

PUBLIC RECORD

The PSA successfully appealed decisions of this Tribunal. The High Court substituted a finding of impairment and directed that the matter be remitted to a differently constituted Medical Practitioners Tribunal for consideration as to sanction.

A copy of the appeal judgment is not accessible online for free. The name of the case is PSA v GMC & Dr Kausik Ray and the case number is AC-2024-LON-003107. If you wish to view the judgment you can contact the High Court direct to obtain a copy.

Date: 12/07/2024

Medical Practitioner's name:	Dr Kausik RAY
GMC reference number:	6043969
Primary medical qualification:	MB BS 1994 Calcutta
Type of case	Outcome on impairment
Review - Conviction	Not Impaired

Summary of outcome

Suspension to expire

Tribunal:

Legally Qualified Chair	Mr Sean Ell
Medical Tribunal Member:	Dr Sarah Jeffery
Medical Tribunal Member:	Ms Hazel Busby-Earle
Tribunal Clerk:	Ms Angela Carney

Attendance and Representation:

Medical Practitioner:	Not present, not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Mr Salek Ahmed, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Impairment - 12/07/2024

1. At this review hearing the Tribunal now has to decide in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules') whether Dr Ray's fitness to practise is impaired by reason of a conviction and whether the practitioner has failed to comply with any requirement imposed upon him as a condition of registration.

The Outcome of Applications Made during the Impairment Stage

2. The Tribunal granted the GMC's application, made pursuant to Rule 31 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that, service has been effected and to proceed in Dr Ray's absence. The Tribunal's full decision on the application is included at Annex A.

Background

3. Dr Ray qualified as a doctor in 1994 at R G Kar Medical College, Kolkata, India. Dr Ray completed his postgraduate surgical training at SCB Medical College and passed his MS and DNB in General Surgery in 2000 and 2001 respectively. Dr Ray worked as a registrar in General Paediatric Surgery in Kolkata. He obtained his MRCS in 2004 and FRCS in 2015 both from the Royal College of Surgeons, Edinburgh.

4. The facts found proved at Dr Ray's hearing which took place in July 2023 can be summarised that on 26 May 2022, at Brighton Magistrates' Court, he was convicted of sexual assault of a female aged 16 or over, contrary to section 3 of the Sexual Offences Act 2003. On 29 June 2022, at Lewes Crown Court, Dr Ray was sentenced and made subject to a community order requiring him to undertake 100 hours of unpaid work, a requirement to register with the police for five years and was subject to a restraining order in respect to Ms A for a period of two years.

5. At the time of the events that led to Dr Ray's conviction he was practising as a Registrar within the Digestive Diseases department at Royal Sussex County Hospital ('the Trust').

6. The events that led to Dr Ray's conviction occurred on 25 January 2021 when he was working at the Trust in a consultation room. At about 17:00, a colleague of Dr Ray's, Ms A, entered the room and offered him a cup of tea. When Ms A returned with the cup of tea she placed it on the desk where Dr Ray was working. At this point Dr Ray reached his hand towards Ms A, clasped her right breast and squeezed it gently and manoeuvred his hand in a circular motion, pushing her right breast up and down, for about a minute. Ms A had not consented to this; she was shocked and backed away. Dr Ray then asked Ms A to close the door to the consultation room, but she refused. Ms A left the room and shortly thereafter reported the incident to a colleague. Approximately 30 to 40 minutes later, Dr Ray approached Ms A and tried to apologise to her for his actions.

7. The Trust carried out an investigation at which Dr Ray admitted to inappropriately touching Ms A without her consent. Following a disciplinary meeting Dr Ray was dismissed on 18 March 2021. Dr Ray unsuccessfully appealed his dismissal.

8. The initial concerns were raised with the GMC by the Trust and on 15 April 2021 the GMC opened their investigation into the matter. This was followed by a police investigation on 18 November 2021 which led to Dr Ray's conviction. Dr Ray informed the GMC of his conviction on 27 May 2022 and his sentence on 29 June 2022.

9. During the GMC's investigation, Dr Ray worked as a Consultant General Surgeon at Belford Hospital. This latter employment terminated on 7 October 2022. Dr Ray returned to India on 8 November 2022.

The 2023 Tribunal

10. Dr Ray was not present or represented at the hearing in July 2023 but he provided that Tribunal with an email and witness statement dated 3 March 2023. Within those documents, Dr Ray admitted the Allegation in its entirety, in accordance with Rule 17(2)(d) the Rules and the 2023 Tribunal found it proved.

