

PUBLIC RECORD

Dates: 29/09/2021 - 01/10/2021

Medical Practitioner's name: Dr Madappuliaratchige FERNANDO
GMC reference number: 6066029
Primary medical qualification: MB ChB 2003 University of Leeds

Type of case

Restoration following disciplinary erasure

Summary of outcome

Restoration application granted. Restore to Medical Register.

Tribunal:

Legally Qualified Chair	Ms Christina Moller
Lay Tribunal Member:	Ms Val Evans
Medical Tribunal Member:	Dr Neil Shastri-Hurst

Tribunal Clerk:	Ms Angela Carney
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Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Ms Catherine Stock, Counsel of Kings View Chambers, directly instructed
GMC Representative:	Ms Katie Jones, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Restoration Application - 01/10/2021

1. This determination will be read in private. However, as this case concerns Dr Fernando's previous misconduct and caution, a redacted version will be published at the close of the hearing with those matters relating to XXX removed.
2. Before the hearing started the Legally Qualified Chair (LQC) informed everyone of a connection with counsel for Dr Fernando, a former tenant of Alexander Chambers, where the LQC was a tenant until late 2018. GMC Legal was informed of this last week. In the presence of both counsel, the LQC gave advice to the Tribunal about any risk of perceived bias.
3. The Tribunal accepted the advice of the Legally Qualified Chair and bore in mind the relevant principles in the authorities, including *Porter v Magill [2002] 2 AC 357*, which set out the test of apparent bias as being 'whether a fair minded and informed observer, having considered the facts, would conclude that there is a real possibility that the Tribunal was biased', as well as *Helow v Home Secretary [2008] 1 WLR 2416*, which described a fair-minded observer as 'the sort of person who always reserves judgment on every point until she has seen and fully understood both sides of the argument. She is not unduly sensitive or suspicious, nor complacent'.
4. There were no comments from counsel on this legal advice, nor any objection to the LQC conducting the hearing. The Tribunal decided to proceed as there was no risk of actual or perceived bias.

Background

5. Dr Fernando qualified as a doctor in 2003. He appeared before a Fitness to Practise Panel (the FTP Panel) hearing in December 2013. At the outset of that hearing Dr Fernando admitted the Allegation in full and the FTP Panel found it proved.
6. On 3 January 2013 Dr Fernando accepted a caution from Guildford police for a criminal offence of fraud by dishonest false representation contrary to sections 1 and 2 of the Fraud Act 2006. Dr Fernando had presented a prescription for tablets at a pharmacy in Guildford on 3 August 2012 in the name of a fictitious patient and purportedly signed by Dr B

of Binscombe Medical Centre in Godalming. At that time, Dr Fernando was working as a GP Partner at the Victoria Practice in the Aldershot Centre for Health. Dr Fernando admitted that he had intended to obtain XXX for himself, wrote the prescription and signed it without Dr B's knowledge.

7. Dr Fernando was arrested on 3 August 2012. When police searched his car, they found a prescription pad from Binscombe Medical Centre, stamped with Dr B's name. During this search the police also found a prescription for tablets made out to Patient A purportedly signed by Dr C of the Border Practice in Aldershot. Dr Fernando admitted that there was no patient there with the same name as Patient A or with the date of birth on the prescription; he had completed and signed the prescription without Dr C's knowledge or consent. Dr Fernando also admitted that his actions in relation to the two prescriptions were dishonest.

8. During the police search of Dr Fernando's house and car, a number of prescription pads were found which belonged to:

- Border Practice in Aldershot;
- Penhurst Gardens Surgery in Edgware, Middlesex;
- Goldsworth Park Health Centre in Woking, Surrey;
- Haslemere Health Centre in Haslemere, Surrey;
- Guildowns Group Practice in Guildford, Surrey; and
- Hillview Medical Centre in Woking, Surrey.

9. Dr Fernando admitted that these prescription pads were in his house and car because he had failed to return them to the relevant practices after he left each one.

10. Dr Fernando admitted that, after his arrest in August 2012, he did not inform his partners at the Victoria Practice of the reason for his arrest; he led them to believe that he had been arrested for a road traffic offence. Dr Fernando admitted that he was dishonest with his partners at the Practice.

11. Dr Fernando admitted that, between 1 March 2012 and 7 August 2012, he allowed his professional indemnity insurance to lapse. Dr Fernando also admitted that, on his application to join the Performers List of Hampshire Primary Care Trust (the PCT) in October 2009, he failed to declare that he had worked at Penhurst Gardens Surgery in Edgware. He also failed to declare that his employment at Guildowns Group Practice in Guildford was terminated due to an unsatisfactory probation period. Dr Fernando admitted that these omissions were dishonest.

12. The FTP Panel determined that the public would have viewed Dr Fernando's caution as a serious matter which undermined the reputation of the profession.

13. In relation to misconduct the FTP Panel noted that Dr Fernando had in his car a prescription completed by him for drugs, made out in the name of a non-existent patient and that he had admitted that this was dishonest.

14. In relation to the matter of Dr Fernando's professional indemnity insurance, the FTP Panel considered this to be a very serious issue. The requirement to have insurance is fundamental to medical practice; the lapse in Dr Fernando's cover could have had disastrous consequences for the Victoria Practice, as it could have placed that practice in breach of its contract with the PCT.

15. In relation to Dr Fernando's application to join Hampshire PCT Performers List, the FTP Panel found that he had failed to provide full details, including particulars of an unsatisfactory probation; he did not declare his employment at the Penhurst Garden Surgery in Edgware at all. Dr Fernando stated that he was a locum at the Guilddowns Group Practice for a fixed period, but he had been a salaried doctor on probation. Dr Fernando accepted that these failures were dishonest.

