

## PUBLIC RECORD

Date: 14/08/2023 - 16/08/2023

Medical Practitioner's name: Dr Rupesh SETH

GMC reference number: 6166703

Primary medical qualification: MB ChB 2008 University of Birmingham

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

## Summary of outcome

Erasure

Immediate order imposed

## Tribunal:

Legally Qualified Chair	Miss Ogheneruona Iguyowwe
Lay Tribunal Member:	Dr William McClune
Medical Tribunal Member:	Dr Alastair McGowan

Tribunal Clerk:	Ms Jemine Pemu
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## Attendance and Representation:

Medical Practitioner:	Not present and not represented
GMC Representative:	Ms Georgina Goring, 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 - 15/08/2023

### Background

1. Dr Seth qualified in 2008 from the University of Birmingham and prior to the events which are the subject of the hearing Dr Seth was a General Practitioner locum doctor with the NHS and private practice at the Anvil Group.
2. The allegation that has led to Dr Seth's hearing can be summarised as on 14 November 2020, at Guildford Magistrates' Court Dr Seth was convicted of arranging/facilitating the commission of a child sex offence contrary to section 14(1) and (4) of the Sexual Offences Act 2003 and three counts of making indecent photograph/pseudo-photograph of a child, contrary to section 1(1)(a) of the Protection of Children Act 1978. The case was committed to the Crown Court for sentence. On 3 March 2023, Dr Seth was sentenced at Guildford Crown Court to a total of 40 months' imprisonment, he was signed onto the Sex Offender Register indefinitely and made subject to a Sexual Harm Prevention Order indefinitely.
3. The police recovered 26 category A images, 3 category B images and 11 category C images from Dr Seth's first mobile phone and 1 category A image on a second mobile phone. Dr Seth pleaded guilty to all charges and is currently serving a custodial sentence at HMP XXX with the earliest possible release date of January 2025.
4. The initial concerns were raised with the GMC on 13 November 2020 through a referral email sent by Detective Constable B following Dr Seth's arrest on 12 November 2020

for arranging or facilitating the Commission of a child sex offence, namely sexual activity with a child.

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

5. The Tribunal granted the GMC's application, made pursuant to Rules 15, 40 and 31 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that notice had been properly given to Dr Seth and that it would be appropriate to proceed with the hearing in his absence. The Tribunal's full decision on the application is included at Annex A.

6. On day one of proceedings, the Tribunal amended the stem of paragraphs 1 and 2 of the Allegation pursuant to Rule 17(6) of the Rules. The Tribunal's full decision on the application is included at Annex B.

### The Allegation and the Doctor's Response

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

1. On 14 November 2020 at Guildford ~~Crown~~ Magistrates Court you were convicted of: **Amended under rule 17(6)**
  - a. arranging/facilitating the commission of a child sex offence, contrary to section 14(1) and (4) of the Sexual Offences Act 2003; **To be determined**
  - b. three counts of making indecent photograph/pseudo-photograph of a child, contrary to section 1(1)(a) of the Protection of Children Act 1978. **To be determined**
2. On 3 March 2023 at Guildford Crown Court you were sentenced to: **Amended under rule 17(6)**
  - a. a total of 40 months' imprisonment; **To be determined**
  - b. sign on the Sex Offender Register indefinitely; **To be determined**
  - c. be made subject to a Sexual Harm Prevention Order indefinitely. **To be determined**

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

### The Facts to be Determined

8. As no admissions were made, the Tribunal is required to determine the entirety of the Allegation.

### Documentary Evidence

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

- Police referral of Dr Seth to the GMC dated 13 November 2020;
- Dr Seth's MG5 police summary;
- Record of interview dated 13 November 2020;
- Police Witnesses statement of DC A dated 13 November 2020;
- Occurrence enquiry log report from the Police dated 12 November 2020 and 10 March 2023;
- Police interview of Dr Seth at 11:10am dated 13 November 2020;
- Police interview of Dr Seth at 19:59pm dated 13 November 2020;
- Dr Seth's Certificate of Conviction provided by Guilford Crown Court including all details, bar date of sentence dated 07 July 2023;
- Dr Seth's Certificate of Conviction provided by Guilford Crown Court for the sentencing, missing details relating to notification requirements dated 24 March 2023;
- Dr Seth's Certificate of Conviction provided by Guilford Crown Court including details of plea, missing notification requirements dated 28 June 2023.

