

PUBLIC RECORD**Dates:** 24/08/2026 – 26/08/2026 & 25/09/2026**Doctor:** Dr Malcolm DUNCAN**GMC reference number:** 3407882**Primary medical qualification:** MB BS 1989 University of London

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

Summary of outcomeErasure
Immediate order imposed**Tribunal:**

Legally Qualified Chair	Miss Rachel Birks
Lay Tribunal Member:	Ms Morgan Phillips
Registrant Tribunal Member:	Dr Patricia Moultrie
Tribunal Clerk:	Olivia Gamble 24/08/2026 – 26/08/2026 Alex Currie 25/09/2026

Attendance and Representation:

Doctor:	Present, represented
Doctor's Representative:	Mr David Pojur, Counsel, instructed by Olliers Solicitors
GMC Representative:	Mr Lewis Kennedy, Counsel, instructed by GMC Legal

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.

Protecting the Public

Throughout the decision making process the tribunal has borne in mind the statutory duty as set out in s1(1) of the Medical Act 1983 (the 1983 Act) to protect the public. The tribunal has considered the relevance and impact on each of the three distinct parts of public protection to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on Facts and Impairment – 26/08/2026

1. This determination was handed down in public. However, the Tribunal exercised its powers under Rule 41 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended (the Rules), to sit in private when the matters under consideration were confidential.

Background

2. Dr Duncan qualified in 1989 from University of London. Prior to the events which are the subject of the hearing, Dr Duncan's last clinical post was as a Resident Medical Officer in Gastroenterology and General Medicine at Warwick Hospital from April 1996-May 1997.

3. The allegations that have led to this hearing relate to a conviction. It is alleged by the General Medical Council (GMC) that on 23 October 2025, at St. Albans Magistrates' Court, Dr Duncan was convicted of making an indecent photograph(s) / pseudo-photograph(s) of a child on or before 7 September 2023, namely 5084 Category C images and videos of a child, contrary to Sections 1(1)(a) and 6 of the Protection of Children Act 1978.

4. It is alleged that on 27 November 2025, Dr Duncan was sentenced to a Community Order and Sexual Harm Prevention Order for a period of five years. It is further alleged that as a result of the conviction and sentence set out above, Dr Duncan became subject to a

notification requirement to register with the Police for 5 years pursuant to sections 80 and 82 of the Sexual Offences Act 2003.

5. The matters that led to Dr Duncan's conviction were referred to the GMC by the police after Dr Duncan's arrest in November 2023.

The Outcome of Applications Made During the Facts Stage

6. The Tribunal refused Mr Pojur's application, made pursuant to Rule 41 of the GMC (Fitness to Practise Rules) 2004 as amended (the Rules). The Tribunal's full decision on the application is included at Annex A.

The Allegation and the Doctor's Response

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

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

1. On 23 October 2025, at St. Albans Magistrates' Court you were convicted of:
 - a. making an indecent photograph(s) / pseudo-photograph(s) of a child on or before 7 September 2023, namely 5084 Category C images and videos of a child, contrary to Sections 1(1)(a) and 6 of the Protection of Children Act 1978.
Admitted and found proved
2. On 27 November 2025, you were sentenced to a:
 - a. Community Order where you must comply with the requirements by 26 November 2026 including;
 - i. a Rehabilitation Activity Requirement; **Admitted and found proved**
 - ii. an Unpaid Work Requirement of 150 hours; **Admitted and found proved**
 - b. Sexual Harm Prevention Order for 5 years. **Admitted and found proved**
3. As a result of the conviction and sentence set out above you became subject to a notification requirement to register with the Police for 5 years pursuant to sections 80 and 82 of the Sexual Offences Act 2003. **Admitted and found proved**

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

The Admitted Facts

8. At the outset of these proceedings, through his Counsel, Mr Pojur, Dr Duncan made full admissions to all paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced the Allegation as admitted and found proved.

Impairment

Witness Evidence

9. Dr Duncan provided his own witness statement dated 4 August 2026. He did not give oral evidence at this hearing.

Documentary Evidence

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

- Certificate of conviction – dated 6 May 2026;
- CPS note of sentencing hearing – dated 9 July 2026;
- Police MG5 – dated 23 September 2025;
- Police crime report;
- MG11 witness statement of DC A – dated 16 July 2025;
- MG11 witness statement of DC B – dated 9 November 2023;
- MG11 witness statement of DC C – dated 9 November 2023;
- Witness statement of Dr Duncan – dated 4 August 2026;
- Dr Duncan's CV;
- XXX;
- XXX.

Submissions on Behalf of the GMC

11. On behalf of the GMC, Mr Kennedy, Counsel, invited the Tribunal to find Dr Duncan's fitness to practise impaired by reason of a criminal conviction.

12. Mr Kennedy outlined the circumstances of this case. He informed the Tribunal that no sentencing remarks are available because the case was dealt with in the Magistrates Court.

He said that the court e-scribers notified the GMC that they have searched their systems but cannot locate any audio-recording in respect of Dr Duncan's proceedings at St. Albans Magistrates' Court on 27 November 2025. However, Mr Kennedy submitted that Mr Duncan's admissions, along with the certificate of conviction, are conclusive evidence of the doctor's guilt.

13. Mr Kennedy submitted that a finding of current impairment is not an automatic result or rubber-stamp of proving the facts underpinning an allegation. He stated that the Tribunal is now required to consider all the evidence and consider whether the registrant poses a current, ongoing risk to public protection.

14. Mr Kennedy drew the Tribunal's attention to relevant caselaw and also the Guidance for MPTS Tribunals and submitted that there is a relevant factual and legal basis for finding impairment on the basis of the nature of the conviction alone.

15. Mr Kennedy submitted that that while a doctor subject to a Sexual Harm Prevention Order (SHPO) is not automatically impaired by the requirement to provide data storage to the police upon request, they face a fraught and complex conflict between their legal obligations under the SHPO and their professional duty of medical confidentiality. Mr Kennedy stated that it is difficult to see how Dr Duncan's *clinical* fitness to practice could not be impaired by that sentencing regime and for the currency of the SHPO, assuming the 'extremely remote eventuality' that Dr Duncan was to return to clinical practice.

16. Mr Kennedy reminded the Tribunal that Dr Duncan has been convicted of a serious criminal offence, which has resulted in him being required to register as a sex offender for a period of 5 years and be the subject of an SHPO for 5 years. He stated that as a starting point, given the impact on public protection by that regime, he should not be permitted to engage in unrestricted practice until he has completed his criminal sentence and these orders have expired.