16. When Dr Fernando asked a colleague, Dr D, to cover some duties on 13 September 2012, he said he had to leave due to "an urgent personal matter... to sort some things out". However, it was not until 14 September 2012, that Dr Fernando disclosed that he had appeared before a PCT Performance panel on 13 September 2013 after prescribing XXX.

17. It was not until 1 October 2012 that Dr Fernando revealed to his GP partners the extent of the allegations against him, including the fact of his arrest on 3 August 2012. When Dr Fernando was first interviewed by Surrey Police he did not make admissions, but sought initially to cover up. Dr Fernando did not fully admit his dishonest behaviour until urged to do so by the police and GP partners.

18. Dr Fernando told the police that he had not been asked to return prescription pads, saying that he had retained them for any further locum work or home visits for those surgeries. The FTP Panel did not accept this explanation as some pads were retained long after Dr Fernando had ceased work at the practices. It considered that Dr Fernando should have returned them without being asked; his failure to do so fell below the standard of conduct expected of a doctor.

19. The FTP Panel considered that Dr Fernando's admitted dishonesty, and the matters relating to his professional indemnity insurance, inaccurate application to Hampshire PCT and retaining prescription pads, taken individually, were each sufficiently serious to bring his fitness to practise into question.

20. The FTP Panel concluded that Dr Fernando had acted dishonestly on a number of occasions; this was not a case of a single act of dishonest behaviour. In addition, Dr Fernando did not appear to have recognised that his behaviour was inappropriate and well short of the standards expected of a medical practitioner.

21. The FTP Panel considered that Dr Fernando's misconduct and the caution he had received had brought the medical profession into disrepute. His misconduct had breached fundamental tenets of the profession.
22. The FTP Panel considered whether Dr Fernando's behaviour was remediable although it accepted that dishonesty, by its very nature, was difficult to remedy. The FTP Panel noted that insight into his misconduct could contribute to Dr Fernando's remediation, but it was not been presented with any evidence to demonstrate his insight into the matters that had brought him before the Panel.
23. The FTP Panel was not satisfied that Dr Fernando would not be dishonest in the future. He had acted dishonestly in the past. In all the circumstances, the FTP Panel concluded that Fernando's fitness to practise was impaired by reason of his caution and misconduct.
24. The FTP Panel accepted that Dr Fernando had sought to understand his behaviour and how to remediate; XXX. However, Dr Fernando's acts of dishonesty were persistent and [initially] covered up. The FTP Panel was not persuaded that he had developed sufficient insight into the gravity of what he had done. The FTP Panel considered that Dr Fernando had a deep-seated attitudinal problem and displayed poor judgement, resulting in dishonest actions, when facing embarrassment or issues that would affect how he was perceived by others. The FTP Panel concluded that there was a real risk of repetition.
25. The FTP Panel considered the seriousness of Dr Fernando's misconduct and found that Dr Fernando had a reckless disregard for some of the core principles of Good Medical Practice (GMP). It concluded that Dr Fernando's actions demonstrated that he was not a doctor whose probity could be relied upon; if a doctor's probity cannot be relied on, then this was fundamentally incompatible with continued registration.
26. The FTP Panel determined that the only appropriate and proportionate sanction in Dr Fernando's case was one of erasure, taking account of the need to protect the public interest, specifically the need to protect public confidence and maintain proper standards. It took account of the principle of proportionality, balancing Dr Fernando's needs with the public interest and concluded that the need to protect the public interest outweighed his interest. The FTP Panel determined to erase Dr Fernando's name from the Medical Register.
27. Dr Fernando appealed the FTP Panel's determination, but its decision to erase was upheld. Dr Fernando's name was erased from the Medical Register on 21 May 2014.
28. The Tribunal acceded to the request made by Ms Stock, Counsel for Dr Fernando, to allow a relative of Dr Fernando to observe the virtual hearing after he had given evidence, in order to support him. Ms Jones, Counsel for the GMC had no objection. The LQC reminded Dr Fernando not to discuss his evidence with anyone until he had finished.

29. The Tribunal was also asked by both counsel to ensure that confidential matters were not heard in public. The Tribunal agreed that XXX and other private issues should not be heard in public and that the Determination should reflect this.

Documentary Evidence

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

- 2013 Fitness to Practise Panel’s Determination on Facts, Impairment and Sanction
- Dr Fernando’s witness statement dated 1 September 2021
- Dr Fernando’s reflective statement dated 1 September 2021
- Letters of Apology dated April 2013 and February 2019
- Evidence of attendance on Ethics and Probity Courses between 2013 and 2020
- GP Observership /Clinical placement at Binscombe Medical Centre May 2019
- XXX
- XXX
- XXX
- Continuing Professional Development (CPD) Summary
- Dr Fernando’s reflections on CPD
- Character reference from Dr G, GP Principal / Trainer, Binscombe Medical Centre, dated 16 August 2021
- Character reference from Dr H, GP at Border Practice, dated 21 August 2021
- Character reference, Ms I, Area Manager Kent, Oxfam, dated 17 August 2021
- Character reference, Mr J, Manager, Oxfam Sevenoaks, dated 5 August 2021
- Character reference, Mrs K, dated 29 August 2021.

Dr Fernando’s evidence

31. Dr Fernando provided a detailed witness statement dated 1 September 2021 to the Tribunal. He then gave oral evidence and answered all questions.

32. Dr Fernando told the Tribunal that he accepted reasons given for his erasure. He fully recognised that his dishonest behaviour was a grave breach of trust. He had delayed his application for restoration until he considered that he had deep insight into his misconduct and that he had remediated as fully as possible. He had also been concerned to ensure that his medical skills and knowledge were up to date.