10. Dr Seth did not provide a witness statement at the hearing.

### The Tribunal's Approach

11. 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 Seth 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.

12. The Tribunal had regard to Rule 34(3) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules') which states:

*'(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.'*

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

13. The Tribunal has evaluated the evidence in order to make its findings on fact.
14. The Tribunal had regard to the submissions of Ms Goring who referred the Tribunal to Rule 34 where it is established that a certificate of conviction is conclusive evidence of the offence committed and that there was no evidence or submission to the contrary.
15. The Tribunal was provided with a certificate of conviction from the Magistrates Court of Guildford dated 14 November 2020.
16. Therefore, in accordance with Rule 17(2)(e) of the Rules, and in reliance on the certificate of conviction produced (Rule 34(3)), for which there is an absence of any contest from Dr Seth that he is not the subject of the conviction, the Tribunal announced paragraphs 1 and 2 of the Allegation as determined and found proved.

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

17. The Tribunal has determined the facts as follows:
  1. On 14 November 2020 at Guildford ~~Crown~~ Magistrates Court you were convicted of: **Amended under rule 17(6)**
    - a. arranging/facilitating the commission of a child sex offence, contrary to section 14(1) and (4) of the Sexual Offences Act 2003; **Determined and found proved**
    - b. three counts of making indecent photograph/pseudo-photograph of a child, contrary to section 1(1)(a) of the Protection of Children Act 1978. **Determined and found proved**
  2. On 3 March 2023 at Guildford Crown Court you were sentenced to: **Amended under rule 17(6)**
    - a. a total of 40 months' imprisonment; **Determined and found proved**

- b. sign on the Sex Offender Register indefinitely; **Determined and found proved**
- c. be made subject to a Sexual Harm Prevention Order indefinitely.  
**Determined and found proved**

#### Determination on Impairment - 16/08/2023

18. 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 Seth's fitness to practise is impaired by reason of his conviction for a criminal offence.

#### The Evidence

19. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary.

#### Submissions

20. On behalf of the GMC, Ms Goring submitted that Dr Seth's fitness to practise is currently impaired by reason of the facts found proved and his conviction. She invited the Tribunal to consider the case law of *CHRE v. NMC & Paula Grant [2011] EWHC 927 (Admin)*, which sets out the approach a Tribunal should take in determining issues of impairment.

21. Ms Goring directed the Tribunal's attention to section 35C of the Medical Act 1983 which states that a conviction shall be a ground for finding a doctor's fitness to practise impaired. She submitted that Dr Seth is currently serving a custodial sentence and that the practical effect of this is that he is currently impaired. She submitted that it therefore follows that the Tribunal should find him to be currently impaired.

22. Ms Goring added that Dr Seth's actions did not involve a single act but related to conduct which took place over a prolonged period, reflecting serious behavioural and attitudinal issues. She submitted that his offences were of a grave nature, involving child sex abuse materials, and that there were multiple aggravating factors. She submitted that website links stored on the notes section of Dr Seth's mobile phone led to indecent images of children. Officers found at 26 category A images, 3 category B images and 11 category C images on one device and a further category A image was found on a second device belonging to Dr Seth.

23. She reminded the Tribunal that Dr Seth had been in communication with another individual by using encrypted chat programs to discuss the sexual abuse of children and, during the course of those communications, he had made arrangements to travel from Dorset to Staines in order to meet a man and to carry out the sexual abuse of a 10-year-old girl. She submitted that Dr Seth admitted to the police that he had ‘bad intentions’ when he went to meet this man. He admitted to the police that he had a sexual interest in children that started by looking at indecent images.