17. Mr Kennedy submitted that no doctor registered as a sex offender should have unrestricted registration. He outlined that the core reason courts punish these types of offences so severely is the direct link to real-world harm. Mr Kennedy stated that every indecent image is a permanent record of child abuse. The viewing and downloading of these images forces victims to be re-victimised endlessly. He stated that indecent image offences are treated seriously in the criminal courts because they directly facilitate the ongoing abuse of children and fuel child exploitation. Mr Kennedy submitted that every viewing or download creates a demand or market force, which drives the production of new illegal material and

causes lasting harm to the victims. This offending directly drives the ongoing abuse and trauma of the victims involved, for without a market for this illegal material, the abuse would significantly decrease.

18. Mr Kennedy submitted that by downloading and possessing child sexual abuse material, the individual offender actively contributes to a network which facilitates, produces, and distributes even more abusive content. He stated that possession cannot be dismissed as ‘victimless’ or merely passive criminal offending, because it is linked to the ongoing demand for child sexual abuse material and the new abuse implicit in its creation. Mr Kennedy submitted that any sexual offence conviction involving child sexual abuse material, against a registered doctor, is a matter of grave concern because it involves such a fundamental breach of the public’s trust in doctors and inevitably brings the profession into disrepute. Accordingly, Mr Kennedy stated that this category of conviction seriously undermines the public’s trust and confidence in the medical profession and breaches a number of principles set out in GMP.

19. Mr Kennedy outlined the aggravating features of this case, for example the ‘profound volume of images’ and the fact that Dr Duncan’s conviction can be properly characterised as a ‘making’ by virtue of him having downloaded images and videos.

20. In terms of mitigation, Mr Kennedy submitted that the GMC acknowledges the presence of the following: that the files were ‘technically’ categorised as Category C images which is the lowest category in terms of seriousness; that Dr Duncan made admissions during his initial police interview; and that he entered a guilty plea at the earliest available opportunity in the criminal courts. However, Mr Kennedy said that the GMC submits that in cases of this nature, such mitigation carries negligible weight. He stated that such mitigation cannot safely override the overarching requirements of public protection and professional reputation. Mr Kennedy did submit that ‘genuine’ self-reflection, full acceptance of responsibility, and remediation are expressed within Dr Duncan’s witness statement, and he noted that the GMC does acknowledge this.

21. Mr Kennedy submitted that this conviction sits squarely at the higher end of the spectrum of seriousness. He stated that public confidence dictates that no doctor subject to sex offender notification requirements should hold unrestricted registration. Mr Kennedy stated that this case falls at the higher end of the spectrum of seriousness on that specific criterion alone. Given this case lies at the higher end on the spectrum of seriousness, Mr Kennedy submitted that the current, ongoing risk to public protection is thereby high.

22. Mr Kennedy referred the Tribunal to the overarching objective of public protection and submitted it was engaged in this case.

23. Mr Kennedy said that XXX. However, Mr Kennedy stated that given the deep-seated, compulsive history demonstrated by the high volume of material, and his documented statement to the police regarding boredom and temptation, XXX cannot be relied upon as having successfully eliminated the risk of repetition. Mr Kennedy said that the depth of Dr Duncan's insight has not been fully established, and the risk to the public interest persists.

24. Overall, the GMC submitted that all three limbs of the statutory over-arching objective are heavily engaged in this case, and the resulting risk posed to the public interest is high. Mr Kennedy submitted that the gravity of the allegation (and the conviction underpinning it) warrants immediate restrictive action on Dr Duncan's registration.

25. Mr Kennedy concluded that in this high-risk case, which was high on the spectrum of seriousness, Dr Duncan's fitness to practise is currently impaired and he invited the Tribunal to make this finding.

Submissions on Behalf of Dr Duncan

26. On behalf of Dr Duncan, Mr Pojur began by inviting the Tribunal to 'apply caution' to the GMC's submissions and to insert balance into the decision making. He informed the Tribunal that impairment in this case is a matter for the Tribunal, however he made the following observations.

27. Mr Pojur stated that this is a conviction case, not a sexual misconduct case. He stated that Dr Duncan did not create the images in question 'at source' and submitted that this is not a production case, it is a case concerning downloading of child sexual abuse images and videos.

28. Mr Pojur submitted that the governing feature of Dr Duncan's sentence was a 150-hour community order. He stated that his conviction did not cross the custodial threshold. Mr Pojur noted that a SHPO is a standard type of order to follow a case of this nature.

29. Mr Pojur submitted that in this case there is no patient risk, he reminded the Tribunal that Dr Duncan has not practised in a clinical setting for some 30 years.

30. Mr Pojur submitted that convictions of this nature are serious by their categorisation and what they involve. He stated that he did not seek to argue the contrary, but he implored the Tribunal to apply context.

31. Mr Pojur addressed the GMC submission that Dr Duncan had been downloading child sexual abuse material for a prolonged period, between 2005-2023. However, he submitted that this is not the position of the doctor. Mr Pojur stated that the reference on the MG5 to the images having been 'created' between 12/7/2005 – 7/9/2023 was not a reference to the dates that Dr Duncan had downloaded material and had been incorrectly interpreted in that way by the GMC. Mr Pojur stated that Dr Duncan's position was that he downloaded the images/videos over a two-week period between August-September 2023.

32. Mr Pojur submitted that category A and category B images are more serious than category C and noted that the 'lower end' sentencing is therefore saved for this 'lower end offending', involving category C images. Mr Pojur submitted that category A images are the most serious and carry the highest penalties, and that this case was confined to category C images.

33. Mr Pojur submitted that it was agreed that a high volume of images were downloaded, however, it is the doctor's position that he did not view the majority of them. Mr Pojur reiterated that Dr Duncan did not 'make the images at source', his involvement was in downloading them.

34. In relation to insight and remediation, Mr Pojur submitted that for the GMC to say that Dr Duncan's remediation and guilty plea is essentially inadequate is not right. Mr Pojur said that it is important to note that when someone who commits an offence admits it without delay, it is inherent that they are admitting they have done wrong and therefore have an insight into their offending. Mr Pojur submitted that Dr Duncan's guilty plea is important and that the admissions at the police interview stage are important too.

35. Overall, Mr Pojur submitted that impairment is a matter for the Tribunal.

The Relevant Legal Principles

36. There is no burden or standard of proof at this stage of the proceedings and the decision of impairment is a matter for the Tribunal's judgment alone. The Tribunal will only make a finding of impairment where there is a legal basis for doing so and where a decision is reached that the doctor poses a current and ongoing risk to one or more of the three parts of

public protection which is likely to require restrictive action in response. The three parts of public protection are to protect, promote and maintain the health, safety and well-being of the public; to promote and maintain public confidence in the profession; and to promote and maintain proper professional standards and conduct for members of the profession.

