

PUBLIC RECORD

Dates: 29/03/2021 - 07/04/2021

Medical Practitioner's name: Dr Mark McCLURE
GMC reference number: 3488511
Primary medical qualification: MB BCh 1991 Queens University of Belfast

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

Summary of outcome

Erasure

Immediate order imposed

Tribunal:

Legally Qualified Chair	Ms Chitra Karve
Lay Tribunal Member:	Ms Gail Mortimer
Medical Tribunal Member:	Dr Edward Smith
Tribunal Clerk:	Mr Stuart Peachey

Attendance and Representation:

Medical Practitioner:	Present and not represented
GMC Representative:	Mr Peter Atherton, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts and Impairment - 31/03/2021

Rule 41

1. The Tribunal determined that, pursuant to Rule 41 of the Rules, the hearing would be held partly in public and private. This determination will be announced in private XXX. However, a redacted version will be published at the close of the hearing. The Tribunal's determination on this matter can be found at Annex A.

(1) THE FACTS

2. At the outset of these proceedings Dr McClure admitted the entirety of the Allegation. The Tribunal therefore announced the Allegation as admitted and found proved.

3. The admitted facts of Dr McClure's case are as follows:

Conviction

1. On 2 February 2017 at Lisburn Magistrates' Court you were:

a. convicted of:

- i. installing equipment or constructing or adapting a structure or part of a structure on 18 February 2015 with the intention of enabling yourself or another to commit an offence under Article 71(1) of the Sexual Offences (Northern Ireland) Order 2008, contrary to Article 71(4) of the Sexual Offences (Northern Ireland) Order 2008;

Admitted and found proved

- ii. installing equipment, namely an Apple iPhone, on 23 February 2015 with the intention of enabling yourself or another to commit an offence under article 71(1) of the Sexual Offences (Northern Ireland) Order 2008, contrary to Article 71(4) of the Sexual Offences (Northern Ireland) Order 2008;
Admitted and found proved
 - b. sentenced to a Probation Order comprising of a period of supervision for nine months from the date of the Order.
Admitted and found proved
- 2. On 15 December 2020 at Craigavon Crown Court you were:
 - a. convicted of:
 - i. recording another person between 9 July 2014 and 23 December 2014, for the purpose of sexual gratification, doing a private act knowing that the other person did not consent to being recorded for sexual gratification contrary to Article 71(3) of the Sexual Offences (Northern Ireland) Order 2008;
Admitted and found proved
 - ii. seven counts of recording another person between 8 August 2014 and 23 December 2014, for the purpose of sexual gratification, doing a private act knowing that the other person did not consent to being recorded for sexual gratification contrary to Article 71(3) of the Sexual Offences (Northern Ireland) Order 2008;
Admitted and found proved
 - iii. three counts of installing equipment or constructing or adapting a structure or part of a structure between 8 August 2014 and 23 December 2014 with the intention of enabling yourself or another to commit an offence under Article 71(1) of the Sexual Offences (Northern Ireland) Order 2008, contrary to Article 71(4) of the Sexual Offences (Northern Ireland) Order 2008;
Admitted and found proved
 - b. sentenced to:
 - i. nine months' imprisonment;
Admitted and found proved
 - ii. a Sexual Offences Prevention Order for a period of seven years;

Admitted and found proved

- iii. sign the Sex Offenders Register for a period of ten years.
Admitted and found proved

XXX

(2) IMPAIRMENT

4. Having announced the facts admitted and found proved, in accordance with Rule 17(2)(k) of the Rules, the Tribunal then considered whether, on the basis of the facts which it has found proved, Dr McClure's fitness to practise is currently impaired by reason of his conviction, XXX.

Background

5. The Tribunal does not intend to rehearse the full agreed factual background of this case beyond the following summary:

6. At the time of the Allegation, Dr McClure was a Consultant Radiologist employed in a private capacity at the Hillsborough Private Clinic ('the Clinic'). Dr McClure was also employed as a National Health Service ('NHS') Consultant Radiologist by the Southern Trust operating out of Craigavon Area Hospital.