33. Dr Fernando added that XXX had recently been very ill and his involvement with their care and treatment, liaising with doctors, had rekindled his passion for medicine. He was keen to return to medical practice to contribute to society and the profession.

34. Dr Fernando said that it had been a difficult eight years since erasure, but he now fully recognised the seriousness of his dishonest acts and the harmful impact of his actions on his

colleagues, the GMC, relatives and public. He knew that his misconduct had brought the profession into disrepute.

35. Dr Fernando said that he had been very angry with himself; XXX. Dr Fernando had benefitted from XXX and other XXX support including mentoring. He had attended and reflected on probity and ethics courses and workshops.

36. Dr Fernando told the Tribunal that he had made full disclosure to prospective employers about his police record and his erasure. This had often prevented him from getting work, causing financial difficulties for himself and close relatives. Dr Fernando said that he had also undertaken work for the Alzheimer's Society. More recently he had worked for Oxfam and currently managed over 40 members of staff and volunteers.

37. Dr Fernando said that he did not seek to justify his past behaviour, as he realised that honesty is absolutely fundamental in a doctor. He was deeply ashamed of his dishonesty but added that he could not change the past.

38. Dr Fernando confirmed that he had done a lot of work to develop insight into the reasons for his dishonest behaviour, remediate his misconduct and avoid any repetition. By way of example, he referred to a course on boundaries as enabling him to gain deeper understanding of his past behaviour and dishonesty. He said that he had changed significantly and matured since 2012.

39. Dr Fernando said that he conducted himself with absolute honesty and integrity; if in doubt he would disclose extra information, providing even more detail than was required. What he had learned informed every aspect of his current approach. Testimonials and support from work colleagues indicated that he was trusted and valued. Successive promotions were also testament to the change in his behaviour.

40. Dr Fernando said that he has learned that, however challenging a situation, one must always be open and honest; also to trust others to be supportive at such times. He has now learned to seek help from line managers, colleagues, friends and relatives. In the past he had internalised his problems (not asked for support) but he now realised that this was a personal weakness, linked to his minimisation of the gravity of his offences. He had now actively addressed these issues by recognising the seriousness of dishonest misconduct, as well as being open about his difficulties and requesting help or support when appropriate.

41. Dr Fernando asked the Tribunal to consider his reflective statement outlining his journey and development. He was now fully aware of the wide-ranging consequences of his actions on others, which he likened to the 'ripple effect' of a stone in water. If he were to be restored to the Medical Register he would be scrupulously honest and uphold other principles in GMP.

42. Dr Fernando said he has kept his CPD up to date and that his mentors have provided help and guidance. As a result of his shame over his fraud, remorse, development of insight and work to remediate, he was now totally different from his younger self.
43. Dr Fernando said that he was cautioned, then convicted, of theft from shops as a young man. He had stopped associating with certain friends years ago as he recognised that they were a bad influence, although he did not seek to excuse his crimes. Twenty years ago he had little insight into the gravity of his dishonest behaviour as a medical student, but this had totally changed.
44. Dr Fernando said that it was never his intention to retain the prescription pads but he was embarrassed to contact those practices where negative remarks had been made. Although reluctant to return them in person, he accepted that he could have posted them back, in answer to questions in cross examination.
45. Dr Fernando said that he now makes full disclosure to all prospective employers about his criminal and regulatory record, including his erasure. At times such disclosures have contributed to the development of trust at work.
46. Dr Fernando described his erasure as a big ‘wakeup call’ enabling him to appreciate the gravity and impact of his misconduct on others, including members of the public who need to be able implicitly to trust their doctor/s. He said that he had undergone a huge life change. Dr Fernando said that he now appreciates the importance of disclosure from the point of view of a manager considering work applications too.
47. Dr Fernando said that he had allowed his public indemnity insurance to lapse by being careless, but he had set up reminders to ensure that this never occurred again as he fully realises the gravity of the lapse, particularly if an insurance claim needed to be made. Dr Fernando said that he is now scrupulous about renewal. He was also aware of the risk of reputational damage to any General Practice concerned.
48. Dr Fernando acknowledged that in 2012 he was embarrassed about XXX but did not seek to excuse his behaviour in falsifying prescriptions using fictitious names of ‘patients’. XXX.
49. Dr Fernando accepted that he had fraudulently written prescriptions for his own use and he knew it was wrong at the time. However, he has learned from courses on ethics; he now understands how he falsely ‘justified’ his actions to himself and is fully aware of how impaired his judgement was at the time. He said that he is deeply ashamed and embarrassed about his dishonesty now.
50. Dr Fernando said that in the past his focus was on care and clinical skills rather than professional ethics, which he now realised could impact on patient care and treatment. He acknowledged that he did not previously pay sufficient attention to professional ethics.

Patients need to trust medical professionals; if the public has no confidence in doctors, it can have a real impact on their health.

51. Dr Fernando said that being erased had meant that he was unable to practise medicine. However, Dr Brunet had helped him to identify CPD for General Practice. Dr Fernando said that, if he were restored to the register, he would complete the GP Induction and Refresher course; his clinical knowledge would be assessed, any gaps identified and then addressed. He had undertaken clinical observations, but that has ceased due to the pandemic. During the observerships he realised that his skills had not deteriorated as much as he had feared, so he had gained confidence and had few, if any, concerns about his medical skills and knowledge. He had also gained skills and management experience from his work at the Alzheimer’s Society and Oxfam.

52. When his work is very stressful, Dr Fernando said that he now XXX, or advice and support from mentors or colleagues; he would not have done so in the past. Recently he disclosed that XXX and his employer made provision for him to take time off, as needed. He was XXX and would not consider dishonest behaviour in future. He was more mature and had shown that he can make use of resources to support him. There have been no concerns about honesty or probity in the last nine years.

