

PUBLIC RECORD

Dates: 09/11/2020 - 11/11/2020; 26/01/2021 -28/01/2021; 29/03/2021 -30/03/2021;
20/07/2021 -21/07/2021

Medical Practitioner’s name: Dr Kevin WHITELEY
GMC reference number: 3689611
Primary medical qualification: MB ChB 1992 University of Liverpool

Type of case
Restoration following disciplinary erasure

Summary of outcome
Restoration application refused. Right to make further applications suspended indefinitely.

Tribunal:

Legally Qualified Chair	Mr Paul Burns
Medical Tribunal Member:	Dr Thomas O'Leary
Medical Tribunal Member:	Dr Matthew O'Meara
Tribunal Clerk:	Ms Angela Carney

Attendance and Representation:

Medical Practitioner:	Present and not represented 09/11/2020 - 11/11/2020; 26/01/2021 - 28/01/2021; 29/03/2021 - 30/03/2021 Not present or represented 20/07/2021 -21/07/2021
Medical Practitioner’s Representative:	N/A
GMC Representative:	Ms Emma Gilsenan, Counsel 09/11/2020 – 11/11/2021 Ms Kathryn Johnson, Counsel 26/01/2021 – 28/01/2021; 29/03/2021 – 30/03/2021 Mr Neil Usher, Counsel 20/07/2021 – 21/07/2021

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 Restoration Application - 29/03/2021

The Outcome of Applications Made during the Preliminary Stage

1. The Tribunal granted the GMC's application, made pursuant to Rule 41 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that the public should be excluded from those parts of the proceedings concerning confidential matters. The Tribunal's determination on that application is included at Annex A, with a short addendum determination reflecting a development during the course of the hearing.
2. Therefore in accordance with Rule 41XXX of the Rules, the Tribunal determined that the press and public be excluded from parts of the proceedings. A public version of this determination will be issued with the confidential matters redacted.

Preliminary Matter

3. XXX
4. XXX

The Substantive Application before the Tribunal

5. Dr Whiteley has applied for restoration to the Medical Register ('the Register') pursuant to section 41 of the Medical Act 1983 (as amended) ('the 1983 Act') and Rule 24 of the Rules. This is Dr Whiteley's third application for restoration to the Register. He previously applied (unsuccessfully) to be restored to the Register in 2008 and in 2009.
6. Between 9 and 11 November 2020 the GMC was represented by Ms Gilsenan of Counsel. At the reconvened hearing on 26 to 28 January 2021 the GMC was represented by Ms Johnson of Counsel. In the lead up to the hearing of Dr Whiteley's application in

November 2020, and throughout the proceedings before this Tribunal, Dr Whiteley has represented himself.

7. On 28 January 2021 the Tribunal adjourned the hearing, and re-listed two further hearing dates on 29 and 30 March 2021.

Background

8. The GMC provided a written Opening Note which provided a detailed background to this case. That approach was helpful to the Tribunal, and was also helpful to Dr Whiteley because he had received and read the Opening Note in advance of the hearing commencing. Then, after the preliminary matters had been addressed and determined, and before the GMC formally opened the case, Dr Whiteley had a further opportunity to read the GMC's Opening Note, and he confirmed to the Tribunal that he had done so.

9. When the GMC opened the background to the case, the Opening Note was read into the record as this was a public hearing (save to the extent ordered otherwise in the Tribunal's Rule 41 determinations).

10. During the opening address by the GMC, and with the advance agreement of both parties, the Tribunal regularly paused to confirm with Dr Whiteley which paragraphs of the Opening Note he did and did not agree with, and whether Dr Whiteley felt that anything material was being omitted in the factual background being advanced by the GMC.

11. That approach elicited the fact that almost the entirety of the first 93 paragraphs of the GMC's Opening Note on the facts was agreed by Dr Whiteley as accurate and complete. Ultimately, once the GMC had agreed to some minor redactions to the documents, the factual background to this case was agreed between the GMC and Dr Whiteley.

12. Because this case has an extensive background of some seventeen or so years, and because the parties and the Tribunal agree that the factual background is highly relevant to Dr Whiteley's application, the Tribunal considered it important to set out the background in detail.

13. What follows reflects the agreed factual background to Dr Whiteley's application.

14. In 1992 Dr Whiteley qualified from Liverpool University with an MB CHB (*Bachelor of Medicine, Bachelor of Surgery*). He initially practised in hospital settings before moving to the Jessop Medical Practice as a General Practitioner, where he ultimately became a partner. His particular interest and specialism in general practice became palliative treatment for the terminally ill.

2003 Convictions - 12 Months' Imprisonment

15. On 1 December 2003 at North East Derbyshire and Dales Magistrates' Court, on his own admission Dr Whiteley was convicted of:
- i. taking indecent photographs of a child, contrary to sections 1(1)(A) and 6 of the Protection of Children Act 1978;
 - ii. possessing a quantity of diamorphine, a controlled drug of Class A, in contravention of Section 5(1) of the Misuse of Drugs Act 1971, contrary to Section 5(2) and schedule 4 of the Misuse of Drugs Act 1971; and
 - iii. possessing 193 indecent pseudo-photographs of children on a Packard-Bell laptop computer, contrary to sections 160(1) and (2a) of the Criminal Justice Act 1988.
16. The memorandum of conviction dated 1 March 2004 confirms that on 1 March 2004 Dr Whiteley was sentenced for these offences. In relation to the offence of taking indecent photographs of a child, the deputy district judge sentencing Dr Whiteley described the offences as involving *“considerable premeditation, members of public involved, chilling invasion of privacy”* In light of the considerable mitigation advanced, the court imposed a sentence of six months imprisonment for this offence. For the offence of possession of diamorphine, Dr Whiteley received a consecutive two month sentence of imprisonment. For the offence of possession of 193 indecent pseudo photographs of children (found on his laptop), Dr Whiteley was sentenced to a consecutive four month period of imprisonment. The total sentence was therefore twelve months' imprisonment.
17. In addition to a custodial sentence, Dr Whiteley was placed on the Sex Offenders Register for 10 years with effect from the 1 December 2003 (i.e. until 1 December 2013) and was required to comply with the formal requirements which flow from such registration. The Tribunal have seen the signed Sex Offenders Registration form.
18. On 21 September 2020 Greater Manchester Police provided a *‘full list of convictions from Criminal Record’* in relation to Dr Whiteley. The Police National Computer (‘PNC’) record confirms that Dr Whiteley has been convicted of 10 offences. He was first convicted on 1 March 2004 and last convicted on 16 August 2011. These offences include four sexual offences, two fraud and kindred offences, one theft and kindred offence, one drugs offence and two offences categorised as miscellaneous. In particular the PNC confirms the convictions summarised above. Further reference will be made to convictions below. The PNC showed that Dr Whiteley had no reprimands, warnings or cautions recorded against him.
19. At the time of the 2003 convictions, Dr Whiteley had no previous criminal history, and no history of being subject to regulatory investigations or proceedings by the GMC. He was working as a general practitioner in Derbyshire.
20. The circumstances leading to the 2003 convictions are before the Tribunal in the police case summary (‘MG5’) received by the GMC on 21 April 2004, and in the transcript of the GMC Professional Conduct Committee proceedings dated 6 October 2004.

21. At around 1.30 pm on 28 June 2003, a bag containing portable video recording equipment was discovered in the gymnasium at the Bakewell swimming baths by a member of staff undertaking routine hourly checks. The bag and its contents were handed to the Police. When examined, the videocassette inside the video camera was found to contain an indecent image of a child. The images recorded were of a family visiting the pool that afternoon. The video footage showed that the camera had been placed in the family changing cubicle. The Police examined the cubicle, and found the point where the camera had been placed, although the camera was no longer present. A fingerprint was taken from this point, which was subsequently identified as belonging to Dr Whiteley.

22. During the morning of Sunday 29 June 2003 a female member of staff at the swimming baths received a telephone call from a man (Dr Whiteley) asking if anyone had handed in a bag. The caller was told that the member of staff would check, and she asked for a telephone number to call back on. The caller provided a false number, which related to a shop in Bakewell called The Wee Dram.

23. The caller (Dr Whiteley) rang the swimming baths again on the Monday morning. He was told that the bag and its contents were there and were ready for collection. Dr Whiteley then picked a name at random from the telephone directory. He rang the number and asked the elderly gentleman who answered whether he would, for payment, collect the bag from the swimming baths as Dr Whiteley unable to do so due to his work commitments. The elderly gentleman agreed to do this and arrived at the swimming baths at 1.45 pm the same day. His instructions (from Dr Whiteley) were to take the bag and its contents back to his home address, from where it would be collected later.

24. The gentleman was met at the public baths by the Police, and he told them the story of how he had come to collect the bag. The Police then went to the elderly man's home address to await Dr Whiteley's arrival.

25. At 7.00 pm the same day Dr Whiteley rang the man and was told that the bag was at his home for collection. Dr Whiteley asked the man to place the bag outside his house, as it might be late before he was able to collect the bag. An empty bag was placed outside the premises, with a note attached to it stating that the man was not going to hand over the contents until he had received payment. At 9.25 pm that evening Dr Whiteley arrived at the man's address, and he was arrested by police officers who were waiting there.

26. When Dr Whiteley was interviewed, he admitted placing the equipment in Bakewell swimming baths and recording the images. He claimed that he chose the family changing cubicle simply because it would provide the most interesting footage. He maintained that his interest was in voyeurism, not recording indecent images of children. However, he did accept that he knew that placing the camera where he did would record indecent images of children.

