(c) of the Medical Act 1983, a person's fitness to practise may be impaired by reason of conviction of a criminal offence in England and Wales. He submitted that Dr Burrow's fitness to practise is impaired by reason of his conviction.
22. In response to a question from the Tribunal, Mr Molloy clarified that in relation to the images, Category A, was the most serious which included images involving penetrative sexually activity. Category B images involving non-penetrative sexual activity. Category C was poses of naked children.

Dr Burrow

23. The Tribunal received written submissions from Dr Burrow. He submitted that section 1(1)(a) of the Protection of Children Act 1978 stated that it was an offence '*to take, or*

permit to be taken, or to make, any indecent photograph...of a child'. The Crown Prosecution Service website on the section 1(1)(a) offence states, 'To make' has been widely interpreted by the Courts and can include the following: opening an attachment to an email containing an image; downloading an image from a website onto a computer screen; storing an image in a directory on a computer, although depending on where that image is stored, this could also be a possession charge; accessing a pornographic website in which IIOC appeared by way of a automatic 'pop-up' mechanism.

24. Dr Burrow submitted that section 1(1)(b) of the Protection of Children Act 1978 contained the offence of 'distributing' any such photograph, which includes offering it for acquisition by others. Dr Burrow had not been charged with this offence, as he had never proactively made any such material available for others to access. He submitted that in light of the above, he was advised at the time of his criminal case that the very fact that the images had been recovered from his computer was sufficient that he could be found guilty of the 'making' offences alleged. Dr Burrow said that he has never disputed the fact that he downloaded the material in question and that it was therefore on his device; albeit that he did not proactively search for any IIOC, bestiality or anything else illegal. He said that there has never been any evidence that he did and there was none before the Tribunal. He said he did not see the material he was downloading at the time. Dr Burrow submitted that he had been sentenced for possessing the images and this was not disputed.
25. Dr Burrow said he had entered a guilty plea at the earliest opportunity and accepted full responsibility for his actions at the outset. He submitted that he had reflected extensively on his actions and was immensely sorry for them and for the huge impact they had on his family, friends, employer and reputation of the profession. Dr Burrow maintained that he does not have any sexual interest in children, bestiality or any other type of illegal pornography. His actions were out of character.
26. During the criminal proceedings testimonial evidence was provided but Dr Burrow said that none has been provided to this Tribunal because he did not wish to involve his friends, colleagues and family in this matter any further. He did however wish for the Tribunal to note that a considerable number of positive testimonials were produced to the court in the criminal case.
27. Dr Burrow submitted that only a relatively low number of images were of children, however this was not an attempt to minimise the seriousness of his actions.

28. Dr Burrow submitted that he was not a risk or danger to the public. He had resigned from his post and he was truly sorry for his actions.

The Relevant Legal Principles

29. 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.
30. The Tribunal must have regard to the statutory overarching objective of the General Medical Council, which is to protect the public. This involves the following elements:
- To protect promote and maintain public confidence in the health safety and well-being of the public;
 - To promote and maintain public confidence in the medical profession;
 - To promote and maintain proper professional standards of conduct in the medical profession.
31. The Tribunal must determine whether Dr Burrow's fitness to practise is impaired today, taking into account Dr Burrow's conviction at the time of the events and any relevant factors since then such as whether the matters are remediable in character; whether there is evidence before the Tribunal that the matter has been remedied; and, whether in the view of the Tribunal it is highly unlikely to be repeated.
32. In assessing the risk of repetition, the Tribunal should consider the extent of the doctor's insight.
33. Whilst there is no statutory definition of impairment of fitness to practise, the Tribunal is assisted by the guidance provided in *Meadow v GMC* [2006] EWCA Civ 1390, the Court of Appeal stated:

'the purpose of fitness to practise procedures is not to punish the practitioner for past misdoings but to protect the public against the actions or omissions of those who are not fit to practise. The [Panel] thus looks forward and 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.'

34. The Tribunal will also consider the factors identified by Dame Janet Smith in The Fifth Shipman Report, cited in *CHRE v NMC and P Grant [2011] EWHC 927 (Admin)* ('Grant'). This guidance said that any of the following factors are likely to be present when a doctor's fitness to practise is found to be impaired, that is whether the doctor:

'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. Has in the past and/or is liable in the future to act in such a way that their integrity can no longer be relied upon.'