7. During the course of his employment as a Consultant Radiologist at the Clinic, Dr McClure installed his mobile telephone into the air vent of a unisex toilet which was for use by both staff and patients at the Clinic. The mobile telephone was positioned and pointed towards the toilet. Dr McClure secured the mobile telephone into place using wetted toilet paper as support for the mobile telephone. He set the mobile telephone on record and left it in the air vent while still recording. Dr McClure's actions were detected by nursing staff at the Clinic who then discovered the mobile phone following their investigation.

8. At 00:15, on 24 February 2015, the Police arrested Dr McClure at his residential address for one count of Voyeurism. Dr McClure was cautioned to which he gave no reply. A search was conducted at Dr McClure's registered address resulting in several computers, external storage devices and other data storage items being seized.

9. On 2 February 2017, at Lisburn Magistrates' Court, Northern Ireland, Dr McClure had pleaded guilty and was convicted of two counts of committing an offence under Article 71(1) of the Sexual Offences (Northern Ireland) Order 2008, contrary to Article 71(4) of the Sexual Offences (Northern Ireland) Order 2008. On 2 February 2017, Dr McClure was sentenced to a Probation Order comprising of a period of supervision for nine months from the date of the Order which was deemed desirable for protecting the public from harm and preventing Dr McClure from reoffending.

10. In June 2017, Dr McClure's electronic devices were submitted for forensic examination. The forensic report outlined that images found were thumbnails of videos that were recorded from Dr McClure's mobile phone from 2014 that pre-dated the initial criminal allegations of 2015. The videos can be broken down to three separate locations: Dr McClure's home address, Craigavon Area Hospital and unspecified hotels. There were three identified victims and five unidentified victims. During a Police interview, Dr McClure identified the two women recorded at his home address (XXX); the third victim was identified by staff at Southern Health & Social Care Trust. The identified victims had no suspicions they had been recorded. Dr McClure stated at the time of his initial arrest and subsequent conviction in 2017 he was advised there was no other footage found on devices that had been seized, and was therefore surprised to be arrested for a second time.

11. In relation to those offences, Dr McClure admitted to sexual arousal seeing some of the victims in a state of undress but claimed that this was not a usual feeling of arousal that he would experience when being sexual intimate with a consenting partner. Whilst he described feeling inadequate, he experienced a compulsion to engage in this behaviour, despite knowing it was wrong and extremely risky.

12. On 20 April 2020, Dr McClure's case was referred to the Medical Practitioners Tribunal Service by the GMC. The reason for the referral was solely in relation to Dr McClure's conviction at Lisburn Magistrates Court, Northern Ireland, for those offences he had committed in 2015 (Paragraphs 1 and 2 of the Allegation).

13. This case was listed to be heard in November 2020 as part of a conviction XXX. In October 2020, the GMC was informed that Dr McClure had pleaded guilty at Craigavon Crown Court, Northern Ireland, to 11 offences in 2014, predating his 2015 offences (Paragraphs 3 and 4 of the Allegation).

14. On 9 February 2021, Dr McClure's latest conviction was referred to the MPTS under Rule 5(1) of the Rules and was joined with the original Allegation on 10 February 2021. This Tribunal is seized of all these matters.

The Evidence

15. The Tribunal took account of the documentary evidence provided to it. The GMC provided the Tribunal with the following documentation which included, but was not limited to:

- PSNI Disclosure, dated 3 April 2017;
- Certificates of Conviction, dated 23 May 2017 and 6 January 2021;
- XXX
- Email correspondence between the Probation Board for Northern Ireland enclosing a Pre-Sentence Report regarding Dr McClure's 2017 convictions, dated 28 October 2020; and

- Pre-Sentence Report regarding Dr McClure’s 2020 convictions, dated 30 November 2020.