53. Dr Fernando said that he was XXX and would not consider dishonest behaviour in future. He was more mature XXX. There had been no concerns about honesty or probity in the eight years since his erasure.

54. If asked about his erasure by a patient he would be open and respond to any questions from patients. Although he would be frank about his erasure for dishonest misconduct, he would not disclose private information XXX. If the patient did not wish to be treated by him, he would refer them to a colleague.

55. Dr Fernando emphasised that he was genuinely sorry for his past behaviour. If restored to the Medical Register he would not repeat his misconduct. He was keen to contribute to society by using his professional skills.

Submissions

56. Ms Jones, on behalf of the GMC, provided the Tribunal with the background to the case. Ms Jones stated that the onus was on Dr Fernando to satisfy the Tribunal that he is fit to return to unrestricted practice.

57. Ms Jones referred the Tribunal to the ‘Guidance for medical practitioners tribunals on restoration following disciplinary erasure’ (The Restoration Guidance) the test to be applied and the over-arching objective.

58. Ms Jones accepted that there is evidence of insight and remediation but submitted that his dishonest misconduct was serious and persisted over time, in different

circumstances. Although his caution and conviction for theft were many years ago, the FTP Panel considered them relevant as aggravating factors in the context of his fraud in 2012. Dr Fernando ought to have learned from his earlier arrest and court appearance; his failure to do so was suggestive of an embedded dishonesty, as the FTP Panel recognised. In light of this, a panel would expect more remediation than from a doctor whose dishonesty could be described as an isolated incident of dishonest misconduct.

59. The Tribunal had to consider whether or not Dr Fernando had demonstrated sufficient insight, taken responsibility for his misconduct and addressed his behaviour. Ms Jones conceded that there is evidence of significant remediation. However, Dr Fernando did not appear to take his arrest for theft very seriously at the time of his caution or conviction; he seemed to blame negative peer influences.

60. According to Dr Fernando, he was XXX at the time of his prescription fraud. Ms Jones asked the Tribunal to consider whether or not Dr Fernando has taken sufficient steps to ensure that he would not resort to his previous dishonesty.

61. Ms Jones conceded that Dr Fernando had used his time constructively; he had worked, observed a GP and kept his knowledge up to date. Although this is impressive, his skills may have deteriorated while he has been away from clinical practice.

62. Even if the Tribunal were to conclude that the risk of repetition was low, Ms Jones asked the Tribunal to consider paragraphs B41, B42 and B43 of the Restoration Guidance:

‘B41 Patients and members of the public must be able to trust doctors with their health, safety and wellbeing. Doctors are expected to act with honesty and integrity to ensure their behaviour justifies that trust.

B42 Where a doctor’s past behaviour is so serious that it remains capable of undermining the trust that the public places in doctors, it is unlikely that restoration will be in line with the overarching objective. This applies to behaviour both inside and outside of a doctor’s professional practice. There will be some cases where, even if insight and remediation have been fully demonstrated and there has been a significant lapse of time since erasure, public confidence in the profession would be undermined by allowing the doctor to practise again.

B43 Tribunals should ask themselves whether an ordinary, well informed member of the public who is aware of all the relevant facts would be concerned to learn the doctor had been allowed to return to practice. They should also have regard to the fact that maintaining public confidence in the profession as a whole is more important than the interests of an individual doctor.’

63. Ms Jones submitted that the Allegation of fraud admitted by Dr Fernando and found proved in 2013 was serious. His dishonesty did not only occur XXX. Against that background,

an ordinary well-informed member of the public would be concerned if he were allowed to return to practice, even with the amount of remediation Dr Fernando has undertaken.

64. Ms Jones submitted that, when balancing Dr Fernando's interests against the public interest, the Tribunal should give priority to the public interest, taking account of paragraphs B45, B46 and B47 of the Restoration Guidance:

'B45 We promote the professional values, knowledge, skills and behaviours expected of all doctors working in the UK by setting standards.'

B46 To ensure that doctors work to a consistent set of standards, and patients understand what to expect from the care they receive, action is taken by tribunals where serious or persistent failures to follow the standards set pose a risk to patients or to public confidence in doctors. Erasing a doctor sends a clear message to the profession about what constitutes unacceptable behaviour and practice and corresponds with our duty to promote and maintain professional standards and conduct.'

B47 Where there has been a very serious and/or persistent departure from the published standards resulting in erasure, it may not be consistent with the third element of the overarching objective to allow the doctor to practise again.'

65. In 2013 the FTP Panel considered erasure necessary to uphold professional standards of conduct and to maintain public confidence in the medical profession. Although Dr Fernando had significantly remediated, Ms Jones submitted that the misconduct was so serious that restoration would not be compatible with limbs two and three of the overarching objective, given the background. In conclusion, Ms Jones submitted that Dr Fernando's Restoration Application should be refused.

66. Ms Stock, on behalf of Dr Fernando, referred the Tribunal to the written submission she provided. Ms Stock summarised the background to the case and the 2013 FTP Panel's findings and reminded the Tribunal of Dr Fernando's oral evidence as to why he was making this Restoration Application at this time.

67. Ms Stock said that Dr Fernando was at an early stage in his career when the incidents took place that led to his erasure. He fully accepted the seriousness of his misconduct in using a false prescription to obtain medication for himself and was aware that he abused his position as a doctor. Dr Fernando made no excuses for his earlier dishonest behaviour exposed as a result of his arrest for fraud and subsequent GMC investigation. As a young man he appeared to have a sense of entitlement, but he had significantly matured since that time. Dr Fernando agreed with the decision of the FTP Panel in 2013.

68. Although the FTP Panel in 2013 referred to Dr Fernando's police caution and conviction for theft, these are now over 20 years old. His contact with the criminal justice system should have impressed the need to avoid dishonesty on Dr Fernando. The FTP Panel

took account in 2013 of his failure to learn from his earlier arrest, but he had changed since then.