35. The Tribunal should consider the nature and seriousness of the conviction. In this connection the Tribunal will be assisted by the sentencing remarks of HHJ B from the sentencing hearing in December 2023.
36. In accordance with the authority in Grant, the Tribunal must not lose sight of the wider public interest considerations: the need to protect the public, to declare and uphold proper standards of conduct and whether public confidence in the profession would be undermined if a finding of current impairment were not made.

The Tribunal's Determination on Impairment

Conviction

37. The Tribunal had regard to the following paragraphs of the Good Medical Practice dated April 2013 ('GMP'):

'1 Patients need good doctors. Good doctors make the care of their patients their first concern...and act with integrity and within the law.'

...

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

38. The Tribunal determined that Dr Burrow had not acted within the law by making and possessing IIOC and possessing extreme pornography. The Tribunal accepted that Dr Burrow himself did not create the material in question but had downloaded it. Dr Burrow was convicted of three counts of making an indecent photograph of a child; one count of possessing a prohibited image of a child; one count of possessing an extreme pornographic image; and three counts of distributing an indecent photograph of a child. Dr Burrow had pleaded guilty to all of the offences and was convicted at Uxbridge Magistrates' Court.
39. Dr Burrow was sentenced at Isleworth Crown Court and the conviction included a 40-week imprisonment, suspended for 18 months; unpaid work requirement of 125 hours; a Rehabilitation Activity Requirement of 40 days; Sexual Harm Prevention Order for a period of 10 years; and being subjected to Police notification requirements for a period of 10 years. The Tribunal considered the sentencing remarks of HHJ B. He observed that one of the IIOC was of a five-year-old child who appeared to have been drugged and was anally raped. The Judge regarded the vulnerability of this child and the fact that some of the IIOC images were moving as aggravating factors. The extreme pornography included an image involving bestiality with an animal, a horse. The gravity of the conviction was considered by the Tribunal to be very serious.
40. During the time of the incident Dr Burrow had been working as a doctor. The Tribunal was of the view that the public do not expect doctors to commit criminal offences involving the making or possession of IIOC or the possession of extreme pornographic images. Public trust and confidence is seriously undermined by such conduct.

Impairment

41. The Tribunal went on to consider whether, as a result of the conviction, Dr Burrow's fitness to practise is currently impaired. Dr Burrow admitted this, but the Tribunal has applied its own judgment.
42. The Tribunal took into consideration Dr Burrow's evidence in his witness statement which explained why he had accessed legal pornography using peer to peer file sharing software. However, the downloaded images included IIOC and extreme pornography. Dr Burrow was '*shocked and surprised*' when he found them. Dr Burrow told the Tribunal that he had not deliberately searched for illegal images. The Tribunal had no evidence

before it as to whether this explanation was put forward at the criminal proceedings, but took into consideration that there was no reference to this in the Judge’s sentencing remarks. Whilst the Tribunal bore in mind Dr Burrow’s explanations, it was unable to determine whether or not Dr Burrow had a sexual interest in children or whether or not he deliberately searched for IIOC.

43. The Tribunal bore in mind HH Judge B’s sentencing remarks:

‘The first, of course, is your guilty plea at the earliest opportunity. That is obviously an indication not only of remorse but an acknowledgment that you have done wrong. And it is clear again from the material I have read, from the presentence report and all the other material before me that you have, since your arrest, reflected very clearly on what led to this serious offending behaviour and sought assistance in that regard without the court imposing such upon you. You have XXX. It is quite clear you have also sought to understand how it is you ended up in this situation. I say for now that the report itself does appear to suggest that you have sought to minimise some of this behaviour, but reflect on the presentence report as a whole.’

44. The Tribunal considered whether Dr Burrow’s conduct is remediable. The Tribunal was of the view that it is more difficult to demonstrate remediation of this type of criminal behaviour. Remediation for his actions would be an ongoing process. Dr Burrow has stated that he has been XXX, has reflected and has demonstrated remorse. The Tribunal acknowledges that he is complying with the requirements of the criminal sentence.

45. Dr Burrow had expressed remorse from an early stage and accepted responsibility and the consequences of his actions. Dr Burrow had accepted why his actions were serious, the child abuse issues and the impact on the children. The Tribunal concluded that Dr Burrow has developing insight.

46. The Tribunal considered the Judge’s comments that the risk was medium in relation to Dr Burrow seeking out such images and the risk of wider sexual offending was low. The Tribunal taking all the information into consideration concluded that the likelihood of further offending of this nature is low.