16. Dr McClure also provided the Tribunal with the following documentation which included, but was not limited to:

- Personal statement, dated 1 March 2021;
- Medical Appraisal, dated 2019;
- Colleague feedback output summary, dated 2019 to 2020;
- Medica Audit Report, dated 2019 to 2020;
- Five certificates of attendance to support Dr McClure’s Continuing Professional Development (‘CPD’);
- Letter from Mr A, Dr McClure’s Responsible Officer (‘RO’), dated 7 September 2020;
- Letters from Dr B, Clinical Director of Medica, dated 11 November 2020; and 16 November 2020;
- XXX;
- Various emails in relation to positive feedback on Dr McClure’s work;
- Dr McClure’s five-year CPD record; and
- Dr McClure’s Curriculum Vitae (‘CV’).

Submissions

17. The following is a summary of submissions made at the impairment stage.

Submissions on behalf of the GMC

18. Mr Peter Atherton, Counsel, submitted that Dr McClure’s fitness to practise is currently impaired by reason of his conviction XXX. He directed the Tribunal’s attention to Good Medical Practice (2013 edition) (‘GMP’), specifically paragraphs 36 and 65 when making its determination.

19. Mr Atherton directed the Tribunal’s attention to Section 35(c) of the Act which stated that a conviction shall be a ground for finding a doctor’s fitness to practise is impaired.

20. Mr Atherton submitted that a finding of impairment is necessary in this case. He directed the Tribunal to passages in the pre-sentencing reports prepared by the probation service of both the 2017 and 2020 criminal proceedings. In these reports, the authors assessed that Dr McClure needed to gain insight into the matters which resulted in his conviction. He also directed the Tribunal’s attention to XXX highlighted within the Pre-sentencing reports. However, Mr Atherton acknowledged, given the shortness of the period of the probation and his sentence, Dr McClure had not been in a position to pursue and benefit from XXX.

Dr McClure's submissions

21. Dr McClure rehearsed his professional background and achievements since becoming a medical practitioner. He stated that he has had an exemplary career and was well liked by both colleagues and patients, as evidenced within his 2014 Appraisal and 360 Feedback.
22. Dr McClure submitted that he has worked within and adhered to the restrictions placed on his registration.
23. Dr McClure submitted that XXX that had become more prevalent over the period spanning the allegations. He said this was also the time he discovered XXX.
24. Following the first conviction, Dr McClure submitted that he has become XXX. He stated that he has XXX for his court hearings in 2015 and 2020.
25. Dr McClure submitted that he has discussed his actions with his friends and family, XXX. He stated that he has a number of close friends who have remained loyal despite the convictions. He stated that he had engaged with probation in 2017 XXX. He submitted that since his imprisonment he has been able to reflect further on his offending behaviour and the effect it had had on the victims.
26. Dr McClure submitted that after his first conviction he had been employed with Medica Group ('Medica') for four to five hours a day working from home analysing radiographical images. Further, he stated that he worked at night doing emergency work from 22:00 to 04:00. He submitted that his work with Medica complied with the conditions imposed on his registration as he was not seeing patients.
27. Dr McClure directed the Tribunal's attention to XXX. Further, he directed the Tribunal's attention to the 2020 Pre-sentence report, specifically in relation to the heading '*risk of serious harm to the public*', where it stated:
- 'Whilst acknowledging the concerns it was the decision of the Risk Management Meeting that Mr McClure did not meet the threshold to be assessed as posing a Significant Risk of Serious Harm to others based on the following factors:*
- *Reported stability in general lifestyle;*
 - *Some evidence of improving insight into motivation to offend;*
 - *Reported willingness to further explore pathway to offending; and*
 - *Reported willingness to engage in identified intervention in a meaningful capacity'.*
28. Dr McClure submitted that he is expecting an early release from prison on 26 April 2021.
29. XXX.

30. Dr McClure submitted that in relation to his current fitness to practise, he is in a better and happier place and position than he was seven years ago at the time of the criminal allegations. He stated that he would have continued to work for Medica if it was not for the second court case in 2020. He submitted that he is clinically competent and has developed better coping strategies to deal with stress. Dr McClure accepted that at the time of the convictions, his fitness to practise was impaired. He felt it was no longer impaired because of the amount of remediation he had undertaken. He pointed to his excellent work record with Medica during a very stressful time which evidenced better coping skills and indicated he would be willing to undertake any offence focussed work as recommended.

