

## PUBLIC RECORD

Dates: 31/05/2023 - 02/06/2023

Medical Practitioner's name: Dr Manesh GILL

GMC reference number: 7015322

Primary medical qualification: MB ChB 2010 University of Leeds

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

## Summary of outcome

Erasure

Immediate order imposed

## Tribunal:

Legally Qualified Chair	Mr Angus Macpherson
Lay Tribunal Member:	Mrs Cindy Mackie
Medical Tribunal Member:	Dr Vivek Sen

Tribunal Clerk:	Mrs Jennifer Ireland
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## Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Ms Jennifer Ferrario, Counsel

### Attendance of Press / Public

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

### Overarching Objective

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

### Determination on Facts - 31/05/2023

#### Background

1. Dr Gill qualified in 2010 from the University of Leeds. At the time of the events Dr Gill was practising as a salaried General Practitioner for NHS Lothian.
2. The allegation that has led to Dr Gill's hearing arises from an incident that allegedly occurred on 8 December 2018, when Dr Gill allegedly raped Ms A. Ms A reported to Police Scotland (Stirling) that she had been raped in a hotel room in the early hours of that morning by a man whom she had met online going by the name 'Mike'. Police were able to identify her attacker as Dr Gill by obtaining the booking information and CCTV from the hotel. Ms A was also able to identify Dr Gill as Mike.
3. Ms A told police that she had met Dr Gill, as arranged previously through SnapChat, in the bar of the hotel at approximately 8:15pm. She had entered Dr Gill's hotel room shortly after midnight on 8 December 2018 to use the toilet as she had been told by Dr Gill that the ladies' toilets on the hotel ground floor were out of use (the hotel later confirmed they were not). After using the toilet, Dr Gill had offered her a drink in a coffee mug, which she accepted. Ms A shared a consensual kiss with Dr Gill. Shortly after drinking from the mug, Ms A reported that she felt very tired and 'heavy' as though she was weighed down. She also stated that she ended up lying flat on the bed with no recollection of how she got to that position.
4. Ms A told police that Dr Gill had then removed his clothes and pulled her to him to perform oral sex on him. Ms A recalled that her own clothes had been removed from the waist down, but she could not recall how this had occurred. Ms A recalled that she was

positioned on all fours with Dr Gill's penis in her mouth, and Dr Gill reached over and penetrated her anus with his fingers. She told him to stop. Dr Gill then put on a condom, removed the tampon from Ms A's vagina and began to kiss and bite her breasts. He then inserted his penis into her vagina. Ms A stated she attempted to push him off but was not able to.

5. A short time later, Dr Gill repositioned Ms A so that she was lying on her side with him lying behind her, and he pushed his penis against her bottom. She told him again to stop. Ms A also recalled being moved so that she was lying on her stomach with Dr Gill licking and biting her buttocks. Dr Gill also removed her top at this time.

6. Ms A then recalled sliding from the bed to the floor, and that she told Dr Gill not to touch her. Dr Gill then pulled Ms A by the hand back onto the bed, and then rubbed his penis for a few minutes before climbing back into bed with Ms A. He then took Ms A's hand and placed it on his penis and moved her hand up and down. Ms A then began to cry and he loosened his grip, allowing her to turn on to her side.

7. Ms A reported that she had woken up and used the toilet and described being '*a bit sore*'. She then asked Dr Gill what was going on, why she was naked and where her clothes were. She then gathered her clothes, re-entered the bathroom and dressed. Dr Gill then asked where she was going and attempted to take her hand, but Ms A told him she wanted to go home and left the room. Ms A then left the room at approximately 03:10am and left the hotel. Ms A called the police shortly after arriving home at approximately 04:18am.

8. Police were able to obtain evidence from the hotel room before the room was cleaned, including a used condom, a tampon and two coffee mugs. Dr Gill was arrested later that day. Swabs were taken from him, and the DNA from the condom obtained from the search of the hotel room was confirmed to be from him, and from Ms A.

9. Dr Gill was formally charged in March 2020 under Section 1 of the Sexual Offences (Scotland) Act 2009.

10. On 19 May 2022 at Edinburgh High Court Dr Gill was convicted of rape, contrary to Section 1 of the Sexual Offences (Scotland) Act 2009. On 15 June 2022, he was sentenced to

four years imprisonment and ordered to comply with notification requirements under Part 2 of the Sexual Offences Act 2003 for an indefinite period.