69. Ms Stock submitted that during his oral evidence Dr Fernando was open and honest. She said that Dr Fernando had been naïve, easily led and regrettably did not appreciate the implications of his behaviour soon enough. However, his caution and conviction for theft were long since spent and were of such different character to Dr Fernando's later dishonest conduct that they did not establish a current propensity to be untruthful, in light of his later development.

70. Although Dr Fernando did not list every position in his PCT application, Ms Stock said that the months omitted were not of great length and there were reasons behind their termination. Dr Fernando now accepted that he should have given fuller details.

71. The other acts of misconduct are directly related to Dr Fernando's behaviour to deal with XXX.

72. The lapse in indemnity cover occurred at this time, as did his failure to disclose the reasons for his arrest immediately to his employers. In respect of the prescription pad found at his home Ms Stock submitted that this was an oversight not related to any dishonest intention; it showed poor judgement.

73. Ms Stock submitted that Dr Fernando had demonstrated insight, reflected at length and taken account of deficits identified in 2013 in his approach to CPD and other work to develop.

74. In his statement, Dr Fernando had given an honest explanation of the background and context of his behaviour, response to arrest and aftermath in 2012. He accepted that he was immature, but now regrets his dishonest misconduct. Dr Fernando was fearful, embarrassed and over-concerned about his image, but he had found a way out XXX by asking for and obtaining help and support.

75. After the incidents Dr Fernando had written to Dr B at Binscombe Surgery and his GP partners at Victoria Practice, to apologise for his lack of candour after his arrest. He had also apologised to the GMC.

76. In order to understand his behaviour more fully, Dr Fernando had undertaken CPD on probity and ethics, including a number of intensive courses. All these had helped him to gain insight and offered different perspectives. Ms Stock referred the Tribunal to Dr Fernando's detailed reflections on each course he had undertaken. Dr Fernando had analysed each element of his past misconduct, why it occurred and what he could do to ensure that there is no repetition.

77. Although there had never been any issue with Dr Fernando's clinical skills or competence, he recognised that he need to demonstrate that his medical knowledge was up

to date. To that end, Dr Fernando had undertaken targeted clinical CPD as well as spending time with GPs in a clinical attachment / observership.

78. Ms Stock told the Tribunal that Dr Fernando had also XXX to develop his insight; XXX. With this and other support from colleagues and relatives, Dr Fernando fully appreciated the importance of honesty; he had learned this the hard way.

79. Dr Fernando had volunteered for the Canterbury Centre and Oxfam. He had been offered paid work for the Alzheimer's Society in the role of Dementia Advisor and promoted to be a Support Manager. After that he joined Oxfam as Deputy Manager in retail and then his current role as a Manager. He made full disclosure about his past transgressions in his applications for all these positions.

80. Ms Stock submitted that Dr Fernando had genuine insight into what went wrong, how he should have acted and would know what to do in future. His explanations and reflections demonstrated genuine insight and remediation.

81. He had been on a long and difficult journey, but expressed remorse at an early stage and continued to do so. Dr Fernando understood the reasons for his behaviour and wholly accepted that he should have acted differently.

82. Dr Fernando had worked tirelessly to develop insight and taken every action to remediate his misconduct; there was nothing more he could have done. He had full insight into his dishonest actions, the impact of his dishonesty on colleagues, employer, medical profession, regulator and public confidence in doctors. He was deeply ashamed that he had abused his position as a doctor to gain access to medication. Ms Stock submitted that Dr Fernando now fully appreciated his duty to act with honesty and integrity at all times.

83. Ms Stock submitted that Dr Fernando had fully remediated his past misconduct. She said that he had worked with a number of professionals and mentors to unravel the core reasons for his behaviour and appreciated the importance of honesty in his personal and professional life. Ms Stock submitted that Dr Fernando had shown humility and tenacity during the last eight years and continued to remediate his past wrongdoing.

84. Ms Stock accepted that Dr Fernando had been unable to work as a doctor, but said that he had undertaken a clinical attachment and had worked in the charitable sector. Although lack of repetition is not a guarantee of future good conduct it is an indication that Dr Fernando was likely to continue to be open and honest.

85. Whilst dishonest conduct was not easy to remediate it was possible to do so and Dr Fernando had undertaken extensive, intensive, and wholly relevant steps to remediate the concerns identified in 2013. Ms Stock said that he had provided detailed and certified information about the impact of his remediation on his attitude and behaviour. XXX.

86. Ms Stock submitted that events giving rise to the Allegation arose at a time of XXX, embarrassment and inability to cope as an immature young man. All these issues had been deeply explored and were highly unlikely to recur. Dr Fernando's remediation began soon after the events and had continued for the next eight years or so.

87. Ms Stock said that Dr Fernando had kept his medical knowledge and skills up to date with his GP observership, mentorship, targeted CPD, monthly GP updates and development of transferable skills in his non-medical employment.

88. Dr Fernando had researched the best way to return to practice if his application for restoration is granted. He had provided a number of references which have been validated by the GMC. Professionals and others fully conversant with the facts of this case had all attested to his insight and remediation. Dr B, a supervisor and mentor for Dr Fernando, provided relevant and persuasive evidence.

89. In 2013 the FTP Panel considered that Dr Fernando had shown extremely poor judgement and was not persuaded that he had developed sufficient insight into the gravity of the misconduct to minimise any risk of repetition. Since then, Dr Fernando had taken all steps to ensure that he would behave honestly, openly and professionally, such that he should be enabled to return to his medical practice.