31. Dr McClure submitted that, following his sentence, he wants to continue to work from home with Medica. From a personal point of view, he stated that he misses seeing patients and camaraderie with colleagues and patients. However, he submitted that if he returned to work in a hospital setting, he might be at risk of being falsely accused and at this point, he would have very little defence to such an accusation. He submitted that if the Tribunal were to revoke the current restrictions in place on his registration, he would still continue to work from home until he is ready to go into a hospital environment.

The Relevant Legal Principles

32. The Tribunal had regard to the advice given by the Legally Qualified Chair during the course of these proceedings.

33. The Tribunal had at the forefront of its mind all three limbs of the overarching objective of the GMC set out in section 1 of the Medical Act 1983 (as amended) to:

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

34. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the *Fifth Shipman Report*, as adopted by the High Court in *Grant*. In particular, the Tribunal considered whether its findings of fact showed that Dr McClure fitness to practise is impaired in the sense that he:

- a. *'Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. *Has in the past brought 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; [...]*

35. The Tribunal bore in mind that it must determine whether Dr McClure's fitness to practise is currently impaired by reason of conviction XXX, taking into account his conduct at the time of the events and any other relevant factors.

The Tribunal's Determination on Impairment

36. In determining whether a finding of current impairment of fitness to practise is necessary, the Tribunal looked for evidence of insight and remediation, and the likelihood of repetition, balanced against the three elements of the overarching statutory objective. The Tribunal considered that insight is important in order for a doctor to recognise areas of their practice and/or behaviour that require improvement and to take appropriate and relevant steps to address them, thus reducing the likelihood of repetition.

37. The Tribunal considered the paragraphs of GMP which set out the standards that a doctor must continue to meet throughout their professional career. The Tribunal had particular regard to paragraphs 36 and 65 of GMP when making its determination, that state:

36 *'You must treat colleagues fairly and with respect'.*

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

38. The Tribunal also had regard to the introductory page of GMP entitled *'The duties of a doctor registered with the General Medical Council'* and in particular the paragraph entitled *'Maintaining trust'* which states that doctors must *'Never abuse your patients' trust in you or the public's trust in the profession [...]*.

39. The Tribunal applied the above standards of GMP to the facts found proved.

XXX

40. XXX.

41. XXX.

42. XXX.

43. XXX.

44. XXX.

45. XXX.

Impairment by reason of Conviction

46. The Tribunal next considered whether Dr McClure's fitness to practise is currently impaired by reason of his conviction.

47. The Tribunal first of all had regard to Dr McClure's conviction in December 2020, which involved eight counts that between 8 August 2014 and 2 December 2014, Dr McClure installed electronic equipment at a hospital, unspecified hotels and at his residential address so as to record victims without their knowledge or consent.

48. The Tribunal also had regard to Dr McClure's conviction in February 2017, which involve two counts that in February 2015 he installed electronic equipment in a hospital toilet to record victims without their knowledge or consent.

49. The Tribunal was of the view that Dr McClure's actions involved significant amounts of planning, targeting members of the public, colleagues and family members. It was not an isolated incident and he demonstrated a pattern of offending behaviour between August 2014 and February 2015. Further, it was concerned that some of these actions had taken place in a hospital environment in which patients could have been recorded. The Tribunal was of the view that Dr McClure's actions in this regard were serious, were a breach of the standards outlined in GMP, and had brought the profession into disrepute.

50. In relation to the test set out by Dame Janet Smith, the Tribunal considered the following applied to Dr McClure's case:

- a. Whilst there is no evidence of patient harm, the Tribunal considered that there were some potential safeguarding implications engaged in this case as patients could have been placed at harm being recorded without knowledge or consent undertaking a private act in the toilet.
- b. Dr McClure's actions in the past have brought the medical profession into disrepute, given the serious nature of his conviction and conduct which warranted a prison sentence.
- c. Dr McClure's actions have breached the fundamental tenets of the medical profession, namely paragraphs 36 and 65 of GMP. It also considered that the serious nature of Dr McClure's conviction and conduct were inconsistent with standards of behaviour to be expected of a Medical Practitioner.