47. In Dr Burrow’s letter to the Judge it stated:

‘I understand that I am being sentenced for possession of indecent images of which I am guilty and for which I take full responsibility. I wholeheartedly regret my behaviour.’

At the time these images were downloaded I did not appreciate the wider ramifications of my actions but following wider reading, education and reflection I am now fully aware of how any download is creating demand for these files. I am appalled that any action of mine lead to the promotion or creation of such horrific material. I have seen first-hand through my work the horrendous impact child abuse has on those involved, both immediately and in later life. To have been involved in that, in any way, is a guilt with which I will have to live for the rest of my life.'

48. In relation to public interest, the Tribunal was of the view that Dr Burrow's offences of making and possessing of IIOC and possession of extreme pornography, whilst he was working as a doctor, was not consistent with promoting and maintaining the proper professional standards and conduct expected of him. His actions amounted to serious breaches of the standards set out in GMP, specifically paragraphs 1 and 65.
49. The Tribunal was satisfied that Dr Burrow's fitness to practise is currently impaired by reason of his conviction. The seriousness of the conviction was such that public confidence in the medical profession would be seriously undermined were it to make a finding of no impairment.
50. The Tribunal noted that the offences did not take place in the course of Dr Burrow's professional practice. It was of the view that Dr Burrow does not represent a direct risk to patients or the public. However, the Tribunal noted that criminal conduct such as in this case, helps to perpetuate the market for IIOC and contributes to the continuing risk to the safety and wellbeing of children from the creation and dissemination of this material. The Tribunal concluded that public confidence in the profession is seriously undermined by a doctor who is convicted of such offences as those held by Dr Burrow.
51. The Tribunal determined that a finding of current impairment in this case was consistent with the need to; promote and maintain public confidence in the medical profession; and promote and maintain proper professional standards and conduct for members of the profession.
52. The Tribunal concluded that Dr Burrow's fitness to practise is currently impaired.

Determination on Sanction - 09/05/2024

1. Having determined that Dr Burrow'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

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

Submissions

3. On behalf of the GMC, Mr Molloy submitted that the only appropriate sanction in Dr Burrow's case was erasure. During his submissions Mr Molloy referred the Tribunal to relevant paragraphs of the Sanctions Guidance dated 5 February 2024 ('SG'). He submitted that although the Tribunal should make sure the sanction it imposed was appropriate and proportionate, the reputation of the profession as a whole was more important than the interests of any individual doctor.
4. Mr Molloy submitted that the GMC had not identified any mitigating factors in this case. He submitted that aggravating factors are that the offences involved sexual misconduct and child sex abuse materials. He submitted that when the relevant conduct arises in a doctor's personal life, a Tribunal is more likely to take serious action where the misconduct involves offences of a sexual nature.
5. Mr Molloy submitted that given the extremely serious nature of Dr Burrow's conviction, an order of conditions would not be appropriate. The GMC could not identify an appropriate set of conditions which would be capable of addressing the risk Dr Burrow presents to public confidence in the medical profession. Mr Molloy submitted that the GMC also does not consider that an order of suspension would be appropriate in this case. The GMC considers that the offences for which Dr Burrow was convicted are so serious that, in the GMC's view, they are fundamentally incompatible with continued registration.
6. Mr Molloy submitted that 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. Dr Burrow's actions were an extremely serious departure from the standards expected of a doctor and of the principles set out in GMP. Dr Burrow was sentenced to 40 weeks' imprisonment, suspended for 18 months, which was a substantial sentence. Dr Burrow was convicted of offences of a sexual nature and had

been made the subject of a Sexual Harm Prevention Order for 10 years. Mr Molloy submitted that sexual misconduct seriously undermines public trust in the medical profession and that the misconduct is particularly serious where the doctor has been required to register as a sex offender, as in Dr Burrow's case.

7. Mr Molloy submitted that more serious action, such as erasure, was likely to be appropriate in such cases. He submitted that the sexual offences for which Dr Burrow was convicted seriously undermine the trust and confidence of patients and the public in the medical profession and breach several principles set out in GMP. He told the Tribunal that for these reasons, the GMC submitted that Dr Burrow's actions are fundamentally incompatible with continued registration and the only appropriate sanction was of erasure from the Medical Register.