37. To assess whether Dr Duncan poses any current and ongoing risk to public protection which may require restrictive action in response, the Tribunal will consider:

- where on the spectrum of seriousness the allegation lies, based on the facts found proved
- the impact of any relevant context known about Dr Duncan, and
- how Dr Duncan has responded to the allegations.

The Tribunal's Determination on Impairment

Step 2a: Is there a legal basis for considering impairment?

38. The Tribunal had regard to Case Type 8: Criminal convictions within the *Introduction Guidance*, as well as the *MPTS Guidance for Tribunals (the MPTS Guidance)* (*MPT Hearings > Part B: Stage two - Impairment > Steps 2(a) to (e)*) to assist their decision making.

39. The Tribunal noted paragraphs 9 and 10 from the Guidance in deciding whether there was a legal basis for considering impairment in Dr Duncan's case:

'9. An MPT must be satisfied that there is a legal basis for considering whether a doctor's fitness to practise is impaired, meaning that there is a current and ongoing risk to public protection. The table below explains the grounds of impairment that apply to Medical Practitioners Tribunal taking regulatory action in respect of doctors.

10. A finding of impairment can only be made by an MPT where the facts found proved engage at least one of these grounds of impairment and the doctor is assessed to pose a current and ongoing risk to one or more of the three parts of public protection requiring restrictive action in response.'

40. The Tribunal had regard to the description of the ground of impairment for convictions in the Guidance:

‘A conviction or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England or Wales, would constitute a criminal offence can indicate that a doctor poses a current and ongoing risk to public protection.’

41. In this case the Tribunal had found proved that Dr Duncan received a conviction from the St. Albans Magistrates’ Court on 23 October 2025. The Tribunal therefore found that there was a legal basis for considering impairment in Dr Duncan’s case.

Step 2b: Where on the spectrum of seriousness does the allegation lie?

42. The Tribunal next considered where on the spectrum of seriousness the allegations against Dr Duncan lie.

43. The Tribunal noted paragraph 31 of the Guidance which states:

‘31. Allegations that are likely to fall at the higher end of the spectrum of seriousness include, but are not limited to:

- ...
- *a criminal conviction, caution or other disposal that has resulted in a doctor being required to register on the sex offenders register’*

44. One of the factors listed within the Guidance suggesting a higher level of seriousness is therefore present in this case: Dr Duncan was convicted of making an indecent photograph(s) / pseudo-photograph(s) of a child, namely 5084 Category C images and videos of a child, contrary to Sections 1(1)(a) and 6 of the Protection of Children Act 1978 and has been required to register on the sex offenders register. The Tribunal noted that the images and videos included children as young as 8-10 years old, full nudity, and sexual posing.

45. The Tribunal noted and agreed in full with Mr Kennedy’s submissions in relation to the impact of this type of offending on the victims involved, as outlined in paragraph 17 of this determination. Downloading of child sex abuse material is not a victimless crime. It is abhorrent for any member of society to engage in such activity let alone a member of the medical profession who holds a trusted position in society by virtue of his professional status.

46. Taking everything into account the Tribunal was therefore of the view that Dr Duncan’s conduct was at the high end of the spectrum of seriousness.

47. The Tribunal then referred to paragraph 34 of the Guidance in assessing if there were any features which may increase the seriousness of the allegations:

‘34. In all cases, there may be specific features about the allegation and departure from the professional standards which may increase its seriousness. These features may be seen in any type of case and where present may increase where on the spectrum of seriousness the allegation lies.’

48. The Tribunal considered the extent of the offending by Dr Duncan and considered the following factors increased the level of seriousness:

- The conduct was premeditated. Dr Duncan deliberately downloaded the images. He also searched for terms such as ‘XXX’ indicating he was actively looking for material depicting young people.
- Dr Duncan’s actions were a reckless disregard for professional standards. Dr Duncan knew, or ought to have known, that he is required to act professionally and avoid exploiting vulnerable people, even in his private life.

49. The Tribunal did not agree with Mr Kennedy that there was evidence that Dr Duncan had downloaded images as far back as 2005. It was careful not to speculate in relation to evidence that had been presented that was unclear, and which it had not be able to clarify by way of oral evidence. It noted that the conviction simply referred to offences on or before 7 September 2023 and accordingly there was no reliable evidence of any extended timespan involved in the offending which would increase the level of seriousness.

50. In the light of these factors the Tribunal considered the seriousness of the allegation found proved against Dr Duncan to be at the highest end of the spectrum of seriousness. The starting point for assessing current and ongoing risk to public protection was therefore high.

Step 2c: What is the impact of any relevant context known about Dr Duncan and/or their working environment?

51. Paragraph 45 of the MPTS Guidance (MPT Hearings > Part B: Stage two - Impairment) states that there are three types of relevant context: working environment, role and experience, and personal context. The impact that evidence of relevant context has on the assessment of risk to public protection will depend on the nature of the allegation and individual circumstances of the case. The Tribunal reminded itself that relevant context can be negative or positive and can therefore increase or decrease the level of risk.

52. The Tribunal noted that evidence of relevant context that may decrease the level of risk to public protection posed by a doctor will usually carry less weight in cases that fall at the higher end of the spectrum of seriousness. This is because the risk to public protection arising from allegations at the higher end of the spectrum of seriousness is generally more difficult to mitigate and address.

53. The Tribunal noted that, prior to the matters giving rise to these proceedings, there have been no concerns in relation Dr Duncan's practice.

54. The Tribunal found that there was no relevant context that the Tribunal could take into account in this case in relation to Dr Duncan's working environment nor his role or experience.

55. In respect of personal context, the Tribunal noted that Dr Duncan has cited a combination of difficult personal circumstances that he was experiencing at the time of his offending, XXX. He had stated that these were factors which XXX and which could have potentially contributed to the reasons for his offending. The Tribunal, however, considered that these difficulties were not extreme and not uncommon for any adult to deal with at some point in their life. The Tribunal did not consider that these factors could in any way mitigate Dr Duncan's offending and therefore applied little weight to them.

56. As the Tribunal had limited context before it that it deemed relevant, it considered that its assessment of risk was unaffected and that the current and ongoing risk posed by Dr Duncan to public protection remained high.

Stage 2d: How has Dr Duncan responded to the allegations?

57. The Tribunal then moved on to consider how Dr Duncan has responded to the allegations. The Tribunal noted that Dr Duncan did not give oral evidence at this hearing.

58. The Tribunal considered the notes of Dr Duncan's police interview and his witness statement.

59. It noted that Dr Duncan stated:

'... I am learning about the effects of pornography on a worldwide scale and in particular the harm it causes for women and children across the world.'

I am sickened by my behaviour and acknowledge that the images I viewed are abuse and have a persistent traumatic impact on the lives of the children involved. It will influence future relationships, their self-identity and their ability to trust others, as well as their physical and mental health and for that I am truly sorry.'