51. XXX.

52. XXX.

53. In his submission to the Tribunal, Dr McClure outlined the stressors which caused him to offend, which included XXX, overwork, XXX and XXX. It noted that he is now XXX and his statement that he is now in a *'good place'*.

54. Taking account of all the evidence in this case, the Tribunal concluded that Dr McClure has the ability to remediate his conduct and demonstrate insight into his actions. Whilst this has not been done to-date, the Tribunal was reassured that Dr McClure intended to XXX and apply coping mechanisms for the stressors which caused his offending in the first place. The Tribunal accepted that his conviction was linked to XXX.

55. The Tribunal considered that whilst Dr McClure has taken some positive steps, those steps are insufficient given that he has not addressed the main issues of this case. The Tribunal considered that Dr McClure has the ability to remediate his offending behaviour given his willingness to XXX, apply coping mechanisms for the triggering stressors, and his adherence to the restrictions currently in place on his registration. The Tribunal was concerned that when making his submissions to it on impairment, Dr McClure focussed on his record of good clinical practice. There are no allegations about his clinical practice and the Tribunal found that this continued focus was further evidence of his lack of insight into his offending behaviour.

56. Notwithstanding Dr McClure's limited insight and willingness to engage with XXX as to demonstrate remediation in the future, paragraph 1 of GMP makes it clear that acting with integrity is a cornerstone of the medical profession and the public expect doctors to meet this standard. A failure to act with integrity towards colleagues is a serious breach of the standards expected of a doctor and inevitably brings the medical profession into disrepute, especially when it involves a conviction. Given the serious nature of the conviction, the breaches of GMP and the fundamental tenet of the medical profession, public confidence in the profession would be seriously undermined if a finding of impairment was not made today.

57. Therefore, the Tribunal determined that Dr McClure's fitness to practise is currently impaired by reason of conviction in order to:

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

Determination on Sanction - 07/04/2021

Rule 41

1. This determination will be announced in private XXX. However, a redacted version will be published at the close of the hearing.

SANCTION

2. Having determined that Dr McClure’s fitness to practise is impaired by reason of his conviction XXX, the Tribunal has considered what action, if any, it should take with regard to his registration, in accordance with Rules 17(2)(n) of the Rules.

The Evidence

3. The Tribunal had regard to all of the evidence adduced during the course of these proceedings.

Submissions

4. The following is a summary of submissions made at the sanction stage.

Submissions on behalf of the GMC

5. Mr Atherton submitted that the appropriate and proportionate sanction in this case would be to erase Dr McClure’s name from the Medical Register. He directed the Tribunal’s attention to the Sanctions Guidance (November 2020 edition) (‘SG’) when making its determination.

6. Mr Atherton submitted that this is a serious case and was viewed as such by the Craigavon Crown Court which concluded that it was a ‘category 1’ case for sentencing purposes that possessed a starting point of 26 weeks imprisonment. He submitted that the sentence of nine months imprisonment had been an uplift from that.

7. Mr Atherton submitted that some of the victims were observed and recorded in Dr McClure’s residential address which indicated premeditation in planning the actions to record, and the actions were also an abuse of trust, notwithstanding the mitigating factors outlined in the pre-sentence reports.

8. Mr Atherton stated that the Tribunal should note the concerns regarding insight which were set out in XXX and the pre-sentence reports. He invited the Tribunal to consider the observations made about incomplete insight at this stage of the proceedings.

9. Mr Atherton submitted that a sanction of conditions would clearly be an insufficient means of discharging this case in line with the statutory over-arching objective. He submitted that no conditions could be formulated which would achieve that objective due to Dr McClure’s lack of insight and the seriousness of his convictions.

10. Mr Atherton submitted that no measures have been taken by Dr McClure to remedy the issues which may have contributed to offending of this type.