11. The 2023 Tribunal determined that Dr Ray had shown a degree of consistency in his account from the outset. It found that Dr Ray accepted that Ms A's feelings towards him were not reciprocated and that she had not done anything to encourage him. The 2023 Tribunal noted that at no point, within the evidence provided, had Dr Ray explicitly denied that his conduct was sexual. It found that Dr Ray realised the gravity of his conduct and sought to apologise to Ms A within one hour of the incident occurring. Since that time, save for his initial police interview in which he provided '*no comment*', Dr Ray admitted his behaviour and accepted full responsibility for it.

12. The 2023 Tribunal accepted that sexual misconduct is difficult to remediate. It was of the view that Dr Ray had completed extensive remediation and had apologised. It also noted the relevant training courses Dr Ray had completed throughout the process following which he had written extensive reflections on what he had learned from each course.

13. The 2023 Tribunal determined that, taking into account Dr Ray's extensive remediation, high level of insight and the evaluation within the Pre-Sentence Report, that there was a low risk of reoffending. In addition, it found that there was evidence from the testimonials received that Dr Ray had a good support network. It concluded that risk of repetition was low.

14. Although Dr Ray had taken numerous steps to try to remediate his actions and shown high levels of insight, the 2023 Tribunal was of the view that his sexual assault on his colleague whilst he was in a position of authority at work, was serious and was inconsistent with promoting and maintaining the proper professional standards and conduct expected of him.

15. The 2023 Tribunal found that Dr Ray's actions, their impact on Ms A and his subsequent conviction, amounted to serious breaches of the standards set out in GMP, specifically paragraphs 1, 36, 65. The 2023 Tribunal was satisfied that Dr Ray's fitness to practise was impaired by reason of his conviction. It found that the seriousness of the conviction and the violation of fundamental tenets of the profession are such that a finding of impairment was necessary to protect the public, promote and maintain proper professional standards, and to protect public confidence in the medical profession. The 2023 Tribunal considered that public confidence in the profession would be seriously undermined were it to make a finding of no impairment.

16. The 2023 Tribunal considered that taking no action was inappropriate as he was found to be impaired and there were no exceptional circumstances. It also considered that, given the seriousness of Dr Ray's conviction, conditions would not be sufficient to recognise that seriousness and would not promote or maintain either public confidence in the medical profession or proper professional standards.

17. The 2023 Tribunal concluded that suspension could appropriately and sufficiently mark the seriousness of the conviction as well as serving as warning to the wider profession. It determined that a period of suspension would be sufficient to uphold all three limbs of the overarching objective and would send a message to the profession and the wider public that such conduct was not acceptable. Further, the 2023 Tribunal concluded that in all the circumstances, although serious, Dr Ray's conduct was not fundamentally incompatible with continued registration. The 2023 Tribunal considered that the maximum level of 12 months would send a message to the medical profession and to the wider public that a conviction for a sexual offence is serious and unacceptable, whilst reflecting the gravity of Dr Ray's conduct. The 2023 Tribunal also directed a review.

18. The Tribunal considered that a reviewing Tribunal may be assisted if Dr Ray attends the review hearing and provides the following:

- Evidence of continued reflection from the date of this hearing;
- Evidence of continuing professional development and how he has kept his medical skills and knowledge up to date;
- Any other relevant evidence he wishes to present to assist the reviewing tribunal.

The Evidence

19. The Tribunal has taken into account all the evidence received.
20. The Tribunal received the following documentary evidence, which included but was not limited to:
- Record of Determinations June 2023
 - Email from Dr Ray to the GMC dated 13 August 2023
 - Letter dated 2 May 2024 from Dr B, Medical Director, Sanjiban Hospital and Medical College, Fuleshwar, India
 - Email dated 21 December 2023 from Mr C, Criminal Justice Social Worker, Fort William, Scotland
 - CPD Certificate - Safeguarding children - level 2,
 - CPD Certificate - Safeguarding adults at risk - level 2
 - CPD Certificate - Professional boundaries in health and social care - level 2
 - Dr Ray's reflections on the safeguarding children and adults courses
 - Dr Ray's reflections professional boundaries in health and social care course

Submissions

21. On behalf of the GMC, Mr Salek Ahmed, Counsel, submitted that the GMC remains neutral on the issue of impairment. In the interests of fairness Mr Ahmed referred the Tribunal to Dr Ray's reflective document. He also referred the Tribunal to the courses that Dr Ray has attended and his reflections on those courses.