60. Overall, the Tribunal took the view that this extract was the only evidence the Tribunal had before it where Dr Duncan had displayed that he had any understanding of the impact of his offending on the victims involved. He has not drawn an adequate distinction between the legal downloading of pornography involving adults and the illegal downloading of child sex abuse material. The Tribunal noted that his focus largely appeared to be on the impact of his offending on himself and his family and there was not a commensurate focus on the impact on victims of child abuse. There was also no real reflection on the impact of his actions on public confidence in the medical profession, and the damage that his actions and conviction may cause to public trust in the profession and to fellow members of the profession.

61. The Tribunal concluded that Dr Duncan has some insight, but it was yet to be fully developed.

62. In terms of remediation, the Tribunal noted and took into account that Dr Duncan is undertaking remediation activities. However, it also noted that convictions such as this are hard to remediate because they involve such a significant departure from society's expectations and such a blatant disregard for proper professional standards. The Tribunal noted that Dr Duncan is XXX. However, it did not have sufficient evidence before it to demonstrate that he had remediated his actions leading to his conviction. It noted that there was no evidence before it of any particular remediation action and reflection completed in relation to his engagement in downloading and viewing child sexual abuse material, which is the focus of this hearing. There is little reflection of why he engaged in the criminal activity that he did, why he disregarded professional standards and how he has ensured that the behaviour will not be repeated.

63. Having considered all of the evidence, the Tribunal concluded that Dr Duncan's actions have not yet been remedied. It cannot conclude that the allegations are highly unlikely to be repeated. In the absence of sufficient evidence of insight, remediation, or steps taken which reduce the risk of repetition, the Tribunal determined that repetition is, consequently, a continuing high risk to public protection.

64. The Tribunal noted that Dr Duncan has not evidenced that he has kept his knowledge and skills up to date. He relinquished his licence to practise at the introduction of GMC Revalidation requirements. He has not worked in a clinical role for some 30 years, but has maintained GMC registration.

Step 2e - Tribunal's decision as to whether Dr Duncan poses any current and ongoing risk to public protection which may require restrictive action in response and its finding on impairment

65. The Tribunal reviewed its conclusions at Steps 2(a) to (d) above. It has found that Dr Duncan's conviction, which involved the possession of a large volume of child sex abuse material, resulting in a sentence, lies at the high end of the spectrum of seriousness.

66. The Tribunal reminded itself of Mr Kennedy's submissions as to all three elements of public protection being engaged in this case. The Tribunal agreed with Mr Kennedy's submission on this point.

Protecting, promoting and maintaining the health, safety and wellbeing of the public (patient safety)

67. As to the first limb, the Tribunal considered whether there was a current risk of harm to the public. It acknowledged that there was no evidence of any actual harm to patients arising from clinical practice. However, the Tribunal noted that despite this, the conviction did involve engaging in conduct which was harmful to the public.

68. Given the high risk of repetition, the Tribunal considered that there remained a risk to the health, safety and wellbeing of the public. This was relevant to its assessment of the need to maintain public protection.

Promoting and maintaining public confidence in the profession (public confidence)

69. As to the second aspect of public protection, namely public confidence in the profession, the Tribunal was in no doubt that Dr Duncan's conviction brought the medical profession into serious disrepute. Dr Duncan's criminal conduct breached fundamental tenets of the medical profession, including the requirements to act within the law and to act with integrity. Patients must be able to trust doctors with their lives and health. The Tribunal considered that the public and fellow members of the profession would be justifiably appalled by a doctor being convicted of this offence and by the conduct underlying it.

70. The Tribunal had no doubt that Dr Duncan's conviction and subsequent registration on the sex offenders register was of such a serious nature that the risk to public confidence in the profession was extremely high and that a finding of impairment was necessary to promote and maintain public confidence in the profession.

Promoting and maintaining professional standards and conduct (upholding professional standards)

71. As to the third aspect of public protection, namely upholding professional standards, the Tribunal was satisfied that Dr Duncan's conviction for a serious criminal offence represented a significant departure from the standards of conduct expected of medical practitioners. The Tribunal considered that a finding of impairment was therefore required to send a clear signal to Dr Duncan, the profession, and the public that his offending behaviour was unacceptable.

72. In all the circumstances, the Tribunal concluded that the current and ongoing risk posed by Dr Duncan to public protection was high, by reference to all three limbs of public protection and requires restrictive action in response. In these circumstances a finding of impairment is necessary.

73. The Tribunal therefore determined that Dr Duncan's fitness to practise is impaired by reason of his conviction.

Determination on Sanction - 25/09/2026

74. This determination was handed down in public.

75. The Tribunal has reviewed its findings at the facts and impairment stages and taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

76. The Tribunal received further evidence on behalf of Dr Duncan in the form of an email dated 17 January 2024. Dr Duncan says in the email, in clarification to the author of a report, that in the comment that he is recorded as making he was referring to accessing legal adult pornography and has no interest in accessing child sexual abuse material again.

Submissions

On behalf of the GMC

77. On behalf of the GMC, Mr Kennedy provided written submissions in advance of the reconvened hearing which he supplemented with oral submissions during the hearing. He submitted that the decision as to the appropriate sanction to impose in this case is a matter for the Tribunal, exercising its own independent judgment.

78. Mr Kennedy reminded the Tribunal of its findings at the impairment stage that there remained a risk to the health, safety and wellbeing of the public due to the high risk of repetition that the Tribunal had identified. He referred to the Tribunal's findings that Dr Duncan's conviction and subsequent registration on the sex offenders register were of such a serious nature that the risk to public confidence in the profession was extremely high. He also referenced the Tribunal's earlier conclusion that the current and ongoing risk to public protection is high and engages all three parts of the overarching objective.

79. Mr Kennedy referred the Tribunal to the contents of the MPTS Guidance Introduction relating to Case Type 1: sexual misconduct and Case Type 8: criminal convictions, cautions, court sanctions to assist in their decision making, in particular referring to paragraph 251 which reads:

'251. While the courts distinguish between degrees of seriousness, any conviction for child sex abuse materials will undermine public confidence in the professions. The only proportionate action in these cases will usually be erasure and any departure from this will need to be carefully explained.'

80. Mr Kennedy reminded the Tribunal of their findings at the Impairment stage. He submitted that the Tribunal had concluded Dr Duncan has some insight, but it is yet to be fully developed. Mr Kennedy referenced the Tribunal's findings that convictions such as Dr Duncan's are hard to remediate due to the significant departure from society's expectations and the blatant disregard for professional standards. He observed that the Tribunal found that Dr Duncan's actions had not been remedied and that it could not be concluded the allegations were highly unlikely to be repeated due to the absence of sufficient evidence of insight, remediation or steps taken to reduce repetition and that this presented a continued high risk to public protection as a result.