11. Mr Atherton submitted that he adopted the views that the Tribunal had expressed in its determination on impairment, namely that Dr McClure's focus has been primarily on his personal circumstances, particularly his attempts to highlight his professional competence which is not an issue in this case.

Dr McClure's submissions

12. Dr McClure invited the Tribunal to impose an order of conditions or in the alternative, to suspend his registration.

13. Dr McClure submitted that he has no previous criminal record and the offences occurred in a singular period of his life. He stated that the offences are historic in nature occurring in the latter half of 2014. He is very remorseful for the distress he has caused the victims, and he has evidenced a degree of rehabilitation and insight including victim empathy.

14. Dr McClure directed the Tribunal's attention to the Pre-sentence report for the 2020 convictions, where it is stated *'Mr McClure tells me he has reflected on his actions; he regrets his behaviour and feels ashamed. He has expressed feelings of remorse and regret for the harm caused to the victims and the impact on his family circle and professional colleagues'*.

15. Dr McClure submitted that he is aware of the serious nature of the offences and the consequences of them.

16. Dr McClure submitted that in terms of his rehabilitation, he has been very fortunate to have good support from his family and friends. He stated that it is important to be open and express one's feelings.

17. Dr McClure submitted that he had engaged with probation in 2017 and he has since joined a local church.

18. XXX.

19. Dr McClure submitted that he had admitted guilt and responsibility for his offences at the earliest opportunity. He stated that he is currently in prison where he has been able to further reflect on his offences and the impact they have had.

20. Dr McClure submitted that he has complied with the regulatory restrictions imposed on his registration. He stated that he had worked for a radiology reporting company, and directed the Tribunal's attention to his 2019/2020 Appraisal and 360 Feedback. Further, he stated that he was invited to be an auditor for this company, which indicated his continued clinical competence.

21. XXX.

22. Dr McClure submitted that he would only wish in the future to work remotely from home if he was allowed to continue practising as a doctor. He stated that he has no intention of undertaking hospital work.

The Relevant Legal Principles

23. The Tribunal took into account its earlier findings, Counsel's submissions, Dr McClure's submissions and the documentary evidence adduced during the course of these proceedings.

24. The Tribunal had regard to the advice given by the Legally Qualified Chair during the course of these proceedings.

25. The decision as to the appropriate sanction is a matter for this Tribunal's own independent judgement. The sanction must be proportionate and tailored to the specific circumstances of the case. In reaching its decision, the Tribunal took into account the SG and the statutory overarching objective, which includes the need to:

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

26. The Tribunal recognised that the purpose of a sanction is not to be punitive, although it may have a punitive effect. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr McClure's interests with the public interest.

The Tribunal's Determination on Sanction

Insight

27. Having regard to all the evidence adduced to it, the Tribunal considered that Dr McClure had demonstrated developing insight into his conviction. However, it remained concerned that while he evidenced some insight into the triggering stressors to his offending which included overwork, XXX and relationship difficulties, there was limited evidence of insight into the offending behaviour itself, which included the planning of the recording of colleagues and friends undertaking private acts. It also noted Dr McClure's sincere expression of regret and remorse for his actions and his positive engagement with criminal and regulatory proceedings.

28. XXX.

29. The Tribunal concluded that, with respect to insight, Dr McClure has been unable to demonstrate full insight and remediation into his offending during the course of these proceedings. Further, any coping mechanisms or abilities to manage stressors have not been properly tested following his convictions. Dr McClure has a significant way to go in demonstrating sufficient insight and remediation.

Mitigating and Aggravating Factors

Mitigating Factors

30. The Tribunal had regard to the following mitigating factors present in Dr McClure's case, namely:

- His previously unblemished record as a doctor and no evidence of any previous convictions;
- He has not repeated his actions since the convictions which took place six years ago;
- He has kept his knowledge and skills up-to-date and worked within the restrictions on his practice since his convictions. There are no concerns as to his clinical competence;
- He had work related and personal stressors at the time of his offending, XXX;
- He made full admissions to the entirety of the Allegation at the outset of these proceedings; and
- He has demonstrated remorse for his actions.