11. The initial concerns were reported to the GMC by Police Scotland, as part of the investigation into the incident.

### The Outcome of Applications Made during the Facts Stage

12. The Tribunal granted the GMC's application, made pursuant to Rules 15 and 40 of the General Medical Council (Fitness to Practise) Rules 2004 as amended ('the Rules'), and determined that notice of this hearing had been properly served on Dr Gill. It also granted the GMC's application made pursuant to Rule 31 of the Rules to proceed with the case in Dr Gill's absence. The Tribunal's full decision on both applications is included at Annex A.

### The Allegation and the Doctor's Response

13. The Allegation made against Dr Gill is as follows:

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

1. On 19 May 2022 at Edinburgh High Court you were convicted of rape, contrary to Section 1 of the Sexual Offences (Scotland) Act 2009. **To be determined.**
2. On 15 June 2022 you were sentenced to:
  - a. four years imprisonment; **To be determined.**
  - b. comply with the notification requirements under Part 2 of the Sexual Offences Act 2003 for an indefinite period. **To be determined**

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

### The Facts to be Determined

14. In light of Dr Gill's absence, the Tribunal is required to determine the Allegation in its entirety.

### Documentary Evidence

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

- Dr Gill’s Extract of Conviction; and
- Letter from Police Scotland to the GMC, dated 9 August 2022.

16. Dr Gill declined to attend his hearing and did not provide any statement or additional evidence in his defence.

### The Tribunal’s Approach

17. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Gill does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e., whether it is more likely than not that the events occurred.

18. The Tribunal was also mindful of Rule 34 of the Rules in particular:

‘34...

*‘(3) Production of a certificate purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas that a person has been convicted of a criminal offence or, in Scotland, an extract conviction, shall be conclusive evidence of the offence committed.*

*(4) Production of a certificate signed by an officer of a regulatory body that has made a determination about the fitness to practice of a person shall be conclusive evidence of the facts found proved in relation to that determination.*

*(5) The only evidence which may be adduced by the practitioner in rebuttal of a conviction or determination certified in the manner specified in paragraph (3) or (4) is evidence for the purposes of proving that he is not the person referred to in the certificate or extract.’*

### The Tribunal’s Analysis of the Evidence and Findings

19. The Tribunal has considered each paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

Paragraph 1

20. The Tribunal had regard to the Extract of Conviction, which was received by the GMC on 21 February 2023. The document recorded that Dr Gill was, on 19 May 2022, convicted of the offence as outlined at paragraph 1 of the Allegation, and was signed by an Assistant Clerk of the Justiciary.

21. It also noted that there was no indication that Dr Gill disputed that he was the person referred to in the Extract of Conviction.

22. In the circumstances the Tribunal concluded that the GMC had discharged its burden of proof.

23. Accordingly, the Tribunal found paragraph 1 of the Allegation proved.

Paragraph 2(a) and (b)

24. The Tribunal considered whether, on 15 June 2022, Dr Gill was sentenced to be committed to prison for four years, and thereafter comply with the notification requirements under Part 2 of the Sexual Offences Act 2003 for an indefinite period.

25. The Tribunal noted that that the wording of the sentence mirrored the wording of the Extract of Conviction.

26. Having had regard to the Certificate of Conviction, the Tribunal was satisfied that Dr Gill was sentenced as outlined. Accordingly, the Tribunal found paragraph 2 of the Allegation proved.

**The Tribunal's Overall Determination on the Facts**

27. The Tribunal has determined the facts as follows:

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

1. On 19 May 2022 at Edinburgh High Court you were convicted of rape, contrary to Section 1 of the Sexual Offences (Scotland) Act 2009. **Determined and found proved**
2. On 15 June 2022 you were sentenced to:
  - a. four years imprisonment; **Determined and found proved**
  - b. comply with the notification requirements under Part 2 of the Sexual Offences Act 2003 for an indefinite period. **Determined 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**

#### **Determination on Impairment - 01/06/2023**

28. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Gill's fitness to practise is impaired by reason of his conviction.

#### **Submissions**

29. On behalf of the GMC, Ms Ferrario submitted that Dr Gill's fitness to practise is currently impaired by reason of his conviction. She submitted that the Tribunal should exercise its professional judgement in considering impairment in respect of its findings.