27. The following morning, Tuesday 1 July, the Police carried a search of Dr Whiteley's home address. They recovered the covert pinhole camera used at the baths. Additional recording equipment was also seized, including a covert camera situated in the loft, providing a view into the bathroom, and two covert cameras in the bedroom.

28. Dr Whiteley's personal and laptop computers were also seized, and were examined by the Derbyshire Police Computer Investigation Unit. Dr Whiteley's laptop was found to contain 193 indecent images of children. The seriousness of such images are determined by a process of categorisation derived from *R v Oliver* [2002] EWCA Crim 2766. There are five possible categories of indecent images of children. In this case the police found one Category 5 image (an image of the most serious kind, showing images involving sadism or bestiality); 29 Category 4 images (images displaying penetrative sexual activity between adults and children); 52 Category 3 images (showing non-penetrative sexual activity between adults and children); 3 Category 2 images (displaying either sexual activity between children or solo masturbation); and 108 Category 1 images (depicting erotic posing with no sexual activity).

29. The police search also revealed that Dr Whiteley had a large quantity of prescribed drugs at his home, including a significant amount of diamorphine, a class A drug. Diamorphine hydrochloride injection ampoules of varying strengths were found in the top drawer of a chest of drawers in Dr Whiteley's bedroom. These were present together with water for injection, a syringe and eight needles for the syringe. Some of the packaging for the ampoules bore the dispensing label for the pharmacies that had dispensed them, together with details of the patients for whom the drugs had been prescribed. Other drugs for those same patients were found in different locations within the house.

30. In interview Dr Whiteley admitted that he was in unlawful possession of these controlled drugs. The vast majority of the drugs that he had in his possession related to patients who had been under his care for palliative treatment as a result of terminal illnesses. He had taken possession of unused drugs following the patients' death, and instead of returning those drugs to a pharmacy for destruction, as would be conventional, he retained the drugs.

31. It was also discovered that in some instances Dr Whiteley had written prescriptions for diamorphine after patients' deaths, and then had those prescriptions dispensed by pharmacies.

2004 Professional Conduct Committee (PCC) and Erasure from the Medical Register

32. The Tribunal received and considered the transcript and determination of the Professional Conduct Committee dated 6 October 2004 ('the 2004 PCC').

33. The 2004 PCC considered the factual background to Dr Whiteley's case. It found that the offences which Dr Whiteley had pleaded guilty to, and been convicted of, demonstrated a clear breach of the fundamental principles of good medical practice. It concluded that this

was an extremely serious matter which undermined public confidence in the medical profession and damaged its reputation.

34. The 2004 PCC determined that Dr Whiteley's actions had breached the trust and diminished the respect which the public are entitled to place in doctors, and had seriously undermined the profession as a whole. The 2004 PCC was mindful that doctors occupy a position of privilege and trust in society and are expected to act with integrity and to uphold proper standards of conduct.

35. The 2004 PCC also noted that a profession's most valuable asset is its collective reputation, and the confidence that inspires in members of the public. The 2004 PCC's attention was drawn to the judgment of Lord Bingham (Master of the Rolls) in *Bolton v Law Society*, quoted by the Privy Council in the case of *Dr Gupta (Privy Council Appeal number 44 of 2001)*: "*The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price.*"

36. When considering whether action should be taken against Dr Whiteley's registration, the 2004 PCC considered the GMC's Indicative Sanctions Guidance, and proportionality. They took account of their objectives, namely the protection of the public, the maintenance of public confidence in the medical profession, and the maintenance of proper standards of behaviour by medical practitioners. The 2004 PCC determined that Dr Whiteley would present a risk to patients and to the public if he was allowed to continue to practise.

37. In view of the serious nature of Dr Whiteley's offending, and the impact of his actions on the reputation of the medical profession, the 2004 PCC determined that taking no action and concluding the case with a reprimand would be wholly unacceptable.

38. The 2004 PCC considered whether it would be appropriate to impose conditions on Dr Whiteley's registration. They concluded that the circumstances of the case were such that no conditions could be formulated which would adequately reflect the seriousness of this case, or provide sufficient protection to the public.

39. The 2004 considered and rejected the option of suspension, concluding that a period of suspension would not adequately reflect their very serious concerns regarding Dr Whiteley's behaviour. The 2004 PCC was mindful that it had a duty to secure the protection of the public, and declare and uphold proper standards of conduct on behalf of the profession.

40. In all the circumstances, the PCC determined that Dr Whiteley's behaviour was fundamentally incompatible with continued registration as a medical practitioner. They therefore directed that Dr Whiteley's name be erased from the Register.

41. The effect of this direction was that Dr Whiteley's registration was suspended immediately, and his name was erased from the Register 28 days later.

2005 Convictions for Breaching Sex Offender Notification Requirements

42. Dr Whiteley was released from prison on the 30 August 2004. In 2005, at Manchester Magistrates Court, Dr Whiteley pleaded guilty to and was convicted of four offences of failing to comply with the notification of changes requirement which formed part of the Sex Offender Notification requirements he was subject to. The facts leading to those convictions were that he failed to notify his change of address on three separate occasions, and on one occasion he failed to give notice that he was travelling abroad.

43. The Certificate of Conviction from Manchester Crown Court confirms that in respect of these four offences, on 3 February 2006 Dr Whiteley was sentenced to a 3 year community order. This included requirements for participation in the Sex Offender programme for 15 months, XXX, and a requirement to attend appointments as and when directed by a probation officer.

44. Dr Whiteley completed this sentence on 2 February 2009.

XXX

45. XXX

46. XXX

47. XXX

2008 Conviction for Theft of a Bicycle Wheel

48. On 4 August 2008 Dr Whiteley was convicted of theft of a bicycle wheel, contrary to section 1 of the Theft Act 1968. He was sentenced to a 12 month conditional discharge, and was ordered to pay £60 costs.

49. The circumstances of this offence were that between 20:00 and 20:10 on 24 July 2008 in Manchester Dr Whiteley approached a pedal cycle which was chained to a metal fence. Without permission he removed the front wheel using a spanner. Dr Whiteley then took the wheel to use on his own bicycle. The value of the wheel was £10.00.

Dr Whiteley's first Application for Restoration in 2008

50. On 10 April 2008 the GMC received Dr Whiteley's first restoration application dated 8 April 2008. Dr Whiteley made a number of points within that application:

- i. he wished to have his name restored with effect from 1 July 2008

- ii. his full primary medical qualification was: MB CHB (*Bachelor of Medicine, Bachelor of Surgery*), Liverpool University
- iii. his dates of training were October 1986 – June 1992, with his qualification being awarded in June 1992
- iv. he was not currently registered with a medical regulatory authority
- v. he was not currently employed
- vi. in relation to his recent professional experience he stated that he had, '*no experience. I was removed from the medical register on 2 September 2003, and have not worked since*'
- vii. in relation to his declaration of fitness to practise he stated that:
 - a. he had been convicted of an offence in a court of law;
 - b. he had received a fixed penalty notice in the UK or another country;
 - c. he did have his registration removed whilst working as a medical practitioner;
 - d. XXX
 - e. there was a reason why he may not be entitled to a certificate of good standing from the medical regulatory authority in any of the countries he had worked as a doctor;
 - f. there were no proceedings pending that may lead to him being removed, suspended or restricted in any way.

51. Dr Whiteley provided a letter in support of his application dated 8 April 2008. This addressed a number of issues including:

- i. XXX
- ii. XXX
- iii. XXX
- iv. details of the 2005 criminal convictions, and sentence;
- v. XXX

vi. XXX

vii. confirmation that:

- a. he had not been working for the last five years;
- b. he had no references to forward to the GMC;
- c. over the past year he had been attending the Edinburgh course for Rehabilitation of Sex Offenders, under the care of the Probation Service, and he saw the value of that course;
- d. he had '*seen the problems and errors [he] had caused in the past*';
- e. he knew what he did was wrong;
- f. XXX

Case Examiner's Decision: 4 June 2008

52. The Case Examiner reviewed Dr Whiteley's 2008 Application for Restoration. Because a doctor can only apply to be restored to the register after a period of five years has elapsed from erasure, and this 5 year period had not expired in this case, the application was refused.

53. Dr Whiteley was notified that he could not re-apply for restoration until November 2009.

Dr Whiteley's second Application for Restoration in 2009

54. On 12 November 2009, the GMC received Dr Whiteley's second restoration application dated 11 November 2009. Within that application Dr Whiteley stated that:

- i. he wished to have his name restored on the date this application was approved.
- ii. his full title of primary medical qualification was: MB CHB (*Bachelor of Medicine, Bachelor of Surgery*), Liverpool University
- iii. in relation to details of his current or most recent employer he stated, '*n/a*'
- iv. in relation to his recent professional experience he stated, '*n/a*'
- v. in relation to his declaration of fitness to practise he stated that
 - a. he had been convicted of an offence in a court of law;

- b. he had not received a fixed penalty notice in the UK or another country;
- c. he did have his registration removed whilst working as a medical practitioner;
- d. he had never been refused registration by any medical health or social care regulator in the UK or another country;
- e. he had never been fined, given a warning or reprimanded by any medical health, social care or any other regulator in the UK or another country;
- f. XXX
- g. he was aware of an aspect of his conduct and/or capability that might raise a question about his fitness to practise as a doctor in the UK;
- h. he did know of a reason why the medical authority in any of the countries where he had worked would refuse to grant him a certificate of good standing;
- i. there were no proceedings pending that may lead to him being removed, suspended or restricted in any way.