81. Mr Kennedy submitted that Dr Duncan's repeated attempts to seek voluntary erasure since his conviction came to the attention of the GMC should not be regarded as an acceptable substitute for demonstrating insight and remediation.

82. Mr Kennedy submitted that whilst Dr Duncan's witness statement seems to show him accepting responsibility, this should be viewed through the Tribunal's findings at the impairment stage that his insight remains under-developed and his actions unremedied.

83. Mr Kennedy submitted that as the Tribunal established this as a high risk and high seriousness case involving a criminal conviction, it falls within the highest Sanctions Banding. Mr Kennedy referred to paragraph 62 of Section three of the MPTS Guidance for Tribunal members which contains the Sanctions Banding for convictions. With reference to the particular Sanctions Banding, Mr Kennedy observed that for a conviction case involving a higher level of risk to public protection a sanction of 12 months suspension to erasure is provided.

84. Mr Kennedy submitted that while a 12-month suspension sits within the identified banding such a sanction would be wholly disproportionate and inadequate. He submitted that given Dr Duncan's inclusion on the sex offenders' register and the critical public confidence limb of the overarching objective, the objective seriousness of this conviction requires permanent erasure to maintain public trust in the profession.

85. Mr Kennedy submitted there are features which increase the level of seriousness in this case. He submitted that the volume of child sexual abuse material downloaded was high, with 5,084 illicit items documented, and that the collection included 33 moving images or videos which represents a heightened layer of digital engagement with CSAM. Mr Kennedy referred to the Tribunal's findings at the impairment stage that Dr Duncan's conduct was premeditated and deliberate, and that he had actively sought out material depicting young people.

86. Mr Kennedy acknowledged that the files were categorised as "Category C" images, that Dr Duncan had made admissions during his initial police interview, and that he entered a guilty plea at the earliest available opportunity in the criminal courts.

87. Mr Kennedy noted that at the impairment stage the Tribunal applied little weight to Dr Duncan's personal difficulties, that they had identified them as not being extreme or uncommon for any adult to deal with in their life, and therefore not factors that could mitigate Dr Duncan's offending. Mr Kennedy submitted that in cases of this nature such

mitigation carries only negligible regulatory weight and cannot safely override the overarching requirements of public protection.

88. Mr Kennedy submitted that an upper or even a maximum 12-month period of suspension would be completely inadequate; disproportionate; and insufficient to maintain public confidence in the medical profession. Mr Kennedy submitted that an ordinary, well-informed member of the public would find their confidence in the profession shattered if Dr Duncan was only suspended and permitted to remain on the medical register.

89. Mr Kennedy further submitted that a 12-month suspension would not provide enough time to meaningfully remediate, develop complete insight or XXX. Mr Kennedy noted that as Dr Duncan will be a registered sex offender until November 2030 a suspension of the maximum period of 12 months would expire in only 2027, leaving a registered sex offender holding a potentially active license to practise medicine.

90. In response to a request for clarification from the Tribunal, Mr Kennedy further submitted that a 12-month suspension which is reviewed and extended by 12 months at a time until Dr Duncan is no longer on the sex offenders register would be a de-facto suspension of four years, which would exceed the permitted maximum of any suspension order, which is 12 months.

91. Concerning erasure Mr Kennedy reminded the Tribunal of paragraph 251 of the MPTS Introduction Guidance which states that any conviction for child sex abuse materials will usually result in erasure, and any departure from this will need to be carefully explained. He submitted that the GMC's position is that there is no basis for such a departure. He then referred to the relevant paragraphs of the MPTS Guidance including the Sanctions Bandings for conviction cases involving higher levels of risk to public protection and submitted that the only appropriate, proportionate, and lawful regulatory response is an order of erasure. He submitted that no other sanction could satisfy the statutory duty to protect the public, preserve public confidence or uphold professional standards.

On behalf of Dr Duncan

92. On behalf of Dr Duncan, Mr Pojur submitted that the position in Dr Duncan's case is nuanced. Mr Pojur referred to the Sanctions Bandings at paragraph 62 of Part three of the MPTS Guidance and submitted that the Tribunal could still consider a 12-month suspension at the upper risk level of conviction cases.

93. Mr Pojur submitted that the Tribunal could consider a 12-month suspension and direct a review hearing. He submitted that the least restrictive measure that upholds the overarching objective is required by the Tribunal. Mr Pojur submitted that a 12-month suspension with a review would be carried out alongside Dr Duncan's sex offender register notification requirements, and that the police will also have the ability to undertake checks. Mr Pojur submitted this must be taken into account by the Tribunal in their factual analysis of risk management.

94. Mr Pojur submitted that Dr Duncan is not a practising doctor currently so the risk to patients and the wider public is 'fanciful'. He stated that even if Dr Duncan was free to practise it would be 40 years since the time that Dr Duncan last had any patients. Mr Pojur further submitted that Dr Duncan's clinical skills are not at an adequate level as he has not practised clinically for many years, and it is therefore inappropriate to focus on what would happen when a 12-month suspension lapsed meaning he would have potential access to patients.

95. Referring to the email that was adduced at the sanction stage Mr Pojur submitted that it reflected positive insight on Dr Duncan's behalf, demonstrating that he was worried that having time on his hands he may access adult pornography. Mr Pojur submitted that Dr Duncan's concern in this email is about how his comments about viewing adult and legal pornography had been misconstrued as comments about accessing child abuse material. He stated this was significant when assessing risk, and that the Tribunal could take this into account as a factor that could reduce the level of risk to public protection. Mr Pojur submitted that Dr Duncan had said he was not a habitual user of indecent images of children and the context was that he was in a downward trend at the time, being on his own, isolated and dealing with difficult matters for a specific period. Mr Pojur submitted this is not a course of conduct and there has not been any relapse by Dr Duncan as monitored through the notification requirements.

96. Mr Pojur submitted that Dr Duncan's entry of a guilty plea demonstrates, alongside his reflections, evidence in writing, XXX, that he has insight into what occurred at that time during a specific period.

97. Turning to proportionality, Mr Pojur submitted that Dr Duncan had not created the images, the images were at the lower Category C of seriousness, and his offence was an entirely remote, single offence. Mr Pojur also submitted that there was no direct contact with any persons. Mr Pojur submitted that it is not an open and shut case of erasure as a result.

98. Mr Pojur concluded by submitting that for the reasons set out above, a 12-month suspension with a review hearing directed would on balance be a lawful, appropriate, and proportionate response, and would give reassurance to the public.