The Tribunal's Determination on Sanction

8. The Tribunal had regard to the submissions made by Mr Molloy, but was not bound by them. The decision as to the appropriate sanction, if any, is a matter for the Tribunal's own independent judgment.
9. In reaching its decision the Tribunal took account of the SG and the GMC's statutory overarching objective to protect the public.
10. The Tribunal reminded itself that the main reason for imposing any sanction is to protect the public and that sanctions are not imposed to punish doctors, even though they may have a punitive effect. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Burrow's interests with the public interest.
11. The SG also provided guidance on the sanctions which may be appropriate in specific types of case. In this case, which concerned a finding of impairment as a result of a conviction for sexual offences, the Tribunal's attention was drawn to paragraphs 149 to 159, 'Sexual Misconduct', and 'Sex Offenders and child sex abuse materials'.
12. This was a case where the doctor had been sentenced by the criminal court and the sentence was still in effect. Paragraph 119 of the SG provided that as a general principle, where a doctor has been convicted of a serious criminal offence, they should normally not be permitted to resume unrestricted practice until they have completed their sentence. Only circumstances which plainly justified a different course should permit otherwise. This reflected the guidance from the case of *CRHP V General Dental Council*

and *Fleischmann [2005] EWHC 87*, as confirmed in the case of *PSA for Health and Social Care v General Dental Council (Patel) [2024] EWHC 243 (Admin)*.

13. In this case, a number of the elements of the sentence imposed on the doctor by the criminal court in December 2023 are still in effect: in particular the 18 month suspended custodial sentence, the Sexual Harm Prevention Order and the Police notification requirement, both of which were imposed for periods of 10 years.
14. The Tribunal took into account the principle set out in the case of *Bolton v Law Society [1994] 1 WLR 512*, that the reputation of the profession was more important than the fortunes of any individual member. The essential issue remained maintaining public confidence in the professions. Matters of personal mitigation, which do not concern the seriousness of the underlying conduct or its impact upon public confidence, are of less weight.
15. Before deciding what action, if any, to take in respect of Dr Burrow's registration, the Tribunal considered the aggravating and mitigating factors present in this case.

Aggravating factors

16. The Tribunal identified the aggravating factors in this case. Dr Burrow's conviction was not a victimless crime, the offending behaviour was linked to the existence of a market for IIOC which involved the physical and psychological abuse of children.
17. The Tribunal bore in mind the aggravating factors identified by the Judge at the sentencing hearing when he referred to the vulnerability of one five year old child and the fact that some of the images in question were moving images.

Mitigating factors

18. Having identified the aggravating factors in this case, the Tribunal determined that the mitigating factors present were that Dr Burrow was a man of previous good character as stated by the Judge in the sentencing hearing. Whilst Dr Burrow had stated that he did not wish to seek further testimonial evidence for this hearing, the Tribunal acknowledged that at the sentencing hearing the Judge commented on the positive testimonials presented. The Tribunal further bore in mind that Dr Burrow had made early admissions in the criminal proceedings and had admitted the GMC allegation. Dr Burrow had expressed remorse and apologised for his actions. XXX.

19. The Tribunal balanced the aggravating and mitigating factors. It bore in mind that mitigating factors carry less weight in these proceedings and concluded that in Dr Burrow's case, they were outweighed by the gravity of the allegations found proved.

No action

20. The Tribunal first considered whether to conclude the case by taking no action. The Tribunal considered that taking no action was inappropriate as Dr Burrow's practice was impaired and there were no exceptional circumstances. The conviction and subsequent sentence imposed on 21 December 2023 related to very serious offences. Given that Dr Burrow continues to be subject to a suspended custodial sentence and that his registration on the Sex Offenders Register was imposed for a period of 10 years, unrestricted registration would be inappropriate. It would not be sufficient, proportionate, or in the public interest to conclude this case by taking no action.

Conditions

21. The Tribunal next considered whether to impose conditions on Dr Burrow's registration. The Tribunal was of the view that conditions would not be appropriate or workable in these circumstances due to the gravity of his convictions. The Tribunal further determined that, given the seriousness of its findings, conditions would not be sufficient to promote or maintain either public confidence in the medical profession or proper professional standards and conduct for members of the medical profession.

Suspension

22. The Tribunal then went on to consider whether imposing a period of suspension on Dr Burrow's registration would be proportionate and sufficient to satisfy the overarching objective.
23. The Tribunal considered paragraph 92 of the SG to be particularly relevant to its consideration of suspension:

'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).'