90. Dr Fernando had demonstrated in his reflections that he fully appreciated the severity of his past misconduct, that he had remediated by way of CPD, deep reflection and mentorship. He had demonstrated that there is no likelihood of repetition of dishonesty or other misconduct.

91. His reflective statement indicates a high level of insight; he appreciates that trust is a key factor in practise as a doctor. Mrs K's letter supports his position.

92. Ms Stock submitted that his misconduct was not so serious that restoration should be precluded; restoration at this point is compatible with the overarching objective to protect the public and public interest. An ordinary, well-informed member of the public, aware of all relevant facts, would consider that Dr Fernando had now fully remediated and should be permitted to return to practice as a registered medical practitioner.

93. Dr Fernando had worked tirelessly to make amends for his past and to return to his chosen profession. He had taken on board each and every comment from the 2013 FTP Panel and acted accordingly. Although his dishonest actions which led to erasure represented a serious departure from GMP his past misconduct was not such that it precluded restoration for all time. His past misconduct was amenable to remediation and, taking account of his full insight and other factors, had been remediated. Therefore Dr Fernando's Restoration Application should be granted.

The Approach of the Tribunal

94. When determining the outcome of Dr Fernando’s restoration application, the Tribunal took account of the statutory overarching objective:

- 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.*

Advice on Restoration from LQC

95. The LQC gave advice in the presence of counsel, who both accepted it: Where an application for restoration is made to a Tribunal, it may, if it thinks fit, direct that the doctor’s name be restored to the register: section 41(1) of the 1983 Act. The Tribunal has no power to grant registration with conditions, or to restrict it.

96. If restoration is granted, then the doctor returns to unrestricted practice. The Tribunal must have regard to the Restoration Guidance.

97. This is Dr Fernando’s first restoration application. His name was erased over five years ago, so he is entitled to apply for restoration, but the onus is on him to show that his name should be restored to the medical register. The purpose of a restoration hearing is for the Tribunal to decide if the doctor is fit to practise, taking account of the statutory overarching objective and other relevant factors.

98. The Tribunal must take account of all evidence, submissions, relevant law and guidance. Factors to be considered by the Tribunal include:

- The circumstances which led to erasure;
- Any relevant matters post-dating these circumstances;
- The extent to which the doctor has shown remorse and insight;
- The extent to which the doctor has remediated;
- What the doctor has done since his name was erased;
- Steps taken to keep medical knowledge and skills up to date;
- The length of time elapsed since erasure;
- Any risk posed by the doctor;
- Whether public confidence and professional standards would be damaged by restoring the doctor to the register.

99. *GMC v Chandra 2018 EWCA Civ 1898* confirmed that exceptional circumstances do not have to be present to allow a doctor who was erased as a result of disciplinary proceedings to be restored to the register. Tribunals should apply the same test when

considering the question of sanction or restoration to the register: in the context of the overarching objective, is the doctor fit to practise or not?

100. When considering whether to restore a doctor to the register a Tribunal should:

- consider any evidence of insight, remorse and remediation against the backdrop of those matters which led to erasure;
- if the Tribunal concludes that there is insight, remorse and remediation, it should balance those positive findings against all three limbs of the statutory overarching objective;
- when considering a restoration application, the Tribunal should also take account of the length of time since erasure.

101. There is a need to maintain public confidence in the medical profession. The reputation of the profession as a whole is of greater significance than that of an individual doctor.

102. The same principles and approach apply equally to both sanctions and restoration. The question in each case is the same namely, having regard to the overarching objective, is the doctor fit to practice?" *Chandra* at [59]. However, the approach to a restoration decision may be different from that taken to sanction. Various factors may be weighed up with differing emphases; also there may be different approaches in clinical cases as opposed to matters involving dishonesty *Chandra* [60].

103. The Tribunal must be satisfied that restoration would promote and maintain public confidence and uphold professional standards so that, notwithstanding the serious nature of the original matters which led to erasure, the overarching objective to protect the public would be achieved. The Tribunal has broad discretion when considering an application for restoration and may direct that a doctor's name be restored to the Medical Register if it thinks fit.

Erasure in 2013

104. The Tribunal considered the circumstances which led to Dr Fernando's erasure, as detailed above and referred to by counsel. The 2013 FTP Panel determined:

'The Panel is of the view that if a doctor's probity cannot be relied upon then this is fundamentally incompatible with continued registration. Therefore, the Panel finds that suspension is not an appropriate sanction in this case... In exercising its duty to protect the public interest, specifically the need to protect public confidence and maintain proper standards, the Panel has determined that the only appropriate and proportionate sanction is one of erasure.'

Decision of this Tribunal

105. The Tribunal considered the circumstances leading to erasure, which were almost a decade ago. Dr Fernando did not initially make admissions to police or colleagues. However, he did admit the Allegation at the earliest opportunity in the 2013 hearing. He could have been quicker to admit his dishonesty, but he enabled the Tribunal to find the facts alleged against him proved, without the need for a lengthy analysis of evidence. He also acknowledged other breaches not included in the Allegation, which indicated a level of contrition in 2013. This has further developed in the intervening years.

106. One of those most impacted by his fraud was Dr B because Dr Fernando retained a prescription pad stamped with the name of Dr B at Binscombe Medical Centre. Yet Dr B has provided a supportive character reference, dated 16 August 2021. He is clearly familiar with the facts of the dishonest misconduct, so the Tribunal gave weight to his testimony:

‘Nishan [Dr Fernando] has shared with me very openly about his misconduct... at the time and also the previous episode of shoplifting as a student... Nishan’s character has changed significantly since the events that led to his erasure. The positive aspects of his character are unchanged, or strengthened; for instance, he continues to be someone who works hard... for something that is worthwhile and meaningful for society (through his previous role as a GP and his work since through the charity sector). The areas where he has developed significantly relate to... honesty, probity and ethics.