The Relevant Legal Principles

22. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgement alone. As noted above, the previous Tribunal set out the matters that a future Tribunal may be assisted by. This Tribunal is aware that it is for the doctor to satisfy it that he would be safe to return to unrestricted practice.
23. This Tribunal must determine whether Dr Ray's fitness to practise is impaired today, taking into account his conviction for sexual assault and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

The Tribunal's Determination on Impairment

Conviction

24. The Tribunal noted the email dated 21 December 2023 from Mr C, Criminal Justice Social Worker, in which he confirmed that the community payback order and the sexual offenders order imposed on Dr Ray on 29 June 2022 was discharged at the half-way point on 8 August 2023. The Tribunal noted Dr Ray in his witness statement confirmed that due to his conviction, without special consideration by the Disclosure and Barring Service ‘DBS’, he remains subject to a bar on clinically attending to vulnerable adults and young people.

25. The Tribunal noted Dr Ray’s reflections on his actions that led to his conviction in which he apologised and continued to demonstrate regret and remorse. The Tribunal also noted Dr Ray’s reflections on the safeguarding and professional boundaries courses that he attended.

26. The Tribunal noted that the 2023 Tribunal acknowledged that Dr Ray realised the gravity of his conduct and sought to apologise to Ms A within one hour of the incident, admitted his behaviour and accepted full responsibility for it. The 2023 Tribunal also noted that it was an isolated incident in an otherwise long and unblemished career. Further, the 2023 Tribunal considered that Dr Ray had shown high levels of insight into the actions that led to his conviction, remediated his behaviour and that there was a low risk of reoffending.

27. In relation to Continuing Professional Development, the Tribunal noted the letter dated 2 May 2024 from Dr B, Medical Director, Sanjiban Hospital and Medical College, India, confirming that Dr Ray has been employed as the Academic lead of Surgical Education and Training at the hospital since October 2022. The letter stated that Dr Ray teaches medical students and surgical trainees and takes part in all the academic and quality improvement activities. It also stated that Dr Ray’s behaviour and interaction with colleagues and staff remain very satisfactory and there were no concerns.

28. The Tribunal noted that the GMC remains neutral on the matter of impairment.

29. The Tribunal has borne in mind paragraph 163 of the Sanctions Guidance (February 2024), which states:

‘163 It is important that no doctor is allowed to resume unrestricted practice following a period of conditional registration or suspension unless the tribunal considers that they are safe to do so.’

30. The Tribunal also noted paragraph 164 of the Sanction Guidance (February 2024), which states:

‘164in most cases where a period of suspension is imposed, and in all cases where conditions have been imposed, the tribunal will need to be reassured that the doctor is fit to resume practice – either unrestricted or with conditions or further conditions. A review hearing is therefore likely to be necessary, so that the tribunal can consider whether the doctor has shown all of the following (by producing objective evidence):

- a they fully appreciate the gravity of the offence*
- b they have not reoffended*
- c they have maintained their skills and knowledge*
- d patients will not be placed at risk by resumption of practice or by the imposition of conditional registration.*

31. Having regard to paragraph 164, the Tribunal was satisfied that Dr Ray fully appreciates the seriousness of his offence and the gravity of his conviction, which has not been repeated.

32. Whilst the Tribunal received limited information from Dr Ray on CPD as it related to his medical skills and knowledge, it considered that it has been a relatively short time since he has been out of clinical practice in the UK. The Tribunal has borne in mind that this is a conviction case and there were no clinical concerns. Given that Dr Ray has been working and teaching in India as the Academic lead of Surgical Education and Training since October 2022, the Tribunal was satisfied that there was sufficient evidence that he has maintained his skills and knowledge and, that patients will not be placed at risk if he returned to clinical practice. Consequently, the Tribunal was satisfied that Dr Ray's fitness to practise is no longer impaired by reason of his conviction.

33. The Tribunal noted that the order of suspension on Dr Ray's registration expires on 2 August 2024.

34. The Tribunal noted that Dr Ray's conviction was serious. The 2023 Tribunal imposed the 12-month order of suspension and considered that the maximum suspension for 12 months was required to send a message to the medical profession and to the wider public that a conviction for a sexual offence is serious and unacceptable, whilst reflecting the seriousness of Dr Ray's conduct. The Tribunal considered that a reasonably informed member of the public, aware of these reasons, would expect the order of suspension to remain in place until it expired.

35. Accordingly, the Tribunal determined that the current order of suspension on Dr Ray's registration should be allowed to expire.

36. That concludes this case.

ANNEX A – 12/07/2024

Application on service and proceeding in absence

37. Dr Ray is neither present nor represented at this Medical Practitioners Tribunal ('MPT'). The Tribunal therefore considered whether notice of this hearing has been properly served in accordance with Rules 20 and 40 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004 ('the Rules') and paragraph 8 of Schedule 4 to the Medical Act 1983.