24. The Tribunal was of the view that no factors in favour of suspension outlined in paragraph 97 applied to Dr Burrow's case.
25. The Tribunal was of the view that the conviction for sexual offences which involved making (downloading) and possessing IIOC and possessing extreme pornography, the images included children being sexually abused, was so serious that it was fundamentally incompatible with continued registration.
26. The Tribunal bore in mind the public interest in maintaining doctors on the register and was aware that Dr Burrow was employed as a Consultant Anaesthetist. However, the Tribunal was satisfied that a sanction of suspension would be inappropriate and insufficient to mark the gravity of Dr Burrow's conviction. The Tribunal was of the view that it was fundamental to public trust in the profession that doctors should not hold convictions for serious sexual offences involving children and should not be on the Sex Offenders Register. For these reasons, the Tribunal concluded that a period of suspension would be insufficient to promote and maintain public confidence and proper standards of conduct in the medical profession.
27. Taking all these factors into account, the Tribunal concluded that the sanction of suspension was not appropriate given the gravity of this case.

Erasure

28. Having considered the SG in relation to erasure, the Tribunal was of the view that the following paragraphs were applicable:

'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.

...

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

...

119 As a general principle, where a doctor has been convicted of a serious criminal offence or offences, they should not be permitted to resume unrestricted practice until they have completed their sentence.

...

151 Any doctor who has been convicted of, or has received a caution for, a sexual offence listed in Schedule 3 to the Sexual Offences Act 2003 must notify the police (register) under section 80 of the Sexual Offences Act 2003 and may need to undertake a programme of rehabilitation or treatment. Sexual offences include accessing and viewing, or other involvement in, child sex abuse materials, which involves the exploitation or abuse of a child. These offences seriously undermine patients' and the public's trust and confidence in the medical profession and breach a number of principles set out in Good medical practice...

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

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

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

29. The Tribunal was of the view that Dr Burrow's conviction for these sexual offences involving children was a particularly serious departure from the standards of GMP and was fundamentally incompatible with being a doctor. Dr Burrow had undermined and breached the trust and confidence of patients and the public in the medical profession. The convictions inevitably brought the profession into disrepute. The Tribunal considered that members of the public would find his actions to be deplorable and morally reprehensible.

30. Dr Burrow's suspended sentence would not end until on or around June 2025. In addition, he is subject to Sexual Harm Prevention Order and to Police notification requirements, both for a period of 10 years.
31. The Tribunal determined the only appropriate and proportionate sanction in this case was one of erasure. Erasure was the only sanction sufficient to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards and conduct for members of the profession.
32. The Tribunal therefore directed that Dr Burrow's name be erased from the Medical Register.
33. Unless Dr Burrow exercises his right of appeal, his name will be erased from the Medical Register 28 days from the date on which written notice of this decision is deemed to have been served upon him. A note explaining his right of appeal will be sent to him.

Determination on Immediate Order - 09/05/2024

86. Having determined to erase Dr Burrow's name from the Medical Register the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Burrow's registration should be subject to an immediate order.

Submissions

87. On behalf of the GMC, Mr Molloy submitted that if the Tribunal was satisfied that it would be necessary for protection of members of the public or was otherwise in the public interest, or was in the best interest of that person, it may order an immediate order. He submitted that an immediate order of suspension is required in the public interest.
88. Mr Molloy submitted that the current interim order of suspension should be revoked.

The Tribunal's Determination

89. The Tribunal had careful regard to the submissions made by Mr Molloy and to the guidance in the SG including paragraph 172 which states that:

'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 doctor³⁹ 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.'

90. Having considered the submissions, and in light of all the circumstances of the case and in particular having regard to the gravity of the conviction, the Tribunal determined that it was necessary to impose an immediate order on Dr Burrow's registration on the basis that it was in the public interest. The Tribunal was satisfied that the necessity for the immediate order outweighed the interest of Dr Burrow in this case.
91. This means that Dr Burrow's registration will be suspended from the date on which notification of this decision is deemed to have been served upon him. The substantive direction, as already announced, will take effect 28 days from that date, 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.
92. The existing interim order of suspension will be revoked when the immediate order takes effect.
93. That concludes the case.