55. On a supplementary information sheet attached to his 2009 restoration application form Dr Whiteley raised the following additional points:

- i. details of his criminal convictions and sentences received in March 2004;
- ii. XXX
- iii. confirmation that:
 - a. he had not contacted anyone to support his application;
 - b. he had not worked since his removal from the medical register.

Case Examiner/Assistant Registrar's Decision in 2009

56. On review of Dr Whiteley's 2009 application for restoration the GMC determined that it was appropriate to refer Dr Whiteley's case to a restoration hearing. That hearing took place between 7 and 9 June 2010.

Restoration Hearing on 7-9 June 2010

57. At this hearing Dr Whiteley was present and unrepresented. The Panel heard the background to the application, and considered a number of documents including a pre-sentence addendum report (produced for a hearing on 12 October 2005 which related to Dr Whiteley's breach of the terms of the Sex Offenders Register) and an undated probation report prepared by Mr A in relation to Dr Whiteley's compliance with the relapse prevention element of the Sex Offenders Programme (between 11 April 2008 and 22 August 2008).

58. In the relapse prevention report, the Panel noted that in week three of the programme Dr Whiteley *"took minimal responsibility for his offending, as though these restrictions were placed on him for no reason."* The Panel noted that the summary of overall progress within the programme stated that *"Kevin spoke about wanting to be on his own and this was put into greater context in session eight. He said that for him voyeurism feels 'normal' and he will have to monitor this carefully."* Under the heading 'outstanding issues/concerns' the report stated *"As I have detailed above there remains areas of concern around Kevin's emotional recognition and management. As a facilitator I still feel I do not have a clear picture of the role these issues might have played in his offending or if Kevin's detachment and social isolation remains a risk issue for the future."*

59. The Panel considered Dr Whiteley's application for restoration, balancing his interests with the public interest, which included amongst other things, the protection of patients, the maintenance of public confidence in the profession, and the declaring and upholding of proper standards of conduct and behaviour.

60. The Panel noted that during his oral evidence Dr Whiteley stated that:

- i. for him voyeurism felt normal and that it was still an interest for him but that it was not as extreme as it used to be and he could put it into context at that stage;
- ii. whilst he did not want to re-offend, he could not say that he would never re-offend again;
- iii. when he failed to comply with the notification of changes requirement, whilst he had signed the Sex Offenders Register he did not want to accept that he was on the Register and that he had *"buried [his] head in the sand"*;
- iv. he now recognised that whilst he knew he was committing a crime by being voyeuristic he had not recognised the consequences of his actions as the people he was looking at were not aware of what he was doing;
- v. he now realised that his actions had consequences;
- vi. he saw the chance of his name being restored to the Medical Register as being very slight.

61. When considering the application, the Panel noted that:

- i. Dr Whiteley had not worked in any capacity since July 2003;
- ii. on his application for restoration he wrote: *"I have contacted no other persons in support of my application, and am unsure how far this application will go"*;
- iii. there was no evidence before it about how Dr Whiteley had kept his medical knowledge up to date, apart from his oral evidence during which he stated that he had been reading medical journals until a year ago;
- iv. they had received oral evidence from a probation officer, Mr A, who stated that the level of engagement and the amount of work Dr Whiteley had put into his Sex Offender Treatment Programme was substantial. However, it was Mr A opinion that Dr Whiteley could pose a risk working as a doctor. Mr A stated that once somebody crosses a boundary there is always a risk that they could do it again if the circumstances are similar. His judgment was to err on the side of caution. He stated that at the end of the Sex Offender Treatment Programme there were still concerns about Dr Whiteley's social isolation and his lack of intimate relationships;
- v. the GMC publication Indicative Sanctions Guidance (April 2009) contained paragraphs on Sex Offenders and Child Pornography, which clearly stated (at paragraph 99) that: *"The Council has made it clear that no doctor registered as a sex offender should have unrestricted registration"*;
- vi. when deciding whether Dr Whiteley's name should be restored to the Register, the Panel was aware that it had no power to restore his name to the Register with conditions or undertakings and that it must decide whether he was fit to resume unrestricted practice, having regard to all the circumstances, including the original allegations found proved against him;
- vii. Section 41 of the Medical Act required an applicant for restoration to provide evidence as to their fitness to practise, and that the Panel should not grant restoration if that evidence did not satisfy them as to that issue. The burden of proof was therefore on Dr Whiteley to satisfy the Panel that he was fit to be restored to the Register.

62. The Panel concluded that they had not received any evidence to satisfy them that Dr Whiteley's name should be restored to the Register. The Panel were concerned about Dr Whiteley's apparent lack of insight into his previous serious misconduct, and the fact that he had made his application whilst his name was still on the Sex Offenders Register. They were also concerned at what they regarded as Dr Whiteley's less than adequate attempts to keep his medical knowledge up to date.

63. In light of the above, the Panel determined to refuse Dr Whiteley's application for the restoration of his name to the Register.

2011 Conviction for Making a False Representation to Obtain Social Security Benefit

64. In November 2011 the GMC were informed that on 16 August 2011 at Manchester City Magistrates Court Dr Whiteley had been convicted of two offences of making a false statement or representation in order to obtain benefits, contrary to s111A of the Social Security Administration Act 1992. The circumstances of these offences, which took place on 1 May 2006 and 8 November 2006, were that for the purpose of obtaining benefit, Dr Whiteley dishonestly made a false representation in that he failed to declare the true extent of his capital.

65. On 31 October 2011, at Minshull Street Crown Court, Dr Whiteley was sentenced for these two offences. He was sentenced to a 12 month community order on each offence, to run concurrently, making a total sentence of a 12 month community order. This order contained an unpaid work requirement of 150 hours. A confiscation order was made in the sum of £1,217.78.

The 2020 Application for Restoration

66. On 1 April 2020 Dr Whiteley made a further (third) application for restoration to the Register. Within that application Dr Whiteley stated that:

- i. he wished to have his name restored on the date this application was approved;
- ii. his full title of primary medical qualification was: MB CHB, (*Bachelor of Medicine, Bachelor of Surgery*), Liverpool University;
- iii. in relation to details of his medical service he confirmed that, within the last five years, he had not provided medical services as an employee or under contract or arrangement to provide such services;
- iv. in relation to his recent professional experience he stated '*no work history since 2004*'
- v. in relation to his registration/licensing history he stated '*no medical/license history since 2004*';
- vi. in relation to the GP register, he confirmed that his name was previously entered on the GP register and he was applying for his name to be restored to that register;
- vii. in relation to his declaration of fitness to practise he stated that he was not aware of any proceedings, act or omission on his part which might render him liable to be referred to the GMC for investigation or consideration of his fitness to practise.

67. On a supplementary information sheet attached to his restoration application form, Dr Whiteley raised the following additional points:

- i. confirmation of his removal from the medical register in 2004;
- ii. confirmation that he had not provided medical services since 2004;
- iii. confirmation that he wished to be considered to be registered so that he can provide medical services again;
- iv. details of the criminal convictions and sentences received in March 2004;
- v. confirmation that he has not worked since his removal from the medial register in 2004, albeit clarifying his wish to return to medical working;
- vi. XXX

68. XXX

July 2020 Decision to refer to a Restoration Hearing

69. On review of Dr Whiteley's 2020 application for restoration it was noted that Dr Whiteley's name was erased from the Medical Register in 2004, that his 2008 application for restoration was refused because five years had not passed since his erasure, and that his 2009 application was refused on the merits at a hearing in June 2010.

70. Since it was over 5 years since the date of erasure, and over 12 months since the previous application for restoration to the register, pursuant to Section 41 Medical Act 1983 the Registrar referred the application for consideration by a Tribunal, and the matter was subsequently listed for a hearing commencing on 9 November 2020. With the agreement of the parties the hearing was conducted as a remote hearing by Skype for Business due to the ongoing pandemic.

Evidence

71. The Tribunal took account of the documentary evidence provided in the hearing bundles prior to the hearing. This included, but was not limited to:

- XXX
- Documents relating to Dr Whiteley's criminal offending between 2003 and 2011
- Transcript of Professional Conduct Committee, and determination dated 6 October 2004
- XXX
- Dr Whiteley's first application for restoration dated 8 April 2008

- Dr Whiteley’s second application for restoration dated 11 November 2009
- Public Minutes of the Fitness to Practise Panel held between 7 and 9 June 2010
- Private Minutes of the Fitness to Practise Panel held between 7 and 9 June 2010
- Private determination of the Fitness to Practise Panel (June 2010)
- Dr Whiteley’s third application for restoration dated 1 April 2020 and associated documents covering 1 April 2020 to 23 September 2020 including a three page typed statement from Dr Whiteley (undated) which Dr Whiteley told the Tribunal was prepared a day or two before he sent it to the GMC on 30 June 2020, and a letter dated 10 September 2020 from XXX

72. In addition the Tribunal took account of the documents and evidence provided to it at the outset of or during the hearing. This included:

- GMC Rule 41 application and associated documents
- GMC Statement of Case (Dr Whiteley agreed that paragraphs 1 – 6 of this document were factually accurate)
- Written Chronology prepared by the GMC (Dr Whiteley agreed the factual accuracy of this document)
- GMC’s Opening Note
- Witness statement from Dr Whiteley (undated)
- XXX
- Statement from Dr Whiteley (undated but confirmed by Dr Whiteley as completed on 26 January 2021, referenced in the hearing as D1)
- GMC Submissions Opposing Restoration dated 26 January 2021
- Dr Whiteley’s written closing submission on restoration dated 27 January 2021

73. Given that the material background to the instant application before the Tribunal goes back to 2003, during the hearing the Tribunal was addressed on the contents of Good Medical Practice (‘GMP’) 2001 – 2006 and GMP 2006 – 2013.