Aggravating Factors

31. The Tribunal balanced the above mitigating factors with the aggravating factors present in Dr McClure's case, namely:

- His significant breach of the fundamental tenets of the medical profession and GMP;
- His lack of insight, in particular with respect to the offending behaviour;
- The early stages of remediation in that he has not undertaken the offence focussed work that has been recommended for him. The Tribunal acknowledged that Dr McClure is willing to do this work, but that he has not yet had the opportunity;
- His abuse of his professional position, which also involved predatory behaviour;
- Conduct involving offences of a sexual nature;
- Premeditated, calculated offences involving several victims over a significant period of time;

- A criminal conviction which warranted a sentence of nine months imprisonment, a Sexual Offences Prevention Order, and a requirement to sign the Sex Offenders Register.

The Tribunal's Decision

32. In deciding what sanction, if any, to impose, the Tribunal reminded itself that it must consider each of the sanctions available, starting with the least restrictive, to establish which is appropriate and proportionate in this case.

No Action

33. The Tribunal first considered whether to conclude the case by taking no action. The Tribunal noted paragraphs 68 to 70 of SG.

34. The Tribunal was satisfied that there were no exceptional circumstances in Dr McClure's case which could justify it taking no action. It determined that, given the circumstances of this case and the serious nature of the Allegation, taking no action would be wholly inappropriate, inadequate and would not be in the public interest.

Conditions

35. The Tribunal then considered whether imposing an order of conditions on Dr McClure's registration would be appropriate. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable. The Tribunal had regard to paragraphs XXX 82(c)(d), 83 and 84(a)(c) XXX of the SG, which it considered were engaged in this case:

XXX

82 *'Conditions are likely to be workable where:*

[...]

c. the tribunal is satisfied the doctor will comply with them

d. the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised.

83 *'When deciding whether remedial training is possible, the tribunal needs to consider any objective evidence that has been submitted. For example, assessments of the doctor's performance, health or knowledge of English, or evidence about the doctor's practice, health or knowledge of English'.*

84 *‘Depending on the type of case (eg health, language, performance or misconduct), some or all of the following factors being present (this list is not exhaustive) would indicate that conditions may be appropriate:*

a. no evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor’s unwillingness to engage

[...]

c. willing to respond positively to retraining, with evidence that they are committed to keeping their knowledge and skills up to date throughout their working life, improving the quality of their work and promoting patient safety (Good medical practice, paragraphs 7–13 on knowledge, skills and performance and paragraphs 22–23 on safety and quality)

XXX’.

36. The Tribunal noted that Dr McClure had engaged with the restrictions placed on his registration and, in this light, it did not have concerns that Dr McClure would not comply with any further restrictions.

37. XXX.

38. In light of all the evidence before it, the Tribunal concluded that a period of conditional registration would not be appropriate given the seriousness of Dr McClure’s conviction. Conditions would not sufficiently mark the gravity of the findings made by the Tribunal.

39. The Tribunal concluded that imposing conditions on Dr McClure’s registration would not be sufficient to satisfy all three limbs of the statutory overarching objective, namely to protect patient safety, maintain public confidence in the medical profession and uphold proper professional standards for members of the profession.

Suspension

40. The Tribunal went on to consider whether a period of suspension would be an appropriate and proportionate sanction to impose on Dr McClure’s registration. The Tribunal noted the SG, specifically paragraph 92 of the SG, which it considered engaged in this case:

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)'.

41. As outlined in its determination on the facts and impairment, the Tribunal considered that Dr McClure's conviction was a serious breach of GMP and breached the fundamental tenets of the medical profession. Further, his calculated, premeditated actions took place over a significant period of time within a clinical environment, his residential address and a hotel. His actions were not an isolated incident.

42. The Tribunal was of the view that where a doctor has convictions for such serious offences, it was important to take into account the degree of insight that the doctor had into the offence post-convictions. It did not hold against Dr McClure that he had been unable to XXX for his offending due to the timing of his sentencing and the legal advice he had received. However, as the Tribunal already has noted in its determination, Dr McClure's insight and remediation is very limited.