The Tribunal's determination on sanction

99. The Tribunal was reminded that the decision as to the appropriate sanction to impose is a matter for its independent judgement. There is no burden or standard of proof. When determining the appropriate sanction, if any, it should have regard to the principle of proportionality and consider the least restrictive option that addresses the public protection issues identified by it in the impairment decision. The Tribunal acknowledged that any sanction decision also needs to be transparent and fair.

100. The Tribunal reminded itself that the main reason for imposing a sanction is to protect the public and the wider public interest, and that sanctions are not imposed to punish doctors, even though they may have a punitive effect. The Tribunal must balance Dr Duncan's interests against the public interest. The Tribunal reminded itself that the reputation of the medical profession as a whole is more important than the interests of an individual doctor.

101. The Tribunal reminded itself it had determined at the impairment stage that all three limbs of public protection were engaged, namely the need to protect, promote and maintain the health, safety and well-being of the public; to promote and maintain public confidence in the profession; and to promote and maintain proper professional standards and conduct for members of the profession.

102. In making its decision on sanction, the Tribunal has reviewed its decision on facts and impairment and has considered the level of current and ongoing risk the doctor poses to public protection. It has referred to the Sanctions Banding for Conviction cases as set out in Part C of the Guidance for MPT hearings and noted that the indicative Sanctions Banding for a Conviction case where there was a high level of risk to public protection was "Suspension 12 months to Erasure". It has also considered the impact of any specific sanction type.

103. Although the Guidance includes indicative Sanctions Bandings, as set out above, the Tribunal acknowledged that these are indicative rather than binding and any decision on sanction is one ultimately for the Tribunal. Accordingly, the Tribunal considered all possible sanctions open to it, including taking no action.

104. The Tribunal reminded itself that it is important to refer to their earlier impairment determination when there has been a passage of time, as there has been in this case, between the impairment determination being handed down and reconvening today to consider the sanction stage.

105. The Tribunal needs to consider any new evidence and whether that may be relevant to deciding what sanction is proportionate. The Tribunal acknowledged that Dr Duncan has previously made an application for Voluntary Erasure but that this is not a factor that should be taken into account when determining sanction in this case.

Findings at the impairment stage

106. The Tribunal reminded itself of their findings at the impairment stage and referred to paragraphs the Tribunal found were relevant to consider. Paragraph 44 sets out the factors that increased the seriousness including that there were both images and videos, that the victims included children as young as 8-10 and involved full nudity and sexual posing. The Tribunal referred to paragraph 45 in which it noted that downloading of child sex abuse material is not a victimless crime. In paragraph 48 the Tribunal concluded that the conduct was premeditated as Dr Duncan deliberately downloaded the images, searching for terms such as 'XXX' indicating he was actively looking for material depicting young people. In paragraph 48 the Tribunal also set out its conclusion that Dr Duncan's actions were a reckless disregard for professional standards.

107. The Tribunal referred to paragraph 55 of their impairment determination which related to Dr Duncan's personal context. The Tribunal found that the difficult personal circumstances that Dr Duncan was experiencing were not extreme or uncommon for any adult to deal with at some point in their life. The Tribunal did not consider that these factors could mitigate Dr Duncan's offending and therefore placed little weight on them.

108. Paragraphs 60 and 61 dealt with the Tribunal's concerns about Dr Duncan's insight, noting that his focus largely appeared to be on the impact of his offending on himself and his family rather than a focus on the impact on victims of child abuse. The Tribunal also found there was no real reflection on the impact of his actions on public confidence and public trust in the profession and colleagues. The Tribunal had concluded that Dr Duncan has some insight, but it was yet to be fully developed. Paragraph 69 covered the impact to public confidence in the profession. The Tribunal found that Dr Duncan's conviction brought the medical profession into disrepute, breaching fundamental tenets of the medical profession.

The Tribunal had concluded that the public and fellow members of the profession would be justifiably appalled by a doctor being convicted of this offence and by the conduct underlying it.

New evidence at sanction stage

109. The Tribunal considered the new evidence of the email from Dr Duncan dated 17 January 2024 which was adduced at the sanction stage. The Tribunal read the document and heard submissions relating to it from Mr Pojur. The Tribunal concluded that its findings on impairment would not have been impacted had they seen this email earlier. The Tribunal did not consider that it materially impacted its assessment of risk which was principally based on the nature of the conviction, Dr Duncan's actions at the time and his limited insight and remediation since. The Tribunal did not consider the email to be particularly compelling in its consideration on sanction.

No action

110. In reaching its decision as to the appropriate sanction, if any, to impose in this case, the Tribunal considered whether to take no action.

111. The Tribunal considered paragraphs 13 – 16 of Section 3 of the MPTS Guidance which relate to consideration of 'Taking no action'. It noted paragraph 13 which states:

'13. Where a doctor's fitness to practise is impaired, it will usually be necessary for the MPT to restrict the doctor's registration to achieve public protection. But there may be exceptional circumstances to justify an MPT taking no action. Exceptional circumstances are unusual, special, or uncommon, so such cases are likely to be very rare.'

112. The Tribunal did not identify any exceptional circumstances in this case such as to justify a decision to take no further action. The Tribunal determined that taking no action would not be an appropriate nor proportionate response and would fail to maintain public safety, public confidence or uphold professional standards.

113. The Tribunal observed that neither party suggested that anything less than a sanction of a 12 months' suspension would be appropriate in Dr Duncan's case.

Conditions

114. The Tribunal next considered whether to impose conditions on Dr Duncan's registration. It bore in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable. The Tribunal had regard to paragraphs 17 to 40 of the MPTS Guidance. Paragraphs 23 and 30 state:

'23. Conditions are likely to be workable where:

- a. the doctor has shown insight*
- b. time is needed for the doctor to take steps to address the findings (remediate), for example through retraining, study, supervision and/or seeking medical treatment*
- c. the doctor is willing to remediate, and*
- d. the MPT is satisfied the doctor will comply with them.*

...

30. Conditions are unlikely to be a proportionate response in cases where the nature of the allegations about the doctor's behaviour fall at the higher end of the spectrum of seriousness and/or suggest an underlying problem with their attitude.'

115. The Tribunal considered that the Sanctions Banding for this case type did not indicate that conditions would be sufficient to meet the level of risk to public protection.

116. The Tribunal was of the view that there were no conditions which could be implemented that would be sufficient to protect the public when considering all three limbs of public protection. The Tribunal concluded that an order of conditions would not be proportionate nor appropriate to address the seriousness of Dr Duncan's conduct and would not satisfy the public interest.

117. Again, the Tribunal observed that neither party suggested that anything less than a sanction of a 12 months' suspension would be appropriate in Dr Duncan's case.