74. The Tribunal confirmed with Dr Whiteley that he had received and read copies of the following current guidance:

- Guidance for doctors on restoration following disciplinary erasure; and
- Guidance for Medical Practitioners Tribunals on restoration following disciplinary erasure (‘the Restoration Guidance’).

The GMC’s Case

75. From the outset the GMC opposed Dr Whiteley’s application for restoration, submitting that this case falls towards the top end of the spectrum of seriousness.

76. The GMC relied on the circumstances and seriousness of the 2003 criminal offences, and from 2004 onwards made the following submissions in particular:

- a. Dr Whiteley had been convicted of further criminal offences since 2004, namely:
 - i. the four offences of failing to comply with the failure to notify change requirements (pursuant to the Order placing Dr Whiteley on the Sex Offenders Register) in 2005;
 - ii. the theft offence in 2008; and
 - iii. the two offences of making a false statement or representation to obtain benefit in 2011.
- b. XXX
- c. Dr Whiteley failed to disclose his 2005 or 2008 convictions (or sentences), XXX, in the course of his 2009 application for restoration to the register;
- d. Dr Whiteley failed to disclose his 2005, 2008 or 2011 convictions (or sentences), XXX, in the course of his 2020 application for restoration to the register;
- e. Dr Whiteley had failed to adduce any or any adequate evidence that he had maintained his clinical skills in the period since his erasure;
- f. Dr Whiteley had failed to adduce any or any adequate evidence that the concerns of the 2004 Professional Conduct Committee had been remediated since his erasure in 2004;
- g. Dr Whiteley had failed to demonstrate any or any adequate insight in the period since his erasure in 2004;
- h. XXX
- i. Dr Whiteley had failed to adduce any or any adequate evidence that the risk of repetition of criminal offences has been reduced in the period since his erasure in 2004.

77. In the GMC's closing address, Counsel directed the Tribunal to the relevant paragraphs of the Restoration Guidance, in particular Part B of that guidance.

78. In the circumstances the GMC submitted that the Tribunal cannot be satisfied that Dr Whiteley is fit to practise unrestricted having regard to each of the three elements of the overarching objective.

Dr Whiteley's Case

79. Dr Whiteley provided written evidence before and during the hearing, gave oral evidence and was asked questions by the GMC and by the Tribunal. In addition, Dr Whiteley provided a written closing submission and addressed the Tribunal in oral submissions. Dr Whiteley confirmed that he did not have any other documents that he wished to rely upon in support of his restoration application, and he did not wish to call any witnesses to give evidence.

80. It was agreed that Dr Whiteley would address the Tribunal after the GMC had made closing submissions, and after Dr Whiteley had had an opportunity to reflect on those matters, to ensure that Dr Whiteley had a full opportunity to address all of the submissions made by the GMC, and advance his application before the Tribunal.

81. In his written witness evidence Dr Whiteley acknowledged the seriousness of his criminal conduct in 2003. He said he still finds it difficult to accept that he placed a camera in the family changing room at the swimming baths. XXX

82. In oral evidence, he was asked about his evidence to the 2010 Panel regarding his 2003 offending. He stated that he now has no interest in voyeurism. He stated that he has changed his frame of mind. When asked by the GMC about the images of children found on his computer, he explained that whilst looking for general pornography on the internet he opened images of children, but he deleted them. He said that he did not accept that his conviction in 2003 demonstrated a sexual interest in children. He clarified that he was only interested in people generally.

83. Dr Whiteley acknowledged that he went on to commit further criminal offences.

84. In relation to the offences concerning his failure to notify changes required by the terms of the Sex Offender's Order he was subject to at the time, he stated that this wasn't a deliberate act, and that he had told the police and Probation, but not formally as required. As a consequence, as part of his sentence he attended the Sex Offenders Programme and XXX which he said he found beneficial.

85. Dr Whiteley acknowledged that he later committed theft, a dishonesty offence. He stole a bicycle wheel, but said that at the time there was some justification in his head. He chose a specific wheel on a particular bike which he thought had been abandoned as it had been chained in the same place for some months, and was damaged. He saw the front wheel as salvageable and wanted to make use of it, and in his mind it was more a matter of recycling abandoned material.

86. In 2011, Dr Whiteley acknowledged that he was convicted of having committed two further offences of dishonesty in 2006 relating to making false representations to the DWP for the purpose of claiming benefits he was not entitled to. In short he had more money in his bank account than he declared. As part of his sentence he worked in a charity shop, and he said that he has now paid back the excess benefits he had claimed.

87. XXX

88. Dr Whiteley accepted that the 2005 and 2008 convictions were not included within his declarations when he made a restoration application in 2009, and that the 2005, 2008 and 2011 convictions were not included within his declarations when he made the current restoration application in 2020. Dr Whiteley confirmed that he had been aware at the time of these declarations of the need for a doctor to act with honesty and integrity, in line with the guidance in Good Medical Practice. He also confirmed that he knew he was required to complete forms honestly and accurately. He explained that it was never his intention to hide the matters which he did not declare from the GMC. He said that because he was not a doctor after 2004, the later convictions were not something he felt he needed to make the GMC aware of, and that the GMC would automatically make contact with the police as a matter of course in any event, and so the GMC would discover these matters once he applied for restoration anyway.

89. On the issue of whether Dr Whiteley had maintained his clinical skills since his erasure in 2004, he said this has been difficult for him. He accepted that he has not practised medicine or had any clinical or other clinically-related employment or experience since 2003, and that this was a long time. In oral evidence he confirmed that since 2003 he has not maintained any contact with medical practitioners and has not had any sort of mentoring. Shadowing has not been practical due to the nature of his criminal convictions. Due to his convictions he felt he was excluded from the medical profession.

90. Dr Whiteley stated that he does not have access to the internet at home due to financial difficulties which have persisted for many years. He said he has been on benefits for seventeen years. He had borrowed a neighbour's WiFi in order to access the hearing. Accordingly, he said he had been unable to access on-line courses, and that in any event he had found that in order to register for online courses you needed to be a registered doctor. However, he stated that he had made efforts to keep in touch with what he termed in his written evidence '*matters that are the basis of medicine and those matters that have progressed as each year passes*'. He said he had done that in a limited way, but in a manner consistent with furthering his skills as a doctor. He gave specific examples of reading updated editions of the BMJ and said that he receives editions of GP, PULSE and the BNF from e-Bay, all of which update him on ailments and treatments of current interest. His oral evidence was that he had spent four to five hours per week reading over the last four to five years, and that the last reading materials he had received arrived in November 2020.

91. Dr Whiteley addressed the GMC's submission that he was not fit to practise unsupervised. In his April 2020 restoration application he made the following statement on a supplementary information sheet included within his application: '*I have not provided medical services since 2004. I wish to be considered to be reinstated so that I can provide medical services again*'.

92. In his written evidence he accepted that if restored to the Register he would be seen as *'being rusty or inexperienced'* but he felt that in a short time, and with some supervision, he would get to an acceptable skill level. He said he could see the GMC's point of view, but he was not applying to be restored to work unsupervised as a doctor.

93. In his oral evidence, Dr Whiteley stated that he did not feel he had become de-skilled but he said he did not think that he would be able to return to unsupervised clinical practice safely at the outset. That said, he did not feel that he would pose a risk to patients because he thought that he would return to clinical practice in a supervised position, similar to that of a junior doctor. He said he would want supervision to see what he could and couldn't do. He used a specific example of minor surgery, saying that he felt he would have no problem returning to minor surgery, assuming that he was supervised.

94. Dr Whiteley said that whilst he wished to be restored to the Register, to be employed again was another matter. He felt that with his history it would certainly be difficult to gain employment, but being restored to the Register was a necessary step for him to take to see what was available for him. If employment wasn't available for him, he said he would look into the option of research as this would be an easier route for him, and any findings he made as a doctor would be more readily accepted. He told the Tribunal of his interest in research on mitochondria. He said he had a plan but that could not be progressed because he is not a doctor.

95. Dr Whiteley stated he understood that the Tribunal could only grant unrestricted restoration to the Medical Register. He accepted that there have been considerable changes in clinical practice and guidelines since he last practised seventeen years ago, but stated that he has been reading medical journals in order to keep his medical skills and knowledge up to date.

96. Dr Whiteley made it clear that he was not seeking to be restored to the Register to have access to patients, but because he wanted to seek employment again and offer something of value to society and the medical world.

97. In the period since 2003 Dr Whiteley stated that he had had a lot of time for self-reflection. Apart from occasional short periods of voluntary work in a charity shop, which he said had ended within days on each occasion due to people becoming aware of his history, he had not worked in any paid or unpaid capacity since 2003. He stated that over this period he had gained understanding as to what he has done, and why he did it. XXX

98. Dr Whiteley stated that he knows that what he did in the past was wrong, but that this behaviour is now behind him and he has no desire or impulse to commit any crimes again, and certainly not the ones he has committed in the past. His evidence was that he can do a lot of good and contribute in a positive way which will help others, and that only good would come out of his restoration to the Register, as he hoped the Tribunal would see.

99. Dr Whiteley was taken to the probation officer's report which was provided to the 2010 Panel. The report stated that *'once somebody crosses a boundary there is always a risk that they could do it again if the circumstances are similar'*. Dr Whiteley stated that he understood why the probation officer had made that comment, but he did not agree with that officer that he posed a risk in 2010. In any event, Dr Whiteley said that since then his personal situation had changed. He said that in 2014 he was in a relationship with a female who knew about his history, but he ended that relationship. He said he is not in a relationship now, and he doesn't seek out other people to be with. However, he sees his family and so is no longer socially isolated. He stated that he has never been gregarious. Dr Whiteley said he does not pose any continuing risk.