30. Ms Ferrario submitted that Dr Gill has been convicted of a serious offence, which involved the sexual assault and rape of a young, vulnerable female on their first meeting. She stated that Dr Gill displayed an extremely serious and very clear breach of the fundamental tenets of the profession.

31. Ms Ferrario stated that, although Dr Gill maintains his innocence, as he is entitled to do, the GMC would have expected to have seen some form of reflection from Dr Gill both in relation to Ms A and in respect of the reputation of the profession as a result of his conviction. She submitted that there is no evidence from Dr Gill that he has taken any time to reflect about the guilty finding, the conviction or any harm caused to the victim or the

profession. There is no evidence of his having accepted responsibility; any reflection; any attempt at remediation; any insight.

32. Ms Ferrario reminded the Tribunal of the overarching objective set out in the Medical Act 1983, as amended, and submitted that an ordinary well-informed member of the public would be shocked if the Tribunal did not find impairment. She submitted that if no such finding were made, public confidence in the profession and potentially in the regulator could be undermined. She submitted that as the conduct the subject of the conviction was so egregious and abhorrent, Dr Gill's fitness to practise should be found impaired on both a personal level, given the absence of any remediation and insight, and in the wider public interest, given the potential damage to the reputation of the profession and the need to uphold and maintain standards of conduct in the profession.

### The Relevant Legal Principles

33. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof. The decision in respect of impairment is a matter for the Tribunal's judgement alone.

34. The Tribunal must determine whether Dr Gill's fitness to practise is impaired today, taking into account Dr Gill's conduct at the time of the events and any relevant factors since then including whether the matters found proved are remediable, whether there has been any attempt to address them and the likelihood of repetition.

35. Further, whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in her report to the *Fifth Shipman Inquiry*, as adopted by the High Court in *CHRE v NMC and Paula Grant* [2011] EWHC 297 Admin. The Tribunal noted two features to which she referred which she stated are likely to be present when a doctor's fitness to practise is found to be impaired:

a. ....

b. *Has in the past and/or is liable in the future to bring the medical profession into disrepute; and/or*



*c. Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

*d. ....*

36. The Tribunal also took into account the statutory overarching objective, namely to:
- protect and promote the health, safety and wellbeing of the public;
  - promote and maintain public confidence in the medical profession; and
  - promote and maintain proper professional standards and conduct for the members of the profession.

### **The Tribunal's Determination on Impairment**

37. The Tribunal first considered the detail of the case, which involved the rape of a young vulnerable woman. That sexual assault was not limited to a single act of penetration; it included several such acts as well as a variety of other sexual acts, none of which were consensual. Further the Tribunal noted that Dr Gill engaged in an element of deception in that he led Ms A to believe that the toilets on the ground floor of the hotel where they had met not were available for her use and, in that context, invited her up to his bedroom. Further, there was evidence that she was distressed and in pain during the assault.

38. The Tribunal concluded that behaviour such as this breached a fundamental tenet of the profession, namely that doctors should be trustworthy and act openly, honestly and with integrity. The Tribunal further concluded that by his actions and subsequent conviction, Dr Gill will have brought the profession into disrepute.

39. The Tribunal next considered whether Dr Gill's conduct was capable of being remedied, has been remedied, and whether it was unlikely to be repeated. In so doing, the Tribunal looked for evidence of remorse, remediation and insight.

40. The Tribunal did not consider that the conduct that was the subject of the conviction was easily capable of remediation. In any event, it did note that Dr Gill has not provided any evidence of remorse, reflection or remediation such as to demonstrate that he has developed some insight into his behaviour. In the absence of that evidence, and given the

fact that the behaviour was sexually motivated, the Tribunal concluded that there is a risk of repetition of some, if not all, the aspects of his behaviour.

41. The Tribunal had regard to the statutory overarching objective. It was satisfied that Dr Gill's conduct and conviction engaged all three limbs. It considered that a member of the public in full knowledge of the facts of the case would be concerned about a doctor acting in that way. He was convicted of a serious crime and was sentenced to a term of four years imprisonment. The Tribunal was also of the view that given the serious nature of Dr Gill's conviction, public confidence in the profession, the regulator and the MPTS would be seriously undermined if a finding of impaired fitness to practise were not made. The Tribunal also considered that a finding of impaired fitness to practise was required to declare and uphold proper standards of behaviour and to maintain public confidence in the profession.