Suspension

118. The Tribunal went on to consider suspension. It noted paragraphs 44- 45 of the Sanctions Guidance:

‘44. Restrictive action of suspension is intended to address the level of current and ongoing risk to public protection and is not intended to be punitive. However, as it prevents a doctor from working and earning a living within that profession, it can have this effect. Suspension can also have a deterrent effect and be used to send a signal to the individual doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor

45. Suspension may be proportionate in cases where some, or all, of the following factors are present:

- a. conditions are not appropriate, measurable and/or workable*
- b. the level of current and ongoing risk to public protection is such that it cannot be safely managed with conditions, and suspension is necessary to stop the doctor from working and putting patients at risk while they gain insight into any deficiencies and remediate, or undergo medical treatment, and/or*
- c. the level of current and ongoing risk to public protection is such that, although patient safety is not an issue, suspension is needed to maintain public confidence in the profession and/or maintain professional standards’*

119. The Tribunal also referred to paragraph 62 of the Sanctions Bandings for Conviction cases in the MPTS Guidance which sets out that conviction cases determined to be at the upper end of the level of risk to public protection should normally result in a sanction between 12 months’ suspension to erasure.

120. The Tribunal considered that it had not seen any additional evidence that suggests that this provisional banding is not appropriate for the circumstances of this case. Neither party suggested that this banding was inappropriate for the circumstances of this case. The Tribunal reminded itself that it had found a high level of seriousness at the impairment stage and that there was no evidence before it to lead it to reduce that level of seriousness.

121. The Tribunal considered the submissions made by both parties. The Tribunal considered that the observation that the images were Category C, whilst correct, did not mean that it was a conviction which was not serious. The Tribunal also placed limited weight on Dr Duncan’s age or the decades that have passed since he was last in clinical practice. The Tribunal noted that Dr Duncan has continued to maintain registration with the GMC and has continued to benefit from the esteem that members of the profession are held in, regardless of the fact that he has not been in clinical practice.

122. The Tribunal reminded itself of the factors which increased the seriousness in this case which it has previously summarised in its impairment determination, and which are repeated above in paragraph 33. The Tribunal could not see how a conviction for such a serious offence, which included the factors outlined above, could be compatible with being a registered doctor either now or in the future. The Tribunal also considered that even if Dr Duncan was not on the sex offender's register it is difficult to see how it would be appropriate to continue to register a doctor who has the type of conviction that Dr Duncan has. Sex offender registration is simply further evidence that Dr Duncan's actions and conviction are incompatible with continued registration.

123. The Tribunal therefore found that a suspension, even for the maximum permitted 12 months, would be a wholly inadequate sanction given the circumstances of the case as it would not uphold the three limbs of the overarching objective of protection of the public.

Erasure

124. The Tribunal considered whether erasure would be the appropriate response. It had regard to paragraph 55 and 57 of the Guidance:

'55. Erasure is action available for those cases where a doctor's behaviour, performance, or the impact that a health condition is having on their ability to practise safely and effectively, is incompatible with continued registration at this point in time. It means the level of current and ongoing risk the doctor poses to public protection is so significant that they should not be allowed to practise.'

57. Erasure may be the proportionate response where:

- a. conditions are not appropriate, measurable and/or workable and suspension is not sufficient to protect the public*
- b. the doctor's behaviour or performance is such that it caused serious harm, and the risk of harm recurring cannot be mitigated sufficiently through putting conditions or suspension in place*
- c. the doctor has shown a persistent lack of insight into the seriousness of the allegation about their behaviour or performance and the potential or actual consequences, and/or*
- d. the seriousness of the facts found proven and/or impact of any relevant context that increased the current and ongoing risk to public protection mean the effect of the doctor continuing to hold registration is such that it will undermine public confidence in the profession.'*

125. The Tribunal also had regard to paragraph 251 of the MPTS Introduction Guidance within Case Type 8: Criminal Convictions:

‘251. While the courts distinguish between degrees of seriousness, any conviction for child sex abuse materials will undermine public confidence in the professions. The only proportionate action in these cases will usually be erasure and any departure from this will need to be carefully explained.’

126. Referring to paragraph 251 of the MPTS Introduction Guidance, the Tribunal could not identify any reasons that caused the Tribunal to depart from this guidance, which indicates that the only proportionate action in cases dealing with convictions for child sex abuse material is usually one of erasure.

127. In relation to the first part of the overarching objective the Tribunal has found that there is a risk of repetition and that it will be difficult for Dr Duncan to remediate such conduct. Doctors are trusted members of society, and a sanction of erasure is necessary to protect, promote and maintain the health, safety and wellbeing of the public.

128. A reasonable member of the public, properly informed, would be horrified by Dr Duncan’s conviction and would lose confidence in the medical profession and system of regulation if Dr Duncan was not erased from the medical register. A sanction of erasure is necessary to promote and maintain public confidence in the profession.

129. In relation to the third part of the duty to protect the public, the Tribunal considered that a direction for erasure would send out a message to members of the profession that high standards and conduct are expected of members of the profession, and that where those required standards and conduct are compromised in such a fundamental way, protection of the public weighs more heavily when considered in the balance with the fortunes of an individual doctor. The Tribunal has previously identified a reckless disregard of professional standards on the part of Dr Duncan. Erasure from the medical register is necessary in order to promote and maintain proper professional standards and conduct within the profession.

130. The Tribunal therefore determined to erase Dr Duncan from the medical register.

Determination on Immediate Order – 25/09/2026

131. This determination was handed down in public.

132. Having determined that Dr Duncan should be erased from the medical register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Duncan's registration should be subject to an immediate order.

Submissions

133. On behalf of the GMC, Mr Kennedy submitted that to ensure there is no regulatory gap and for the protection of the public the GMC formally applies under Section 38 of the Medical Act 1983 for an immediate order of suspension. He submitted this will ensure that Dr Duncan is legally unable to hold an active registration during the statutory 28-day window before the erasure can formally take effect, and theoretical though the possibility might be, of him returning to practice.

134. Mr Kennedy submitted that the interim order of suspension currently in place on Dr Duncan's registration should be revoked.

135. On behalf of Dr Duncan, Mr Pojur submitted there are no arguments he could advance against an immediate order being imposed.

The Tribunal's determination

136. The Tribunal referred to the relevant section of the Guidance, including:

79. The MPT may impose an immediate order where it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. Where the MPT has imposed a sanction of conditions, it may impose an immediate order of conditions. Where the MPT has imposed a sanction of suspension or erasure, it may impose an immediate order of suspension.

80. In the context of an immediate order, the best interests of the doctor includes avoiding putting them in a position where they may come under pressure from patients and/or may repeat the behaviour or poor performance giving rise to the allegation, particularly where this may also put the doctor at risk of committing a criminal offence. It may also include where the doctor's ability to practise safely

and effectively may be impacted by an ongoing health condition.