100. In his closing address to the Tribunal, Dr Whiteley submitted that prior to the crimes he committed in 2003 he had been a good doctor for a decade, and could handle any medical task that was put in front of him, working well alone and with others. He stated that he regrets his crimes because of the impact on others. People were disappointed and angry. Dr Whiteley told the Tribunal that it had taken him a long time to come to terms with the damage he had caused.

101. Dr Whiteley submitted that over time he had reflected and gained insight into the crimes he had committed. XXX He expressed remorse, and assured the Tribunal that he knew he would never repeat the sort of crimes he had committed, as he had no desire to cause more hurt to people. If he were to have any voyeuristic thoughts, he said he has the ability to *'dampen them down'*. He said he recognises right and wrong, and that over a decade has passed, XXX and he wishes to move forward.

102. Dr Whiteley acknowledged that there would be many reservations if he were to be restored to the Register. He suspected that such a decision would not be welcomed by other doctors, nor by many patients. He accepted that his actions had damaged the public's perception of the medical profession, but he reiterated that he was not seeking restoration to have access to patients, but to use his knowledge and skills which could be of use given the efforts he has been able to make to stay up to date with medical knowledge. Dr Whiteley submitted that he would easily slot back into a role where he could use his medical knowledge and skills, and be of use.

103. XXX

104. XXX

105. XXX

106. XXX

107. XXX

108. XXX

109. Finally, whilst in June 2020 Dr Whiteley had written to the GMC saying that he knew his chances of restoration were slim, before the Tribunal he stated that he can now attain the standards a doctor should meet, and maintain those standards. He submitted that restoration would be just a first step in a long road, and that he would need to show others that he was worth knowing and working with, and that he was someone who could help people when they needed it most. But he said that he would behave as a doctor should, and would contribute to society so that only good would come from his restoration.

The Relevant Legal Principles

110. There was no dispute between the GMC and Dr Whiteley as to either the law or the guidance to be applied when determining this application. The Legally Qualified Chair gave advice which reflected the agreed position of the parties, and which is summarised below. The Tribunal accepted the legal advice.

111. In exercising a function under s41 of the 1983 Act the Tribunal must have regard to the overarching objective, and therefore each of its components: s41(12) of the 1983 Act.

112. Accordingly, throughout its consideration of this case, and when determining the outcome of Dr Whiteley's restoration application, the Tribunal has had regard to the overarching objective which involves the pursuit of the following objectives:

- a. to protect, promote and maintain the health, safety and well-being of the public;
- b. to promote and maintain public confidence in the medical profession; and
- c. to promote and maintain proper professional standards and conduct for members of that profession.

113. By s41(1) of the 1983 Act where an application for restoration comes before a Tribunal, the Tribunal may, if they think fit, direct that the doctor's name be restored to the register.

114. S41(2)(a) of the 1983 Act provides that no application for registration shall be made before the expiration of five years from the date of erasure.

115. The Tribunal has no power to grant registration with conditions, or to restrict registration in any way. If restoration is granted, then the doctor returns to unrestricted practice.

116. When considering the merits of Dr Whiteley's application for restoration, the Tribunal must have regard to the Restoration Guidance.

117. The Tribunal has also had regard to the decision in *GMC v Dr Shekhar Chandra* [2018] EWCA Civ 1898 ('Chandra'). The test on this application for restoration is whether, having regard to the overarching objective, Dr Whiteley is now fit to return to unrestricted practice. The burden to satisfy the Tribunal of this is on Dr Whiteley.

118. The Restoration Guidance, and the decision in *Chandra*, serve as a useful reminder that when considering restoration in this case, in the context of the overarching objective, the Tribunal must consider relevant factors including:

- the circumstances which led to erasure
- relevant matters post-dating the circumstances which led to erasure
- the extent to which the applicant has shown remorse and insight
- the extent to which the applicant has remediated
- what the applicant has done since his name was erased from the register, and the steps he has taken to keep his medical knowledge and skills up to date
- the passage of time
- any risk posed by the applicant
- whether public confidence and professional standards would be damaged by restoring the applicant to the register

The Tribunal's Decision

119. The Tribunal retired to consider its decision on 27 January 2021. On 28 January 2021 the Tribunal adjourned the hearing to 29 and 30 March 2021.

120. The circumstances and reasons that led to disciplinary erasure have been set out in detail earlier in this determination, and are not in dispute. The 2003 criminal conduct which led to Dr Whiteley's first convictions was extremely serious. The conduct concerned allegations of a sexual nature involving children, taking and possessing indecent photographs of children, and possession of a Class A controlled drug (diamorphine). Some of the images on Dr Whiteley's laptop were classified in the most serious category. Dr Whiteley was sent to prison for 12 months and was required to register on the Sex Offender's Register for 10 years.

121. The Tribunal has noted the determination and reasons given at the 2004 PCC hearing.

122. Following his erasure, Dr Whiteley committed further criminal conduct. In 2005 he was convicted of four counts of failing to comply with the notification requirements connected with his registration as a Sex Offender. XXX In 2006 he committed dishonesty offences relating to benefits claims by failing to declare the true level of capital he had (he was convicted of those matters in 2011). In 2008, he committed theft and was convicted on his own admission, this also being a dishonesty offence.

123. The Tribunal has noted the determination of the 2010 Panel, and their reasons.

124. Dr Whiteley failed to disclose the true extent of his further offending / convictions, XXX, in his 2009 and his 2020 restoration applications. As to this Dr Whiteley advanced two arguments. First, that as he was not practising as a doctor at the time of those offences, they were not relevant to his later restoration applications. Second, that the reason he omitted to disclose the convictions on his restoration applications was that he knew the Police would provide that information to the GMC as part of the investigation which followed his application, and so it would be before the Tribunal in any event, and he was not trying to mislead anyone by not including them when he made his declarations in 2009 and in 2020.

125. The Tribunal were not persuaded by either of Dr Whiteley's two arguments, and rejected them. The Tribunal found that Dr Whiteley's arguments were also contradictory. If Dr Whiteley's first argument was correct, and the further convictions / XXX were irrelevant, they would not form part of the investigation process, and would not be before the Tribunal on a restoration application. If, however, his second argument was correct and these later convictions and XXX would be acquired through the investigation process, and be adduced as part of the material before the Tribunal, then that would be because they were relevant.

126. In any event, Dr Whiteley readily accepted during his evidence that in 2009 and 2020 he was aware of the relevant obligations in the applicable versions of GMP, to be accurate and honest when completing and signing forms. The Tribunal found that when completing the forms in 2009, and again in 2020, Dr Whiteley knew that the further criminal offending, and XXX, were relevant considerations on his restoration application, and needed to be declared in answer to the straightforward questions on the application form. The Tribunal found that Dr Whiteley knowingly presented materially incomplete information in each of those forms, and thereby presented a misleading picture which operated on each occasion to present a less serious background than was in reality the case.

127. The Tribunal next considered whether at this stage Dr Whiteley has demonstrated insight into the relevant matters, and whether he has taken responsibility for his actions and actively addressed the findings about his conduct.

128. The 2004 Professional Conduct Committee (PCC) noted that Dr Whiteley had admitted the criminal charges, co-operated with police, spared victims from giving evidence and avoided the costs of a contested trial. The 2004 PCC also noted that Dr Whiteley had apologised and acknowledged the damage he had done to the medical profession. However, they found that the circumstances of Dr Whiteley's offending and convictions amounted to a clear breach of the fundamental principles of GMP, and that the offending seriously undermined public confidence in the medical profession and damaged its reputation. Those findings came against a context that a professions most valuable asset is its collective reputation, and the confidence that inspires in members of the public. In the circumstances the 2004 PCC determined that Dr Whiteley's conduct was fundamentally incompatible with registration as a medical practitioner.

129. During the 2010 restoration hearing, approximately six years later, the Panel heard oral evidence from Dr Whiteley and considered issues of insight and remediation, including reference to a number of probation reports. A summary of key aspects of Dr Whiteley's oral evidence is set out above as part of the agreed background to the current restoration application. The 2010 Panel concluded that they had not received any evidence to satisfy them that Dr Whiteley's name should be restored to the register. They raised particular concerns as to his insight, not least because he had made the restoration application whilst his name remained on the Sex Offenders Register.

130. Moving to the present position, the Tribunal found that Dr Whiteley has evidenced remorse and a degree of insight into the findings that led to his erasure. Dr Whiteley has apologised, accepted the seriousness of his convictions and assured the Tribunal that he would not act in this way again.

131. However, whilst Dr Whiteley spoke of triggers he would be aware of if he found himself in difficulty, and how he could address these triggers to avoid similar difficulties arising in future, he showed a limited appreciation of the wider impact of his offending on others. For example, he made little reference to the impact of his conduct possessing material containing children found on his laptop device, or the impact of the theft on the owner of the bike wheel, or the impact of his dishonest benefit claims and consequent fraud conviction.

132. The Tribunal noted that Dr Whiteley refused to accept that he has not remediated his sexual misconduct or dishonesty. He submitted that he has remediated, is safe and does not pose a threat to society, and that he poses no risk with unrestricted access to patients.

133. Dr Whiteley's oral evidence was that if restored to the register he would see himself in a position akin to that of a junior doctor, requiring a degree of supervision. It therefore became clear to the Tribunal that it was Dr Whiteley's own case that he is not ready to immediately resume unrestricted practice. The Tribunal considered that Dr Whiteley's decision to make and pursue his restoration application when his own case is that he is not ready to immediately resume unrestricted practice raises concerns as to the degree of insight he has.