38. Mr Salek Ahmed, GMC Counsel, said that Dr Ray is unlikely to attend or be represented. He made an application on service and proceeding in the doctor's absence pursuant to Rule 31. He referred the Tribunal to the relevant proof of service documents, which included but was not limited to:

- Screenshot of Dr Ray's GMC registered email address
- GMC email to Dr Ray dated 24 May 2024 containing the GMC's information letter and draft hearing bundle
- An email from Dr Ray dated 26 May 2024 confirming receipt of the GMC's information letter
- An email from Dr Ray dated 28 June 2024 confirming receipt of the GMC's bundle
- MPTS Notice of Hearing (NoH) letter sent by email, dated 23 May 2024
- An email from Dr Ray confirming receipt of the MPTS NoH, dated 23 May 2024

39. Mr Ahmed submitted that service has been effected under the Rules.

40. Mr Ahmed submitted that given that Dr Ray has indicated that he cannot attend due to XXX on his part. He referred the Tribunal to the cases of *R v Jones* [2003] 1 AC 1; [2002] UKHL 5 and *GMC v Adeogba* [2016] EWCA Civ 162. He submitted that Dr Ray has voluntarily absented himself. He further submitted that an adjournment would not secure the attendance of the doctor, nor any further representations over and above those already served by Dr Ray for the aforementioned reasons. Mr Ahmed respectfully invited the Tribunal to proceed with today's hearing, as to do so, both will be fair and reasonable in the circumstances.

Service

41. The Tribunal took account of the GMC's information letter and MPTS NoH sent by email to Dr Ray and his emails confirming receipt of both.

42. Having considered the evidence before it and the submissions made by Mr Ahmed, the Tribunal was satisfied that notice of this hearing had been properly served on Dr Ray in accordance with Rule 20 and Rule 40 of the GMC (Fitness to Practise) Rules 2004 (the Rules), and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended and that Dr Ray is aware of the hearing today but had chosen not to attend.

Proceeding in Absence

43. As the Tribunal was satisfied that notice had been properly served on Dr Ray, it then considered whether to proceed with this hearing in his absence, in accordance with Rule 31 of the Rules, which states:

'31. Where the practitioner is neither present nor represented at a hearing, the Committee or Tribunal may nevertheless proceed to consider and determine the allegation if they are satisfied that all reasonable efforts have been made to serve the practitioner with notice of the hearing in accordance with these Rules.'

44. The Tribunal has borne in mind the relevant Rules, the case of *R v Jones [2003] 1 AC 1; [2002] UKHL 5* and the overarching objective. The Tribunal had regard to the following factors:

- The nature and circumstances of the doctor's behaviour in absenting himself;
- Whether the behaviour was voluntary and therefore that the doctor waived the right to be present;
- Whether an adjournment would result in the doctor attending on a subsequent occasion;
- The likely length of any such adjournment;
- Whether the doctor, although absent, wished to be represented, or whether he had waived his right to be represented;
- The general public interest.

45. The Tribunal was mindful that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution and with a regard to the overall fairness of the proceedings. In doing so, it considered the need to balance Dr Ray's interests with the overarching statutory objective.

46. The Tribunal noted Dr Ray's email to the GMC, dated 5 June 2024, in which he stated:

'Thanks for your mail. Unfortunately, I shall not be able to attend the hearing personally as I can't bear the [XXX] associated with it. I also can't afford a legal representative considering my present financial state. I hope my answers will be acceptable.'

47. The Tribunal noted Dr Ray's reasons for his non-attendance was due to XXX associated with the hearing and that he is unable to afford legal representation due to financial difficulties.

48. The Tribunal noted that Dr Ray has indicated that he will not be attending today's hearing and it determined that he has chosen to voluntarily absent himself from this hearing. Furthermore, it has not received any indication that Dr Ray has requested an adjournment. The Tribunal could not be satisfied that, were there to be an adjournment, Dr Ray might attend a hearing on a future date.

49. The Tribunal was mindful of its power to proceed in a doctor's his absence and that Dr Ray was made aware that it may determine to proceed in his absence.

50. The Tribunal balanced Dr Ray's interests with the wider public interest in deciding whether to proceed in his absence. Considering the public interest in this case and the sanction imposed on Dr Ray's registration which is due to expire on 2 August 2024, the Tribunal concluded that it is in the public interest and in the interests of justice to proceed with this hearing today.

51. Accordingly, the Tribunal determined that it was fair and reasonable to proceed in Dr Ray's absence in accordance with Rule 31 of the Rules.