Since he was first arrested, I have been impressed by Nishan’s attitude, despite the great difficulties he went through. He got in touch with me soon after his arrest, overcoming any embarrassment or shame he may have felt at the time. I know that he felt he had let me down as a trainer, and he did not try to make excuses for his actions but asked to meet up so that he could apologise to me (for using one of my prescriptions) and for emotional support...’

107. Dr B gave four reasons in support of his belief that Dr Fernando has a ‘dramatically different’ attitude to matters of honesty and probity:

1. He has understood that probity and honesty are so vital for the trust that patients put in a doctor that they are simply the right thing to do at all times.

2. He has learnt, very painful, that the consequences of dishonesty can be hugely destructive to himself and those around him, especially those close to him.

3. He has learnt – and I think at times has been surprised by – the truth that the majority of people respond with support and care when someone is honest about their mistakes rather than with judgement. I think this is a really important reason why Nishan is very unlikely to make the same mistakes again. He wrote the fraudulent prescription because he was embarrassed and thought people would judge him XXX; he learnt that even when he had done something far worse... people still stood by him

and wanted to help. This has given him a very positive experience of being honest and when the truth is difficult and is something he will take into his professional practice.

4. Since the events that led to his erasure, he has consistently demonstrated honesty and probity, both with me and his employers.'

108. Dr B added:

'I believe Nishan has very good insight into his past misconduct; he does not try to defend his actions at all but has worked very hard to understand them so that he is not at risk of doing so again. His reflections on the ethics courses he has been on (and his willingness to undertake the courses, which were very demanding at times), shows a very clear understanding of the wrongs that he did and a strong commitment to never repeat such actions (or similar) in the future. He has recognised the fact that though patients were not harmed directly by his actions, this is no defence for what he did and that patients are harmed when a doctor acts dishonestly due to the damage this does to the trust that is implicit in the doctor-patient relationship.'

109. Since erasure Dr Fernando has continued his personal and professional development. Over the last two years he has engaged with targeted online CPD and GP updates to ensure that he is aware of relevant local and national protocols. Dr Fernando has also completed a number of GP observerships, albeit limited by Covid-19 restrictions.

110. The Tribunal gave weight to a letter from Dr H, GP, dated 21 August 2021, which said:

'No doubts ever existed over [Dr Fernando's] medical practice, and he was a competent GP, was popular with both patients and colleagues, and was a valuable member of the team, and can be again.

It is my opinion that Dr Fernando is now worthy of a second chance as a physician. I have no concerns that he will reoffend if he is returned to the Medical Register. There is always a need for competent, caring GPs, particularly in the present circumstances. Dr Fernando now fully understands the error of his ways and is determined, if given the chance, to make a valuable contribution in his chosen profession once again'.

111. It was not submitted on behalf of the GMC, at any point, that Dr Fernando posed a direct risk to patients or other members of public. In 2013 the FTP Panel did not consider this relevant; it focused on upholding professional standards and maintaining public trust in doctors. That is also the main concern of this Tribunal.

112. Dr B and Dr H had no concerns about Dr Fernando's clinical competence and both thought that he is safe to return to unrestricted clinical practice. The Tribunal was satisfied that Dr Fernando had demonstrated a commitment and ability to keep his medical skills and knowledge up to date.

113. Before his hearing in 2013 Dr Fernando had XXX. Since then Dr Fernando has completed additional CPD on ethics and probity. He has provided the Tribunal with in-depth, sincere reflections on what he has learned and how this informs his practice. He has demonstrated to the Tribunal that he has analysed factors relevant to his past misconduct, such as a desire to conform, avoid shame or avoid awkward discussions. In doing so, the Tribunal accepts that he has remediated his flawed thought-processes and thus moved away from his previous avoidant behaviour and rejected his past dishonest approach to solving apparent problems.

114. The Tribunal found that Dr Fernando had demonstrated considerable remorse and very good insight into triggers for his past misconduct, its destructive impact and how to avoid such dishonest behaviour in future. It accepted and gave weight to Dr Fernando's reflective statement dated 1 September 2021, which stated:

'Apology

Words cannot adequately express how ashamed and mortified I am about my past behaviour. I have subsequently apologised, either verbally or in writing, to those affected by my actions, including my former work colleagues at the Victoria practice, Dr [B] and Dr [H], my family and the GMC.

I want to take this opportunity to once again express how truly sorry and extremely regretful I am about my past actions and the damage I caused to my former colleagues, the PCT, the GMC and ultimately, to the medical profession itself. On a personal note, I deeply regret all the harm I have caused to my family.

My actions damaged the public's perception of the medical profession. They also undermined the proper standard of conduct that a doctor must always abide by, both in a professional and in a personal capacity. I understand that these are fundamental aspects of being a good doctor and going forward, I will always place great importance on them.

After the initial shock of my erasure wore off, I have come to accept that my erasure was justified. As painful a realisation as that is, it has served as a wake-up call for me to completely overhaul my life and my behaviour. I have spent many years working on getting to the root cause of all my actions and fully understanding what I did wrong and how I should have conducted myself. My insight and understanding has allowed me to come to terms with my actions, and fundamentally address my failings.'

115. In his oral evidence Dr Fernando told the Tribunal how ashamed he is of his previous dishonesty and having undermined public confidence in the medical profession. The Tribunal accepted his oral evidence about developing an awareness of how vital it is to be open and truthful at work, as well as in his personal life. The Tribunal found Dr Fernando's account of developing insight through reflection on ethics and probity to be persuasive. It included personal reflections, as opposed to generalisations and his remorse was confirmed in oral

evidence. Several professional colleagues supported his belief that he has changed in important respects. The Tribunal concluded that Dr Fernando has matured into a responsible, open and honest professional.