134. On the issue of remediation, sexual offences and/or dishonesty are typically difficult to remediate. In such cases the offending behaviour is central to the function of a doctor: *Chandra* at paragraph 60 per King LJ. That said, ultimately each case turns on its own facts and circumstances.

135. In the Tribunal's judgment, Dr Whiteley's further criminal offending, his failure to declare his further criminal conduct XXX in his 2009 and 2020 restoration applications (and the Tribunal's findings in this regard), together with an absence of material as to how Dr Whiteley has actively addressed the conduct leading to those convictions / orders, undermine Dr Whiteley's submission that he has remediated.

136. The Tribunal is concerned by the seriousness of Dr Whiteley’s initial offending, his further serious offending post 2004, and his failure to declare his further offending XXX in 2009, and again in 2020. Taken together, the Tribunal has clear evidence of a pattern of serious concerns extending over the period from 2003, albeit of a differing nature during that period.

137. XXX

138. XXX

139. XXX

140. XXX

141. XXX

142. Weighing all of the matters before it, the Tribunal is satisfied that Dr Whiteley has developed only limited insight. The Tribunal is not satisfied that Dr Whiteley has satisfactorily remediated. Notwithstanding that the 2003 conduct has not been repeated, there was a pattern of offending over many years, with subsequent dishonesty convictions arising from distinct incidents in different years (the theft and the benefit fraud).

143. In the Tribunal’s judgment, there remains XXX, and a risk of repetition, which may be at the lower end of the scale, but is uncertain given XXX, and the matters noted above. The Tribunal is satisfied that it cannot be said that there is no risk of repetition in this case. Furthermore, in the Tribunal’s judgment, it is relevant that were there to be a repetition of the previous conduct, the outcome, whether for individuals and/or the reputation of the professional as a whole, would be serious.

144. The Tribunal next turned to consider what Dr Whiteley has done since his name was erased from the register, and the steps he has taken to keep his medical knowledge and skills up to date.

145. On his own case, since his erasure in 2004, Dr Whiteley has had no paid or unpaid employment, placement or other role of any sort in any clinical, or related, field. He has not undertaken any relevant shadowing. He has not researched or taught in a relevant field, or at all. He has not written or published articles. He has not undertaken any relevant professional or academic qualifications, or gained any relevant experience. On his own case he has not maintained any professional contacts. He has had no contact with medical professionals, save as a patient, since 2004.

146. Dr Whiteley gave evidence that he had not attended any in person or online courses in relation to clinical knowledge or skills. He stated that he has undertaken personal reading of relevant materials, but he has not produced any learning or development record, or a list

of what he has read, or when, save that his own evidence was that the last reading materials he read were received in November 2020.

147. Dr Whiteley said that if restored to the register he wished to work in the research field. He said he had a plan. However, he did not provide any meaningful evidence of a plan, or steps taken to date, to work towards investigating or achieving these aims.

148. Dr Whiteley was asked about developments in medical practice since 2004. He said that the main developments related to information technology, which he would be able to learn quickly. The Tribunal were concerned at what it regarded as Dr Whiteley's lack of insight, or acknowledgment, of the extent to which medical practice has changed since 2004.

149. In his oral evidence Dr Whiteley accepted that he was not safe to return to unrestricted practice, but he did not consider that he would pose a risk to patients because he said he thought he would return to clinical practice in a supervised position similar to that of a junior doctor.

150. In the circumstances, the Tribunal concluded that Dr Whiteley has done very little which is relevant in terms of supporting his restoration application since his erasure in 2004. The Tribunal concluded that Dr Whiteley has taken very few steps to keep his medical knowledge and skills up to date, and his actions in this regard have been inadequate.

151. In the Tribunal's judgment, allowing Dr Whiteley to return to unrestricted practice at this stage would raise patient safety concerns in the context of Dr Whiteley's lack of up to date medical knowledge and skills. The Tribunal considered that Dr Whiteley is not safe to return to unrestricted practice at this stage.

152. Next the Tribunal considered the lapse of time since erasure. The longer a doctor has been away from clinical practice, the greater the likelihood that their knowledge and skills will have deteriorated to a degree that may place patients at risk. Whilst the length of time which has elapsed since erasure will be a relevant factor, it will not necessarily equate to a doctor no longer posing a risk to patients or to public confidence in the profession. The Restoration Guidance makes plain that tribunals must pay close regard to how the doctor has maintained their knowledge during a lengthy period away from the register. Ultimately when considering the lapse of time, and the impact of that feature of the case on the outcome of the restoration application, each case turns on its own facts.

153. In this case, Dr Whiteley was erased from the register in October 2004, over sixteen years ago. The Tribunal has already concluded that Dr Whiteley has not kept his medical knowledge and skills up to date during this very lengthy period of time. The Tribunal determined that restoring Dr Whiteley to the register, and thereby permitting him to return to unrestricted practice, would be unsafe.

154. Further, and in any event, given the seriousness of the admitted history of this matter, and the findings set out earlier in this determination, the Tribunal concluded that this

a case where notwithstanding the passage of sixteen years since his erasure, Dr Whiteley's restoration, if granted, would undermine public confidence in the profession.

Would restoration meet the overarching objective?

155. Having made the findings set out above, the Tribunal stepped back and balanced those findings against the question of whether restoration would meet the overarching objective, considering each limb of the overarching objective in turn.

156. As to the need to protect, promote and maintain the health, safety and well-being of the public, the background to erasure in this case was very serious criminal conduct which was judged to be incompatible with continued registration at that time. In 2010, the Panel accepted evidence from Dr Whiteley's probation officer as to the risk posed by Dr Whiteley at that stage. That evidence has been summarised earlier in this determination. Dr Whiteley disagreed with the probation officer's opinions in 2010, and he confirmed to the Tribunal that he still disagrees with those conclusions now. The Tribunal's earlier findings connected with insight, remorse and remediation have informed the Tribunal's conclusion, set out earlier in this determination, that there remains a risk of repetition in this case, and that the impact of repetition would be serious.

157. As to the need to promote and maintain public confidence in the profession, it is of central importance that patients and the public at large must be able to trust doctors. Doctors are expected to act with honesty and integrity to ensure that their behaviour justifies that trust.

158. At the heart of the decision to erase Dr Whiteley's name from the register in 2004 was the fact that Dr Whiteley's conduct had undermined confidence in the medical profession and damaged its reputation. His behaviours were deemed to be fundamentally incompatible with registration as a doctor. Similarly, in 2010, the restoration Panel refused Dr Whiteley's restoration application, and expressed concern about Dr Whiteley's lack of insight and his less than adequate attempts at that stage to keep his medical knowledge up to date. It is clear from the 2004 and 2010 determinations that both panels considered there to be a strong public interest element present in this case.

159. The Tribunal have considered the multifaceted nature of the agreed serious misconduct in this case. The totality of the conduct in this case was and is so serious that in the Tribunal's judgment it remains capable of undermining the trust that the public place in doctors. In the Tribunal's judgment the strong public interest element engaged in this case in 2004 and 2010 remains engaged at this stage.

160. The Tribunal consider that public confidence in the profession would be undermined if Dr Whiteley were restored to unrestricted practice at this stage. In the Tribunal's judgment, an ordinary and well-informed member of the public aware of the relevant facts of this case would be shocked and concerned if Dr Whiteley was restored to the register, and thus able to return to unrestricted practice.

161. Notwithstanding that this conclusion will be very disappointing and impactful for Dr Whiteley, the Tribunal considered that the case law and the Restoration Guidance are clear that maintaining public confidence in the profession as a whole is more important than the interests of an individual doctor.

162. As to the need to promote and maintain professional standards and conduct, at the point of erasure the Panel sent a clear message to the profession as to what constituted unacceptable behaviour. Since 2004, there have been further serious issues in this case, as set out earlier in this determination. In all the circumstances of this case as things stand today, the Tribunal determined that restoring Dr Whiteley to the register, and therefore permitting him to return to unrestricted practice, would be inconsistent with its duty to promote and maintain professional standards and conduct in the profession. In other words, restoring Dr Whiteley to the register at this stage would undermine the maintenance of professional standards and conduct.

Conclusion

163. In the circumstances of this case, and for the reasons given above, the Tribunal determined that Dr Whiteley is not fit to return to unrestricted practice. Accordingly, Dr Whiteley's application for restoration is refused.

Consequential Matters

164. Section 41(9) of the 1983 Act provides:

“(9) Where, during the same period of erasure, a second or subsequent application for the restoration of a name to the register, made by or on behalf of the person whose name has been erased, is unsuccessful, a Medical Practitioners Tribunal may direct that his right to make any further such applications shall be suspended indefinitely.”

165. Part E of the Restoration Guidance states that where s41(9) of the 1983 Act is engaged Tribunals should consider whether to indefinitely suspend a doctor's right to apply for restoration, and that a doctor has the right to make representations on that issue before any determination on this issue is reached.

166. If a decision is made to indefinitely suspend a doctors' right to re-apply for restoration to the register, the doctor may apply to the Registrar for that decision to be reviewed by a Tribunal after three years from the date of that decision. Where any such application is unsuccessful, no further application for review can be made within three years of that tribunal's decision, subject only to the doctor's right to challenge that decision by way of judicial review.