24. Ms Goring submitted that within his second police interview, Dr Seth apologised to XXX the GMC and the wider public. She submitted that this apology could be taken as evidence of limited insight as to what impact his behaviour would have on the medical profession’s reputation.

25. She submitted that Dr Seth showed some remorse in his second police interview, but this was qualified by him continuing to put forward that he stopped outside the man’s house in Staines and was still considering whether or not to proceed with this criminal offence. She further submitted that even though Dr Seth made further admissions in his second police interview, she said this was undermined by his later unsuccessful attempts to vacate his pleas at the Crown Court.

26. Ms Goring submitted that Dr Seth has engaged to a limited extent with these proceedings and referred the Tribunal to the letters written by Dr Seth, the contents of which the Tribunal has considered. She submitted that there is no evidence of remediation, remorse or insight within these letters and therefore there is a risk that the behaviour leading to these criminal convictions could be repeated.

27. Ms Goring submitted that Dr Seth’s actions breached fundamental tenets of the profession and breached Good Medical Practice (“GMP”) (2013 edition) guidelines. Ms Goring submitted that an ordinary member of the public would be concerned, surprised, and lose trust in the profession, should Dr Seth not be found to be impaired.

28. Ms Goring submitted that the Tribunal should find Dr Seth’s fitness to practise is impaired due to the need to maintain public confidence in the profession and promote and maintain proper professional standards. She submitted that public confidence would be undermined if a finding of impairment was not made, in the circumstances of this case. She submitted that these are incredibly grave matters and Dr Seth continues to pose a risk to members of the public. She submitted that, although no clinical concerns have been raised, his actions breached multiple aspects of GMP regarding acting with honesty and integrity, acting within the law, dignity and safeguarding children and young people.

### The Relevant Legal Principles

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

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

31. The Tribunal noted that even if the Tribunal found that the matters were remediable, had been remedied and there was no likelihood of repetition, there would be instances where the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made.

32. In determining whether Dr Seth was impaired, the Tribunal gave careful consideration to all of the evidence that had been adduced during the course of these proceedings. It looked to establish whether Dr Seth had shown insight, evidence of remediation and if there was a likelihood of repetition of the type of offending behaviour that gave rise to his conviction and sought to balance those factors against the statutory overarching objective.

33. The Tribunal had at the forefront of its mind all three limbs of the statutory overarching objective:

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

34. The Tribunal concluded that all the three limbs are engaged in this case.

35. The Tribunal had regard to Good Medical Practice (2013) ('GMP') and considered that the following paragraphs were engaged in this case:

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.'*

36. The Tribunal had regard to the principles established in case law and was particularly mindful of:

- i) The case of *Dey v GMC 2001 UK PC 44*, which made it clear that the object of disciplinary proceedings against a medical practitioner convicted of a criminal offence was two-fold: to protect members of the public who may come into contact with him and to maintain the high standards of the profession. It is not to punish him a second time for the offence.
- ii) The points established in the case of *Cohen v General Medical Council [2008] EWHC 581 (Admin)* which require the Tribunal to consider:
  - (a) whether the conduct can be remediated;
  - (b) whether it has been remediated; and
  - (c) whether there is a risk of repetition.
- iii) The Tribunal also took account of the approach adopted in the case of *Yeong v General Medical Council [2009] EWHC 1923 (Admin)* with regard to conduct which has the potential to undermine public trust and confidence:

*'The overarching concern is the public interest in protecting the public and maintaining confidence in the practitioner and medical profession when considering whether the misconduct in question impairs fitness to practise.'*
- iv) the general principles outlined by Mrs Justice Cox in the case of *CHRE v NMC & Paula Grant [2011] EWHC 927 (Admin)*.

37. There is no statutory definition of impairment, the Tribunal applied the approach to impairment set out in The Fifth Shipman Report and incorporated into *CHRE v NMC and Paula Grant [2011] EWHC 927 Admin*:

- 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; and/or

- d. Has in the past acted dishonestly and/or is liable to act dishonestly in the future.