42. The Tribunal has therefore determined that Dr Gill's fitness to practise is impaired by reason of his conviction.

#### Determination on Sanction - 02/06/2023

43. Having determined that Dr Gill's fitness to practise is impaired by reason of his conviction, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

#### Submissions

44. On behalf of the GMC, Ms Ferrario submitted that the appropriate sanction in this case is one of erasure. She referred the Tribunal to Good Medical Practice (2013) ('GMP'), particularly paragraphs 1 and 65 which state:

*'1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.*

...

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

45. Ms Ferrario also referred the Tribunal to the Sanctions Guidance (2020) (‘the SG’) and went on to identify aggravating and mitigating features of the case. She acknowledged that Dr Gill has no prior criminal convictions, nor does he have any past fitness to practice findings.

46. Ms Ferrario submitted that this was a conviction for a very serious sexual offence and that there was some evidence that this was a premeditated event that had been planned by Dr Gill. She directed the Tribunal to a witness statement from an employee of the hotel who said that the public toilets downstairs were not out of use, contrary to the information which Dr Gill gave to Ms A when he invited her to use the facilities in his own room in the hotel. She referred to the hotel booking which Dr Gill had made in advance which was for two persons. She submitted that the evidence suggested that Ms A was affected by the drink in the white mug which Dr Gill handed to her in his room. In her witness statement she said:

*“I took a drink from the mug and it was really strong, more gin than lemonade. I had a couple of sips and that was me. I think I only drank half the drink...  
...  
I don't know if he said anything, my eyes got really heavy, I have never felt that tired. I was aware of what was going on its hard to describe. I felt so tired unable to move, nothing physically was stopping me moving but I felt as if there were weights on top of me stopping me from moving.”*

47. Ms Ferrario submitted that Ms A was a vulnerable young woman, although she accepted that there was no evidence that Dr Gill knew that. She submitted that Ms A endured both physical and mental harm by virtue of Dr Gill’s actions, although she accepted that the evidence suggested that the physical harm was limited to a feeling of soreness and the mental harm to distress during the incident. Ms A was interviewed shortly after the incident and said that her mental health was settled. There were no medical reports.

48. Ms Ferrario submitted that this is not a case where there are any exceptional circumstances warranting the Tribunal taking no action against Dr Gill. Further, the imposition of conditions would not be appropriate because they would not address the

gravity of the offence for which Dr Gill was convicted. She submitted that a well-informed member of the public would be extremely shocked if they were to learn that Dr Gill was not removed from the medical register; that would inevitably lead to damage to public confidence in the medical profession and the regulator. She submitted that Dr Gill's conviction was so serious that action is needed to maintain public confidence in the profession and that the only appropriate sanction in this case was one of erasure.

### **The Relevant Legal Principles**

49. The Tribunal reminded itself that the decision as to the appropriate sanction to impose, if any, was a matter for it alone, exercising its own judgment. In reaching its decision on sanction, the Tribunal had regard to the SG. It bore in mind that the purpose of a sanction is not to be punitive, but to protect patients and the wider public interest, although it noted that any sanction imposed may have a punitive effect. It reminded itself that in deciding what sanction, if any, to impose, it should consider the sanctions available, starting with the least restrictive.

50. Throughout its deliberations, the Tribunal had regard to the overarching objective, which includes the protection of the public, the maintenance of public confidence in the profession, and the promotion and maintenance of proper professional standards and conduct for members of the profession. It applied the principle of proportionality, balancing Dr Gill's interests with the public interest.

### **The Tribunal's Determination on Sanction**

51. The Tribunal first identified what it considered to be the mitigating and aggravating factors in this case.

#### Mitigating factors

52. The Tribunal identified the mitigating factors. The Tribunal took into account that Dr Gill has no previous convictions or prior fitness to practise proceeding. Further there is no evidence of Dr Gill reoffending since 2018.

53. The Tribunal noted that until such time as he was suspended by an Interim Orders Tribunal, Dr Gill was working for NHS Lothian Public Health to support the covid-19 vaccination programme and the Covid-19 Test and Protect system where he was making '*a valuable contribution*'. This deployment was in a non-patient facing role. The medical

director wrote on 29 July 2021 that Dr Gill had been open and honest about the charge which he faced and had kept his employer and the GMC fully informed at all stages.