167. S41(9) of the 1983 Act is engaged in this case. Accordingly, the Tribunal will reconvene as soon as practicable to consider whether or not to indefinitely suspend Dr Whiteley’s right to apply for restoration. Before doing so, the parties will each have the opportunity to consider this determination, and will then each be given an opportunity to make representations on the indefinite suspension issue, after which the Tribunal will retire to consider its determination on that issue.

DETERMINATION under s41(9) Medical Act 1983 - 21/07/2021

168. The Tribunal noted that the GMC is now represented by Mr Neil Usher, Counsel.

169. The Tribunal previously determined (in Annex A) under Rule 41 of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’), that the public should be excluded from those parts of these proceedings concerning confidential matters.

170. In March 2021 the Tribunal determined that Dr Whiteley was not fit to return to unrestricted practice. Accordingly, Dr Whiteley’s application for restoration was refused.

171. In March 2021 the Tribunal determined that s41(9) of the Medical Act 1983 [‘the 1983 Act’] was engaged in this case, and that the Tribunal would go on to consider an order for indefinite suspension pursuant to s41(9) of the 1983 Act, which provides:

‘(9) Where, during the same period of erasure, a second or subsequent application for the restoration of a name to the register, made by or on behalf of the person whose name has been erased, is unsuccessful, a Medical Practitioners Tribunal may direct that his right to make any further such applications shall be suspended indefinitely.’

5. The GMC seek a direction for indefinite suspension pursuant to s41(9) of the 1983 Act.

Evidence & Submissions

172. The Tribunal took account of the documentary evidence provided on 20 July 2021:

- GMC Proof of Service Bundle (July 2021)
- GMC Supplementary Bundle (July 2021)

173. The Tribunal also took account of the documents and evidence provided during the earlier hearings, the contents of its previous determinations, and the oral submissions made by Mr Usher at this hearing on behalf of the GMC.

174. Mr Usher told the Tribunal that he relied upon the GMC's written submissions prepared by Ms Johnson, previous GMC Counsel, dated 19 April 2021, which stated as follows:

1. It is submitted that it is appropriate to make an order pursuant to section 41(9) of the Medical Act 1983 in this case.

2. Dr Whiteley's application for restoration has been refused by the Tribunal. His recent application was his third unsuccessful application. His first application had been made even before five years had elapsed since his erasure. He was notified by the Case Examiner; he could not apply until November 2009. He made his second application on 11th November 2009. This application was refused on 7-9 June 2010.

3. The detail of the history of the case is set out in the Tribunal's determination dated 29 March 2021. In paragraphs 62 the Tribunal summarised the findings of the 2010 Tribunal as set out below:

1. The Panel concluded that they had not received any evidence to satisfy them that Dr Whiteley's name should be restored to the Register. The Panel were concerned about Dr Whiteley's apparent lack of insight into his previous serious misconduct, and the fact that he had made his application whilst his name was still on the Sex Offenders Register. They were also concerned at what they regarded as Dr Whiteley's less than adequate attempts to keep his medical knowledge up to date.

4. In paragraphs 142 and 150 the Tribunal set out the following:

2. Weighing all of the matters before it, the Tribunal is satisfied that Dr Whiteley has developed only limited insight. The Tribunal is not satisfied that Dr Whiteley has satisfactorily remediated. Notwithstanding that the 2003 conduct has not been repeated, there was a pattern of offending over many years, with subsequent dishonesty convictions arising from distinct incidents in different years (the theft and the benefit fraud).

3. In the circumstances, the Tribunal concluded that Dr Whiteley has done very little which is relevant in terms of supporting his restoration application since his erasure in 2004. The Tribunal concluded that Dr Whiteley has taken very few steps to keep his medical knowledge and skills up to date, and his actions in this regard have been inadequate.

5. These findings demonstrate the lack of preparation made by Dr Whiteley in relation to each application made. Very little evidence to support his application was produced for the hearing in January and March 2021. Only short written statements were served either during or immediately prior to the hearing. The doctor has failed once again to

produce any evidence that the tribunal could accept to support his application. He continues to demonstrate a lack of awareness as to what evidence is required.

6. If an order is made the doctor will have the right to seek a review of the order after a period of 3 years. The practical effect of an order would be to give him a substantial period to reflect and remediate.

7. An order is required to protect the public and to maintain public confidence in the profession. It would also be in the doctor's own interests.'

175. Mr Usher reminded the Tribunal that these written submissions had been provided to Dr Whiteley in April 2021. He also reminded the Tribunal of their findings as to Dr Whiteley's lack of insight, an issue which had also been identified by the previous Tribunal in 2010. He submitted that there is no updated material before the Tribunal in respect of Dr Whiteley's lack of insight, or updated material to suggest that Dr Whiteley has kept his medical knowledge up to date.

176. Mr Usher referred the Tribunal to Dr Whiteley's email dated 22 June 2021 in which Dr Whiteley stated '*I have read the verdict and I accept it. Also, I will not be applying for restoration at any time in the future.*' Mr Usher submitted that this marked a change in Dr Whiteley's attitude since March 2021.

11. Mr Usher submitted that the Tribunal must engage in a balancing exercise, considering the doctor's interests against that of the Regulator. He submitted that it is difficult to see what prejudice would be caused to Dr Whiteley if an indefinite suspension pursuant to s41(9) was granted. Mr Usher reminded the Tribunal that if an indefinite suspension was granted, Dr Whiteley could re-apply for that decision to be reviewed in three years' time should he choose to do so.

177. Mr Usher referred the Tribunal to the principles set out in the decision of the Privy Council in **Gosai v General Medical Council** [2003] WL 1822881 ['Gosai'].

178. Mr Usher submitted that this is a case where indefinite suspension should be granted.

The Relevant Legal Principles

179. Throughout its consideration of this case, and when determining whether to make a direction for indefinite suspension under s41(9), the Tribunal has had regard to the overarching objective which involves the pursuit of the following objectives:

- a. to protect, promote and maintain the health, safety and well-being of the public;
- b. to promote and maintain public confidence in the medical profession; and

c. to promote and maintain proper professional standards and conduct for members of that profession.

15. Part E of the Restoration Guidance deals with a doctor's right to make further applications for restoration after an unsuccessful application. Part E states that in any case where restoration is refused a doctor must automatically wait at least 12 months before applying for restoration again. However, where s41(9) of the 1983 Act is engaged a Tribunal should consider whether to indefinitely suspend a doctor's right to apply for restoration, and a doctor has the right to make representations on that issue before any determination is reached.

16. In *Gosai* in 2003 the Privy Council considered the scope of the power under Section 41(6) of the Medical Act 1983, which was the precursor to power now enshrined in s41(9) of the 1983 Act. The Privy Council confirmed the following key principles:

- (i) the discretion to suspend the right to apply for restoration is unconfined and unfettered: it is not a discretion to be reserved for 'very clear' or 'exceptional' cases;
- (ii) when exercising the discretion to suspend, the public interest is a relevant consideration; and
- (iii) the reputation of the profession is more important than the fortunes of any individual member (applying **Bolton v Law Society** [1994] 1 WLR 512).

17. The Tribunal have approached the issue of indefinite suspension as a discretionary matter, in which the Tribunal must act in a proportionate manner, fairly balancing all relevant factors including the overarching objective and the interests of Dr Whiteley, set against the context of the previous findings of the Tribunal and the updated position.

18. Part E of the Restoration Guidance makes clear that where a Tribunal indefinitely suspends a doctors' right to re-apply for restoration to the Register, the practical effect of this is that the doctor may apply to the Registrar for that decision to be reviewed by a Tribunal after three years from the date of that decision. A Tribunal may grant the application to allow the doctor to make a further application for restoration, or may refuse it. Where such an application is refused then no further application for review can be made within three years of that decision, subject only to the doctor's right to challenge that decision by way of judicial review.

The Tribunal's Decision

19. The Tribunal have revisited their previous findings, as set out in the detailed determination handed down in March 2021 after what was Dr Whiteley's third unsuccessful application for restoration. This determination should be read in conjunction with those detailed findings.

20. In its previous determination in March 2021 the Tribunal set out in detail its numerous concerns / findings, including:

- the very serious overall circumstances of this case;
- Dr Whiteley’s limited insight and appreciation of the impact of his conduct on others;
- an absence of satisfactory remediation;
- the risk of XXX repetition (including uncertainty arising from XXX), and the serious impact should this occur; and
- very few / inadequate steps taken by Dr Whiteley to keep his medical knowledge and skills up to date.

21. Overall the Tribunal determined that Dr Whiteley had done very little which was relevant in terms of supporting his restoration application since his erasure in 2004.

22. Since the March 2021 determination, the GMC have provided their written submissions to Dr Whiteley. Dr Whiteley has exercised his right not to respond to those matters, and not to attend this hearing.

23. The only material update from Dr Whiteley since March 2021 is by way of his email to the MPTS sent on 21 June 2021 which stated as follows:

*‘... ..
Many thanks for your email. To let you know, I will NOT be attending the meeting in July. I instead will concentrate on [XXX].
I have read the verdict and I accept it.
Also, I will not be applying for restoration at any time in the future.
Once again, many thanks for your help in this matter.
Yours,
Kevin Whiteley.’*

24. Dr Whiteley’s email provides some support in his favour in the context of consideration of a s41(9) direction. In particular, the acceptance of the outcome of the previous determination may be said to point to a degree of further insight on the part of Dr Whiteley. However, there is otherwise no new material before the Tribunal today to address key concerns raised in the Tribunal’s previous determination, either by suggesting that those concerns are being, or will be, addressed satisfactorily: for example concerns around the seriousness / impact of the conduct, the absence of remediation, and the inadequate steps taken by Dr Whiteley to keep his medical knowledge and skills up to date.