ANNEX A – 07/05/2024

Service and Proceeding in Dr Burrow’s Absence

1. Dr Burrows is neither present nor represented at this Medical Practitioners Tribunal (‘MPT’) hearing. The Tribunal therefore considered whether the relevant documents had been served in accordance with General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’), and paragraph 8 of the fourth Schedule to the Medical Act 1983. In so doing, the Tribunal has taken into account all the information placed before it, together with the submissions made on behalf of the General Medical Council (GMC).
2. The Tribunal was provided with a copy of a Service bundle from the GMC on the morning of day one of the hearing. This included email correspondence dated 26 March 2024 from Dr Burrow to confirm he was content to receive correspondence by email.
3. The Tribunal received: email correspondence from the GMC dated 27 March 2024 attaching the Rule 34(9) letter draft hearing bundle and Rule 15 Allegation; Dr Burrow’s confirmation of receipt of this on 10 April 2024; MPTS Notice of Hearing email, dated 27 March 2024; Dr Burrow’s response to this email of the same date; email from GMC to Dr Burrow dated 17 April 2024 asking for confirmation whether he would be attending the MPTS hearing; Dr Burrow’s response dated 23 April 2024 to confirm he had not decided whether he would be attending the hearing; correspondence between Dr Burrow’s legal representative and GMC between 25 April 2024 and 3 May 2024, which confirmed Dr Burrow’s intention not to attend the hearing.
4. Dr Burrow confirmed in his witness statement and submissions to the Tribunal dated 3 May 2024 the reasons why he would not be attending the hearing.

Service

5. Mr Molloy, Counsel, on behalf of the GMC submitted that Dr Burrow had voluntarily absented himself from the hearing. He submitted that Dr Burrow had confirmed in his

witness statement that he was fully aware of the hearing. Mr Molloy submitted that the documentation had therefore been served upon Dr Burrow.

6. The Tribunal had regard to the evidence before it, as well as the submissions made by Mr Molloy. The Tribunal considered that there had been effective service. The MPTS Notice of Hearing Notice was sent in electronic form to Dr Burrow in advance of the hearing including the Rule 34 letter from the GMC. Dr Burrow had responded to both the MPTS and GMC to confirm he had received the correspondence. In addition, Dr Burrow and his representative had confirmed that Dr Burrow would not attend the hearing or be represented.
7. In the circumstances, the Tribunal was satisfied that all reasonable steps had been made to serve the notice of this hearing in accordance with Rules 15 and 40 and Dr Burrow was aware of the hearing today.

Proceeding in absence

8. The Tribunal then went on to consider whether it would be appropriate to proceed with this hearing in Dr Burrow's absence pursuant to Rule 31 of the Rules. The Tribunal bore in mind that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution, balancing the interests of the doctor with the wider public interest.
9. Mr Molloy invited the Tribunal to proceed with the hearing in Dr Burrow's absence. He submitted that Dr Burrow's witness statement made it clear that he was fully aware of the hearing and had voluntarily absented himself.
10. Mr Molloy submitted that the Tribunal should consider the cases of *GMC v Adeogba [2016] EWCA Civ 163* and *General Medical Council v Visvardis [2016] EWCA Civ 162*. These cases state that the discretion to proceed in the absence of the doctor should be exercised with great care and caution, balancing the interests of the doctor with the wider public interest. He also referred the Tribunal to the case of *R v Jones [2003] 1 AC 1*.
11. Mr Molloy submitted that an adjournment would be unlikely to persuade Dr Burrow to appear at a later date and for those reasons no adjournment was necessary or in the public interest. Mr Molloy submitted that Dr Burrow's hearing should proceed today in his absence.

12. The Tribunal took into consideration that, when exercising its discretion to proceed in absence, fairness to the doctor was the Tribunal's prime consideration, although fairness to the GMC and the public interest should also be taken into account. The Tribunal reminded itself that there was a public interest in ensuring the expeditious hearing of cases.
13. The Tribunal was satisfied that Dr Burrow was aware of the hearing, because Dr Burrow had confirmed that he would not be attending the hearing, the reasons why and that he would not be represented at the hearing. In his witness statement dated 3 May 2024 he stated:

'I also wish to explain why I have decided not to attend the hearing in person and to reassure the Tribunal members that I mean absolutely no discourtesy by this.'

14. The Tribunal was satisfied that Dr Burrow had voluntarily absented himself from these proceedings. The Tribunal determined that it was in the public interest for MPTS hearings to be concluded in a reasonable time and this outweighed Dr Burrow's interests.
15. The Tribunal concluded that it was fair, in the public interest and in the interests of justice to proceed with this hearing in the absence of Dr Burrow. It therefore determined to proceed in Dr Burrow's absence in accordance with Rule 31.