#### Aggravating factors

54. The Tribunal considered that a significant aggravating factor was that this was a conviction for a serious sexual offence. The Tribunal noted that this had taken place in Dr Gill's personal life, but that his conduct was so serious it nonetheless had a significant impact on the reputation of the profession.

55. The Tribunal also considered Dr Gill's persistent lack of insight as an aggravating factor. The Tribunal would have expected to see some remediation or reflection, irrespective of Dr Gill's maintained innocence, into the impact which his conviction will have had on the profession and on Ms A.

56. The Tribunal also took into account that there were elements of deception in Dr Gill's behaviour in order to invite Ms A to come to his hotel room. Once there he exploited her condition, namely her consumption of alcohol that evening. It noted that Ms A had consumed approximately four drinks over the course of several hours in the bar area and was in her own words '*tipsy*'. Dr Gill then, once in his hotel room, offered her a further strong drink which had a significant effect on her, in that she felt tired to the point of feeling heavy or weighed down.

57. The Tribunal also accepted that Ms A was a vulnerable young woman, although there was no evidence before it that Dr Gill was aware of her specific vulnerabilities.

58. The Tribunal also considered that there was an element of force used at various points, consistent with non-consensual sexual assault. However, there is no evidence before the Tribunal that Ms A suffered any specific physical or mental harm as a result of the assault. The Tribunal was satisfied that Dr Gill's actions caused pain and distress to Ms A.

59. The Tribunal balanced the aggravating and mitigating factors throughout its deliberations and went on to consider each sanction in order of ascending severity, starting with the least restrictive.

#### No action

60. The Tribunal first considered whether to conclude the case by taking no action. It noted that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

61. The Tribunal was satisfied that there were no exceptional circumstances in Dr Gill's case which could justify it taking no action. Further the Tribunal considered that concluding the case by taking no action would be insufficient to protect the public interest and would not mark the seriousness of Dr Gill's underlying conduct or convictions.

#### Conditions

62. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Gill's registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable. The Tribunal noted that conditions may be workable where a doctor has insight into their misconduct, where a doctor is likely to comply with conditions, and where a doctor is likely to respond positively to remediation or retraining. The Tribunal considered that none of these apply in Dr Gill's case.

63. The Tribunal further considered that no workable or measurable conditions could be formulated which would address the seriousness of Dr Gill's conviction and the conduct which lay behind it. It concluded that conditions would be insufficient to maintain public confidence in the profession or to promote and maintain standards for members of the profession.

#### Suspension

64. The Tribunal determined that in light of the seriousness of Dr Gill's conviction, action must be taken to maintain public confidence in the profession and to uphold proper standards of its members.

65. In considering whether to impose a period of suspension on Dr Gill's registration, the Tribunal had regard to paragraphs 92, 93, and 97(a), (f) and (g) of the SG which provide:

**'92** *Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible*

*with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).’*

The Tribunal recognised that the most significant issue for it in this case will be whether Dr Gill’s conduct is fundamentally incompatible with continued registration. However it considered the further paragraphs of the SG insofar as they are relevant to an order of suspension.

**‘93** *Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions.*

...

**97** *Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.*

**a** *A serious breach of Good medical practice, but where the doctor’s misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.*

...

**f** *No evidence of repetition of similar behaviour since incident.*

**g** *The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.’*

66. The Tribunal had regard to its findings that Dr Gill had breached a number of paragraphs of GMP including paragraphs 1 and 65 and its finding that his underlying conduct and conviction breached a fundamental tenet of the profession. The Tribunal was satisfied that the identified breaches represented a significant departure from GMP.

67. The Tribunal also had regard to its findings on insight and remediation. There was no evidence upon which the Tribunal could place reliance that Dr Gill would be prepared to engage in remediation or that any such engagement would be successful.

68. In considering whether Dr Gill's conduct was fundamentally incompatible with continued registration, the Tribunal took into account the very serious nature of the crime for which Dr Gill has been found guilty of, and the custodial sentence that he is currently serving.