116. The Tribunal considered the extent to which Dr Fernando has remediated his misconduct. It agreed with Ms Jones' concession on behalf of the GMC that Dr Fernando had completed an 'impressive' amount of remediation. The Tribunal was satisfied that Dr Fernando has remediated his misconduct as fully as is feasible in all the circumstances. There is little else that he could have done to demonstrate insight and remediation.

117. Dr Fernando did not apply for restoration at the earliest opportunity. Instead, he waited until he had satisfied himself that he has addressed all the matters that led to his misconduct and subsequent erasure.

118. In 2012 Dr Fernando forged a prescription XXX. The Tribunal concluded that, although his dishonesty was serious, his motivation was not for financial gain. His behaviour reflected extremely poor judgement at that time.

119. There is a spectrum of dishonest behaviour. The Tribunal concluded that Dr Fernando's offences cannot be described as trivial but nor do they fall at the most serious end of the spectrum. In short, the Tribunal was not persuaded that his convictions or misconduct were such that restoration to the Medical Register must be precluded, regardless of the level of insight or remediation. There are such cases, but, having taken full account of all three elements of the statutory overarching objective, this is not one of them.

120. The Tribunal was particularly concerned about the need to maintain public trust and confidence in the medical profession, closely linked with declaring and upholding professional standards. Although members of the public sometimes disagree as to the appropriateness or otherwise of legal proceedings, the Tribunal had to consider what an average, reasonable person, informed of all the facts, would make of Dr Fernando's past misconduct, current insight, remediation and propensity to behave honestly now. It took account of the character reference from a non-clinical colleague, Ms I, Area Manager, Oxfam, dated 17 August 2021, which said:

'Dr Nishan Fernando has been open and transparent with Oxfam GB regarding his erasure from the GMC, the reasons for it and from the moment of his initial appointment in 2017 when he disclosed it as part of recruitment process... I found his honesty and openness to be praise-worthy and reflective of the integrity and sincerity demonstrated consistently at Oxfam... Dr Nishan Fernando has requested that I provide him with a character statement as he is hoping to being allowed to return to his medical profession; of which I fully endorse in the full knowledge of his past mistakes and proven allegations.'

121. The Tribunal also gave weight to a character reference from another non-clinical colleague, Mr J, Manager, Oxfam, dated 5 August 2021, which said:

'I have been aware of Nishan's Fitness to Practise case since his appointment as my Deputy Manager in July 2017. I was aware that, before his appointment commenced, he had disclosed the details to my manager...

In preparing to write this testimonial I can confirm that I have read the full General Medical Council's Medical Practitioners Tribunal Service determination dated 2-6 December 2013. I confirm that I have never had any cause for concern regarding Nishan's performance of the duties assigned to him, his professionalism, and his honesty and probity.'

122. In the eight years since his name was erased from the Medical Register, Dr Fernando had made good use of the time to reflect on what prompted his dishonesty. He had also developed strategies and a support network in order to help him to avoid similar transgressions in future.

123. At his hearing in 2013 Dr Fernando's insight may best be described as embryonic. It was not absent, but the FTP Panel did not regard it as sufficient to minimise risk of repetition. However, this Tribunal is satisfied, taking account of his CPD, subsequent reflections, development of insight and full remediation that Dr Fernando is now fit to practise medicine without restrictions. The Tribunal considered the risk of any repetition of dishonesty or other misconduct to be very low in this context.

124. The Tribunal concluded that a reasonable and well-informed member of the public, aware of the facts, would be content for Dr Fernando to be restored to the Medical Register. This is because he has good insight into his past dishonesty, has remediated as fully as could be expected and not reoffended or otherwise breached high standards of probity. A range of colleagues, Dr B, Dr H, Ms I and Mr J are all fully aware of the reasons for his erasure and current situation but support his return to medical practice.

125. The Tribunal considered that the public interest includes facilitating the return to practice of an otherwise competent doctor, where appropriate, as well as upholding standards and maintaining trust in the medical profession. As Dr H wrote, there is always a need for competent, caring GPs, particularly in the present circumstances.

126. Members of the public are aware of this, as well as the need for all doctors to be honest, open and act with integrity. Although his erasure was justified in 2013, this Tribunal considers that his restoration is now appropriate in view of his reflective work, insight, remediation, psychological/other support, CPD, clinical skills and changed attitude in the past few years.

127. The Tribunal took account of the views expressed in testimonials quoted above, which reflect a willingness to trust Dr Fernando, despite his record of theft, fraud and other dishonest acts. Each author was fully aware of his past offences, breaches of fundamental tenets of the medical profession and GMP, as well as his erasure and subsequent work to rehabilitate. The Tribunal considered that his colleagues' positive regard for Dr Fernando

indicated a genuine and significant change in attitude and behaviour since the time of events leading to his erasure in 2013.

128. The Tribunal did not consider that professional standards or public confidence in doctors would be damaged by restoring Dr Fernando to the register. He has developed a good understanding of why he acted as he did and shown that he now values openness and acts honestly, with probity. He has understood and addressed his previous desire to emulate his friends' behaviour and hide any perceived deficits. The Tribunal concluded that he is extremely unlikely to act as he did at the time of the events which led to his erasure.

129. Having concluded that there is sufficient insight, remorse and remediation, the Tribunal balanced those positive findings against all three limbs of overarching objective. It focused on upholding professional standards and maintaining public confidence in the medical profession.

130. The Tribunal has concluded that Dr Fernando has provided ample evidence of remorse, insight, remediation. This strongly supported his contention that he has changed his attitude and behaviour. Therefore, the Tribunal determined to grant Dr Fernando's restoration application.

Confirmed

Date 01 October 2021

Ms Christina Moller, Chair