25. Applying the legal framework (including the overarching objective) to the particular circumstances of this case, the Tribunal are satisfied that the balance falls in favour of making a direction pursuant to s41(9) Medical Act 1983 to suspend indefinitely the right of Dr Whiteley to make a further application for restoration. This is for the reasons set out in paragraphs 19 - 24 above, and also having regard to the findings set out in the Tribunal’s

**Record of Determinations –
Medical Practitioners Tribunal**

March 2021 determination, the developments leading up to this hearing, and in particular to protect the public and to maintain public confidence in the medical profession.

180. That concludes this case.

Confirmed

Date 21 July 2021

Mr Paul Burns, Chair

ANNEX A – 11/11/2020

XXX

ANNEX B – 29/03/2021

XXX

ANNEX C – 30/03/2021

Tribunal's Directions

181. Upon it being recorded that following the handing down of the Tribunal's determination on 29 March 2021, the Tribunal reconvened on 30 March 2021. Due to XXX the Tribunal noted the agreed outstanding issues (as recorded below) and adjourned the hearing.

182. It is recorded that as at 30 March 2021 the parties agree that the outstanding issues before the Tribunal are:

- i. XXX
- ii. consideration of whether to indefinitely suspend Dr Whiteley's right to apply for restoration pursuant to s41(9) Medical Act 1983 [this being a direction which the GMC seeks in this case]

183. To assist future case management the Tribunal directs (with the agreement of the parties) that:

1. By 4pm 27 April 2021 the GMC shall send Dr Whiteley its written submissions in support of the direction it seeks for indefinite suspension pursuant to s41(9) Medical Act 1983 (limited to 4 pages).
2. XXX
3. Dr Whiteley may send to the GMC a written response to the written submissions made by the GMC. Dr Whiteley is not required to provide a written response, and he will have the opportunity to make oral submissions at the next hearing whether or not he has filed any further written documentation. Should he wish to provide a written response, he is requested to do so by 4.00pm 22 June 2021.

4. The hearing shall be adjourned and re-listed for a remote hearing by Skype for Business to commence at 9.30am on 20 July 2021 with an estimated length of hearing of two days.

5. The GMC shall endeavour to agree with Dr Whiteley the contents of a supplementary bundle of additional relevant written materials for use at the next hearing. A copy of that bundle shall be supplied to the Tribunal not less than 7 days prior to the next hearing.

ANNEX D – 20/07/2021

Application: Proof of Service

184. The Tribunal previously determined (in Annex A) under Rule 41 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that the public should be excluded from those parts of these proceedings concerning confidential matters.

185. Dr Whiteley is neither present nor represented today.

186. The Tribunal has considered whether notice of this hearing has been properly served upon Dr Whiteley in accordance with Rules 15 and 40 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended) (the Rules), and paragraph 8 of Schedule 4 to the Medical Act 1983 (as amended) (the 1983 Act).

4. When considering the issue of service, the Tribunal has taken into account all the information placed before it in the 26 page service bundle, together with Mr Usher's oral submissions on behalf of the General Medical Council (GMC).

187. On 15 June 2021, the Medical Practitioners Tribunal Service ('MPTS') sent a Notice of Hearing letter to Dr Whiteley's registered email address. A further Notice of Hearing letter was sent to Dr Whiteley by email on 16 June 2021. The Notice of Hearing letters set out the date, time and arrangements for this virtual hearing.

6. A copy of the Notice of Hearing letter was also sent by recorded delivery to Dr Whiteley's registered address, where it was signed for on 21 June 2021.

188. On 22 June 2021 Dr Whiteley replied to the MPTS email dated 16 June 2021 in the following terms:

'...
*Many thanks for your email. To let you know, I will NOT be attending the meeting in July. I instead will concentrate on [XXX]
I have read the verdict and I accept it.*

*Also, I will not be applying for restoration at any time in the future.
Once again, many thanks for your help in this matter.
Yours,
Kevin Whiteley.'*

189. The Tribunal read and considered the documents before it and considered the submissions made by Mr Usher. In the circumstances, the Tribunal was satisfied that notice of this hearing had been correctly served on Dr Whiteley in accordance with the Rules and the 1983 Act.

ANNEX E – 20/07/2021

Proceeding in Absence

190. Having determined that Notice of Hearing for this hearing had been correctly served in this case, the Tribunal went on to consider whether to proceed today in the absence of Dr Whiteley.

2. On 30 March 2021 prior to adjourning the previous hearing, the Tribunal gave case management directions which appear in full at Annex C to this determination. As to those matters, by way of update:

- (a) XXX
- (b) the Tribunal was informed that Dr Whiteley was provided with the GMC's written submissions in relation to their application to indefinitely suspend Dr Whiteley's right to apply for restoration pursuant to s41(9) Medical Act 1983 by email on 21 April 2021;
- (c) the Tribunal was taken to Dr Whiteley's email dated 22 June 2021, a copy of which is set out in full below; and
- (d) the Tribunal was informed that Dr Whiteley had not provided any written response to the GMC's written submissions referred to at paragraph 2(b) above (which he was entitled to do, but not directed to do), and Dr Whiteley has not replied to service on him of the supplementary hearing bundle which was provided to Dr Whiteley by email on 2 July 2021, and again on 13 July 2021.

Submissions

191. Mr Usher made reference to decision on appeal in the criminal case of **R v Jones (Anthony) [2002] UKHL5**. He submitted that the doctor has a right to be present, but may waive that right. He stated that the decision whether to proceed in the absence of the doctor is a question of discretion for the Tribunal, weighing up all relevant factors in the case. He

submitted that in both criminal cases and regulatory proceedings, the discretion must be exercised with great care. Against that background Mr Usher invited the Tribunal to consider the contents of Dr Whiteley's email dated 22 June 2021.

4. Mr Usher submitted that Dr Whiteley has voluntarily absented himself from these proceedings. He reminded the Tribunal that Dr Whiteley had the right to apply for an adjournment, but had not done so.

5. Mr Usher accepted that it is open to the Tribunal to adjourn but submitted that there would be little point adjourning given the circumstances of this case; in particular given that Dr Whiteley accepts the Tribunal's previous determination on restoration, and given that he does not intend to apply for restoration at any time in the future.

6. Mr Usher further submitted that there would be no prejudice to Dr Whiteley if the hearing were to proceed, in circumstances where Dr Whiteley has chosen not to attend. Mr Usher reminded the Tribunal that this matter has been ongoing for many years and fairness to both Dr Whiteley and the Regulator should be taken into account.

7. Mr Usher also submitted that the Tribunal should take into account the public interest in this case, and conclude that it is fair to proceed today in Dr Whiteley's absence.

Legal Framework

8. Rule 31 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended) (the Rules) deals with the power of the Tribunal to exercise its discretion and proceed in the absence of a doctor. It provides:

Absence of the practitioner

31. Where the practitioner is neither present or 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".

9. The starting point is that a doctor has a right to be present at a hearing. When determining whether to proceed in the absence of Dr Whiteley, the essential issue is one of fairness, balancing the circumstances of the particular case and the overarching objective. Relevant factors may include:

- the nature and circumstances of the doctor's behaviour in absenting himself: for example whether he wishes to be represented and/or whether his absence is voluntary and he has waived his right to be present; and
- whether an adjournment would result in the doctor attending on a subsequent occasion.

The Tribunal's decision

192. The Tribunal noted Dr Whiteley's clear email dated 22 June 2021, sent in response to the email from the MPTS on 16 June 2021 containing a Notice of hearing, in which he stated:

'...
Many thanks for your email. To let you know, I will NOT be attending the meeting in July. I instead will concentrate on [XXX]
I have read the verdict and I accept it.
Also, I will not be applying for restoration at any time in the future.
Once again, many thanks for your help in this matter.
Yours,
Kevin Whiteley.'

193. The Tribunal are satisfied from the Notices of Hearing, from Dr Whiteley's email sent on 22 June 2021, and from the information and directions given to Dr Whiteley directly at the March 2021 hearing (which included notice of this hearing), that Dr Whiteley is aware of this hearing.

12. XXX At the March 2021 hearing Dr Whiteley appeared in person throughout the virtual hearing XXX, and invited the Tribunal to proceed and deal with his case, which it did. XXX Dr Whiteley has not expressed any wish for this hearing to be adjourned, by reason of XXX or otherwise.

13. Dr Whiteley's email correspondence dated 22 June 2021 makes clear that he accepts the Tribunal's March 2021 determination and that he will '*not be applying for restoration at any time in the future*'. Against this background, the Tribunal are satisfied that in the circumstances of this particular case there is nothing to suggest that an adjournment would lead to Dr Whiteley's attendance at a future hearing, and that there is nothing to suggest that any useful purpose would be served by adjourning today's hearing to a future date.

194. In the circumstances the Tribunal were satisfied that Dr Whiteley has voluntarily waived his right to attend this hearing, as he is entitled to, notwithstanding that by doing so he has lost the opportunity to present any additional arguments beyond those raised before the Tribunal and addressed in its earlier determinations.

15. The Tribunal has borne in mind the overarching objective and the need to act to achieve the fair and – in so far as it can - efficient disposal of these proceedings, respecting the need to achieve finality where it is fair to do so, in the interests of patients, the doctor and the public generally.

16. Having carefully balanced the circumstances of this hearing and the overarching objective, for the reasons given above the Tribunal determined that in the particular circumstances of this case it would be fair to proceed with this hearing today in Dr Whiteley's absence.

Record of Determinations –
Medical Practitioners Tribunal