81. When deciding if an immediate order is needed, the MPT should balance these considerations against the other interests of the doctor, which may be to return to work pending the outcome of any appeal, and against the wider public interest which may require an immediate order is put in place.

...

83. The decision whether to impose an immediate order is at the discretion of the MPT based on the facts of the case. When deciding if an immediate order is needed the MPT should consider the seriousness of the proved allegation and the level of current and ongoing risk to public protection posed by the doctor.

84. It will not usually be appropriate for a doctor to hold unrestricted registration until a sanction takes effect in cases where:

- a. the doctor poses a risk to patient safety*
- b. the risk to one or more parts of public protection is high, and/or*
- c. immediate action is needed to maintain public confidence in the medical profession.*

137. The Tribunal had regard to the paragraphs set out above. The Tribunal had found that all three limbs of public protection were engaged with a high level of risk.

138. The Tribunal considered that for the same reasons given for the sanction of erasure, an immediate order of suspension is necessary to protect members of the public and the wider public interest.

139. This means that Dr Duncan's registration will be suspended from today. The substantive direction, as already announced, will take effect 28 days from the date on which written notification of this decision is deemed to have been served, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

140. The interim order of suspension currently in place on Dr Duncan's registration is hereby revoked.

ANNEX A – Rule 41 Application – 24/08/2026

141. At the start of these proceedings, Mr David Pojur, Counsel for Dr Duncan made an application pursuant to Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 (the Rules), for the elements of this case XXX to be kept out of the public domain. Mr Pojur clarified in oral submissions that this did not necessitate the entirety of these proceedings being held in private and that XXX, Dr Duncan's name, and other details such as the date and location of his conviction could also achieve that.

Submissions of Mr Pojur, on Behalf of Dr Duncan

142. Mr Pojur referred the Tribunal to the hearing bundle, which contained XXX.

143. The Tribunal was invited to take this opinion into very careful consideration when undertaking the balancing exercise it must engage in. Mr Pojur submitted that the greater the public knowledge and publicity surrounding the conviction through these proceedings, the greater risk XXX, which cannot be underestimated.

144. Mr Pojur then drew the Tribunal's attention to XXX.

145. Mr Pojur stated that this case can be heard in private in accordance with Rule 41 of the Rules. He submitted that should matters before the Tribunal be reportable and or publicised, including its decisions, especially via Internet, then XXX.

146. In all the circumstances, Mr Pojur submitted that the evidence establishes that XXX. He stated that the competing interest of right to respect for private and family life under Article 8 should prevail over Article 10 rights of Freedom of Expression in the balancing exercise to be conducted by the Tribunal. Mr Pojur submitted that the facts of this case amount to exceptional reasons enabling the Tribunal to order a derogation from the open justice principle XXX.

147. Mr Pojur concluded that there are sufficient grounds for the applications to be granted XXX and accordingly, he invited the Tribunal to grant the application.

Submissions of Mr Lewis Kennedy, on Behalf of the GMC

148. Mr Kennedy submitted that the GMC opposes this application. However, he stated that the GMC would support the element of Dr Duncan's anonymity application that XXX.

149. Mr Kennedy submitted that this application is underpinned by XXX. He stated that under Rule 41, the default position is that all MPT hearings must be held in public. Mr Kennedy submitted that the baseline default position in healthcare regulation is public transparency. The general rule is that MPT cases are to be held in the public arena and that all judgments are to be published, in the public interest. He stated that public confidence in a professional regulator diminishes if the public cannot see which professional is being prosecuted. He stated that the regulator must ensure public protection and transparency. He stated that only exceptional circumstances will justify a departure from the general rule, for a registrant to be totally anonymised or for their case to be heard entirely in private.

150. Mr Kennedy drew the Tribunal's attention to the relevant caselaw. XXX.

151. XXX

152. Mr Kennedy submitted that the defence has failed to discharge its heavy burden of proof to justify any derogation from the default position of a public hearing and he invited the Tribunal to refuse the application.

153. Mr Kennedy concluded that less restrictive measures are readily available. XXX.

Legal Advice

154. The Tribunal carefully considered the submissions of both Counsel. In reaching its decision, it had full regard to all the evidence presented to date, both oral and documentary.

155. The Legally Qualified Chair gave advice which was accepted by the Tribunal and which included that:

- a) The starting point is that hearings are held in public. The 'open justice principle' means that, generally, justice should be administered in public and that includes that hearings should be held in public; evidence should be given publicly; and media reporting of proceedings should not be prevented. This ensures the transparency of regulatory proceedings in order to protect confidence in the system of regulation.

- b) By Rule 41 of The General Medical Council (Fitness to Practise) Rules Order

- a. of Council 2004, hearings before the Panel should ordinarily take place in
- b. public.

i. 41:

- (1) *Subject to paragraphs (2) to (6) below, hearings before the Committee and a FTP Panel shall be held in public.*
- (2) *The Committee or FTP Panel may determine that the public shall be excluded from the proceedings or any part of the proceedings, where they consider that the particular circumstances of the case outweigh the public interest in holding the hearing in public.*

- c) The way in which Rule 41 is worded gives a broad discretion to hold a hearing in private or to keep details of the hearing out of the public domain.
- d) A decision to sit in private may relate to all or part of a hearing.
- e) A Tribunal we should always consider any lesser measure than conducting the whole of a hearing in private, such as part of the hearing being in private or anonymisation of information.

The Tribunal's Determination

156. The Tribunal considered Mr Pojur's application and the submissions from both parties. It noted that hearings should be heard in public wherever possible as this accords with the principles of open justice and transparency.

157. The Tribunal considered XXX. Overall, the Tribunal did not consider the evidence XXX to be compelling enough evidence to overturn the principle of a public hearing. XXX.

158. The Tribunal considered the evidence XXX. The Tribunal noted that whilst both Counsel had confirmed that there did not appear to be any media reports following the conviction, it was a matter of public record.

159. XXX

160. The Tribunal determined that in all the circumstances, there was not strong enough evidence before it to tip the balance away from the presumption that the hearing should be in public with details of Dr Duncan's hearing being published.

161. XXX

162. In the interests of open justice and in order to uphold public protection, the Tribunal did not provide anonymity for Dr Duncan and determined that details of his conviction, including the date and location, will not be anonymised/redacted during the hearing. XXX. Dr Duncan has not put forward sufficient evidence to shift the balance in favour of anonymising Dr Duncan and/or holding the hearing in private. Holding a public hearing in relation to a very serious conviction is necessary in order to protect the public, particularly through upholding confidence in the regulation of professionals. Further, transparency of these proceedings helps act as a deterrent and promotes the upholding of professional standards.

163. Accordingly, the Tribunal determined to refuse Mr Pojur's application under Rule 41 of the Rules for either the hearing to take place in private or for Dr Duncan's details to be anonymised.