69. The Tribunal was of the view that, given the seriousness of Dr Gill's conduct which led to his conviction and the fact that his custodial sentence does not come to an end until June 2026, it could not conclude that a sanction of suspension was the appropriate sanction. It would not protect the public interest nor meet the statutory overarching objective. The Tribunal was satisfied that the circumstances of Dr Gill's case were such that his underlying conduct and conviction for rape is fundamentally incompatible with continued registration.

#### Erasure

70. Having concluded that Dr Gill's conduct and conviction would be fundamentally incompatible with continued registration, the Tribunal nonetheless went on to consider whether the sanction of erasure was appropriate and proportionate.

71. The Tribunal had regard to paragraphs 107 and 109 (a), (b), (f) and (j) of the SG and considered they were particularly relevant in Dr Gill's case:

**'107** *The tribunal may erase a doctor from the medical register in any case – except one that relates solely to the doctor's health and/or knowledge of English – where this is the only means of protecting the public*

...



- 109** *Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).*
- a** *A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.*
  - b** *A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.*
  - ...
  - f** *Offences of a sexual nature, including involvement in child sex abuse materials (see further guidance below at paragraphs 151 - 159).*
  - ...
  - j** *Persistent lack of insight into the seriousness of their actions or the consequences.'*

72. For the reasons previously set out in the determination, the Tribunal was satisfied that Dr Gill's underlying conduct engaged each of the above paragraphs.

The Tribunal concluded that Dr Gill's conviction was fundamentally incompatible with continued registration. Dr Gill's offending behaviour was morally unacceptable and seriously undermines patients' and the public's trust and confidence in the medical profession.

73. The Tribunal considered that a sanction of erasure is the only sanction that would protect patients, mark the seriousness of the conviction, maintain public confidence in the profession, the regulator and the regulatory process and meet each of the three limbs of the statutory overarching objective.

74. The Tribunal has therefore directed that Dr Gill's name be erased from the Medical Register.

**Determination on Immediate Order - 02/06/2023**

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

**Submissions**

76. On behalf of the GMC, Ms Ferrario submitted that it was necessary for an immediate order to be imposed. She referred the Tribunal to the relevant paragraphs of the SG, and to its determinations on Impairment and Sanction and submitted that an immediate order ought to be put in place to protect public confidence in the profession.

**The Tribunal's Determination**

77. In reaching its decision, the Tribunal considered the relevant paragraphs of the SG and exercised its own independent judgement. In particular, it took account of paragraphs 172, 173 and 178, which state:

*'172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.*

*173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.*

...

*178 Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.'*

78. The Tribunal determined that, for all the reasons it has already set out in making its determination on sanction, it is in the public interest to make an order suspending Dr Gill's registration with immediate effect, to protect patient safety, uphold and maintain professional standards and maintain public confidence in the profession.

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

80. The interim order will be revoked when the immediate order takes effect.

81. That concludes this case.

**ANNEX A – 31/05/2023**

**Service and Proceeding in Absence**

82. Dr Gill was neither present nor legally represented at this hearing. The Tribunal noted that in order to proceed with the hearing in Dr Gill's absence, it needed to be satisfied that Dr Gill had been properly served with notice of the hearing and that it was appropriate for the hearing to proceed in his absence.

83. The Tribunal was provided with a copy of a Service Bundle from the General Medical Council (GMC). The Service Bundle indicates that on 11 April 2023 the GMC sent a letter to Dr Gill and enclosed a copy of the Allegation and the bundle. A signed handwritten letter was received from Dr Gill on 20 April 2023, in which he acknowledged receipt of the GMC letter and stated he would not be attending or represented at the hearing.

84. The Tribunal also noted that, on 26 April 2023, the MPTS sent Dr Gill Notice of the hearing by letter via the Prison Governor at HMP XXX, confirming that the hearing would commence on 31 May 2023 and that it was expected to last three days, and that the hearing would be held virtually. The MPTS email also requested confirmation from Dr Gill as to whether he would be attending and provided information as to the support available in relation to the hearing. Further, the Tribunal noted the Confirmation of delivery by the Royal Mail dated 27 April 2023.

**GMC's Submissions**

85. On behalf of the GMC, Ms Ferrario took the Tribunal through the service bundle and highlighted that the Notice of Hearing had been sent to Dr Gill by post to his location in prison, as confirmed by the prisoner location service. She invited the Tribunal to conclude that service had been effected in accordance with the GMC (Fitness to Practise) Rules 2004, as amended ('the Rules').