43. Having regard to all of the evidence, its previous findings, and the above factors, the Tribunal considered that the maximum period of 12 months' suspension would not adequately reflect the gravity of Dr McClure's convictions which are a serious breach of the fundamental tenets of the medical profession.

44. In all the circumstances, the Tribunal determined that suspension would not be sufficient to satisfy the public interest, particularly the promotion and maintenance of public confidence in the profession and the promotion and maintenance of proper professional standards and conduct by members of the profession.

Erasure

45. In the circumstances the Tribunal determined that the only appropriate sanction in this case was one of erasure. In reaching its determination, the Tribunal had regard to paragraphs 108 and 109(a)(b)(d)(f) and (j) of the SG, which it considered were engaged in this case:

108 *'Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor'.*

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*

[...]

d. *Abuse of position/trust (see Good medical practice, paragraph 65: ‘You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession’).*

[...]

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’.*

46. The Tribunal also had regard to paragraphs 149 and 151 of the SG which relates to ‘Sexual misconduct’ and ‘Sex offenders [...]’ respectively. It considered these paragraphs of the SG were engaged in this case:

Sexual Misconduct

149 *‘This encompasses a wide range of conduct from criminal convictions for sexual assault and sexual abuse of children (including child sex abuse materials) to sexual misconduct with patients, colleagues, patients’ relatives or others [...].’*

Sex offenders [...]

151 *‘Any doctor who has been convicted of, or has received a caution for, a sexual offence listed in Schedule 3 to the Sexual Offences Act 2003 must notify the police (register) under section 80 of the Sexual Offences Act 2003 and may need to undertake a programme of rehabilitation or treatment. [...] These offences seriously undermine patients’ and the public’s trust and confidence in the medical profession and breach a number of principles set out in Good medical practice [...].’*

47. The Tribunal noted the serious nature of Dr McClure’s criminal convictions. It considered that where a doctor has been convicted, on two separate occasions, on multiple counts, that warranted:

- A sentence of imprisonment;
- A Sexual Offences Prevention Order; and
- A requirement to sign the Sex Offenders Register;

all three limbs of the over-arching objective are engaged.

48. The Tribunal was of the view that Dr McClure's actions had the potential for an adverse impact on the standing of the medical profession as a whole. Specifically, Dr McClure had abused his position of trust in recording and/or attempting to record victims in a clinical environment.

49. In all the circumstances of this case, the Tribunal concluded that it was necessary to erase Dr McClure's name from the Medical Register for the reasons outlined above. No lesser sanction than erasure would adequately:

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

Determination on Immediate Order - 07/04/2021

1. Having determined that Dr McClure's name be erased from the Medical Register, the Tribunal considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order.

Submissions

2. Mr Atherton invited the Tribunal to impose an immediate order on Dr McClure's registration based on its findings at the previous stages and in order to satisfy the statutory over-arching objective. Further, he invited the Tribunal to revoke the interim order currently in place on Dr McClure's registration.

3. Dr McClure submitted that it was not necessary for the Tribunal to impose an immediate order at this time as he is currently in prison and he is unable to work.

The Tribunal's Decision

4. In reaching its decision, the Tribunal has exercised its own judgement and has taken account of the principle of proportionality. The Tribunal has borne in mind that it may impose an immediate order where it is satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest or is in the best interests of the practitioner. It has also borne in mind the guidance given in the relevant paragraphs of the SG relating to immediate orders.

Record of Determinations – Medical Practitioners Tribunal

5. The Tribunal determined that in light of the seriousness of its findings, and in the particular circumstances of this case, an immediate order of suspension was appropriate and necessary in order to protect the public, promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of the medical profession.
6. The substantive direction for erasure will take effect 28 days from when the written notice is deemed to have been served upon Dr McClure, unless an appeal is lodged in the interim.
7. The Interim Order currently imposed on Dr McClure’s registration will be revoked when the immediate order takes effect.
8. That concludes this case.

Confirmed
Date 07 April 2021

Ms Chitra Karve, Chair

ANNEX A – 29/03/2021

XXX