86. Ms Ferrario invited the Tribunal to consider Rule 31 of the Rules which provides that where a practitioner was neither present nor represented, the Tribunal may nevertheless proceed to consider and determine the allegation if it is satisfied that all reasonable efforts have been made to serve the practitioner with notice of the hearing in accordance with the Rules. She submitted that Dr Gill has responded to some of the correspondence sent to him, and he has confirmed that he would not be attending today's hearing. She submitted that all

reasonable efforts have been made to serve the documents in accordance with the Rules and the hearing should proceed in the absence of Dr Gill.

### **Tribunal's Determination**

#### Service

87. The Tribunal had regard to Rule 40(2) of the Rules which provides that a notice or document required to be served under the Rules may be served by ordinary post. Rule 40(4) provides that service of any notice or document under the Rules may be proved by a number of methods including a confirmation of posting issued by or on behalf of the Post Office or other postal operator or delivery service.

88. In light of the evidence of letters containing the Notice of Allegation and the Notice of Hearing being served by post to Dr Gill via the governor of the prison where he currently resides, the Tribunal was satisfied that Dr Gill had been properly served with the Notice of Hearing in accordance with Rules 15 and 40 of the Rules.

#### Proceeding in Dr Gill's Absence

89. In making its determination the Tribunal noted that the decision as to whether or not the hearing should proceed in Dr Gill's absence was a matter for its discretion and that such discretion was to be exercised with great care and caution. It also took into account that Dr Gill is currently serving a custodial prison sentence.

90. The Tribunal had regard to the legal authority of *R v Hayward, Jones & Purvis* [2001] QB 862 CA, which states that a defendant has a right to be present at a trial and a right to be legally represented but that those rights can be waived where a defendant voluntarily absents themselves from a trial and/or withdraws instructions from those representing them. The Tribunal also had regard to the case of *General Medical Council v Adeogba* [2016] EWCA Civ 162.

91. The Tribunal noted that Dr Gill had responded to some of the correspondence sent to him and stated he would not be attending or represented at the hearing. It also noted that it was Dr Gill's responsibility to keep his registered address and contact information up to date, in accordance with S30 of the Medical Act 1983, and that the letter had been sent to the substituted address at which Dr Gill has been confirmed to reside during his incarceration. The Tribunal also noted that this was a virtual hearing and therefore any concerns regarding

Dr Gill's ability to attend the hearing and the cost thereof have been mitigated. In light of the information before it, the Tribunal was satisfied that Dr Gill had voluntarily absented himself from this hearing.

92. The Tribunal considered whether an adjournment would result in Dr Gill attending the hearing. Setting aside that there had been no application for an adjournment, there was no evidence before the Tribunal that an adjournment would result in Dr Gill attending. The Tribunal formed that view that Dr Gill had made it clear in his correspondence with the GMC and MPTS that he did not intend to attend.

93. The Tribunal noted that any decision to proceed in Dr Gill's absence would inevitably result in prejudice to him including that it may not necessarily have all of the information which Dr Gill would wish to present. However, the Tribunal considered that any such prejudice must be balanced against other factors including the statutory overarching objective and the public interest. The Tribunal noted that the public interest included ensuring that a hearing should take place within a reasonable time of the events to which it related and the need for a fair economic, expeditious and efficient disposal of the hearing. These matters should be balanced against any prejudice to Dr Gill.

94. The Tribunal noted that part of its role was to ensure a fair hearing notwithstanding Dr Gill's absence. The Tribunal observed that all reasonable efforts had been made to inform Dr Gill of today's hearing. The Tribunal also noted that no application has been made to adjourn and there was no evidence to indicate that that an adjournment would result in his attendance. The Tribunal balanced these facts against the statutory overarching objective, the fair, economic, expeditious and efficient disposal of the proceedings and the public interest.

95. The Tribunal considered that, while Dr Gill's input would be of great importance for it when considering the case, the fact that the Tribunal would not have this to hand did not outweigh all of the identified factors in proceeding in his absence. Having considered each of the relevant factors, the Tribunal determined that the balance of all of the relevant factors fell in favour of proceeding with the hearing in Dr Gill's absence.