## The Tribunal's Determination on Impairment

### Conviction

38. The Tribunal had regard to 35C of the Medical Act 1983 which sets out categories of impairment in sub paragraph (2):

*35C. Functions of the Investigation Committee*

*(1) ...*

*(2) A person's fitness to practise shall be regarded as "impaired" for the purposes of this Act by reason only of –*

*...*

*(c) a conviction or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;*

39. The Tribunal also considered the case of Fleischmann and paragraph 119 of the SG which states:

**119** *As a general principle, where a doctor has been convicted of a serious criminal offence or offences, they should not be permitted to resume unrestricted practice until they have completed their sentence.*

40. The Tribunal reminded itself that Dr Seth had been sentenced to 40 months imprisonment and that he has still not completed this sentence.

41. The Tribunal considered whether the nature of the conviction was so serious in Dr Seth's case as to lead to impairment.

42. The Tribunal concluded that Dr Seth has been convicted of a serious criminal offence or offences. The offences involved sexual misconduct which has the potential to seriously undermine public confidence. The offences involved sexual exploitation of a 10-year-old child and the downloading of indecent images of children including 27 Category A indecent images

which depict sexual penetration of children. Dr Seth was also convicted of arranging/facilitating the commission of a child sex offence.

43. The seriousness of the conviction is marked in this case by total sentence of 40 months' imprisonment and the ancillary orders of sexual harm prevention order for an indefinite period and notification on the sex offenders' register for an indefinite period.

44. 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.

### Insight

45. The Tribunal went on to consider whether there was any evidence to show that Dr Seth has insight into his behaviour. Insight is shown when a doctor can demonstrate they have reflected on what went wrong, accept they should have behaved differently in the circumstances, demonstrate that they understand the impact or potential impact of their performance or conduct, demonstrate empathy for any individual involved, take timely steps to remediate and identify how they will act differently in the future to avoid similar issues arising. Insight must be genuine. The Tribunal considered how Dr Seth has responded to the concerns in this case.

46. The Tribunal considered all the available evidence. The Tribunal was provided with no evidence of insight on behalf of Dr Seth for the proceedings. It noted that Dr Seth had not provided a witness statement, any reflections or testimonials. However, the Tribunal considered the account given by Dr Seth during his police interviews. During his second police interview, Dr Seth offered apologies, he expressed remorse and admitted his actions, but the Tribunal noted that Dr Seth's apologies related only to the impact of his actions on himself and XXX.

47. The Tribunal also noted that, even though Dr Seth pleaded guilty, he did not accept full responsibility for all of his actions as outlined in the prosecution case which involved arrangements for the rape of a 10-year-old girl.

48. Furthermore, the Tribunal noted that, during his police interviews, Dr Seth did not admit the full extent of his wrongdoing until he was confronted with forensic examination of his devices which showed that he was engaging in online chats with other individuals involving chats and the sharing and distribution of indecent images of children.

49. The Tribunal considered that Dr Seth has not demonstrated that he understands the full impact of his behaviour on the medical profession. The Tribunal therefore determined that Dr Seth’s level of insight was very limited.

## Remediation

50. In terms of remediation, the Tribunal has not seen any evidence of remediation (putting aside the fact that Dr Seth is serving the sentence imposed by the criminal court). There can be no effective remediation without insight. Insight is an essential prerequisite to a confident conclusion that a problem has been properly understood, addressed, and eliminated for the future. The Tribunal concluded that Dr Seth has not expressed full remorse for his actions. The correspondence between Dr Seth and the GMC contained in the hearing bundle focuses more on himself and what was to happen. The Tribunal noted that there was a long gap between Dr Seth’s conviction recorded on 14 November 2020 and his sentence on 3 March 2023 when he could have undertaken the type of activity that would have helped to address the kind of behaviour that led to his conviction.

51. The Tribunal however reminded itself that certain types of conduct will be difficult to remediate. Even if it were to be shown that Dr Seth had taken some steps towards remediation, due to the serious nature of these convictions, it is unlikely that such steps would have been sufficient in this case to offset the concerns given the nature of Dr Seth’s offending which involves a breach of the fundamental tenets of the profession and the impact on public confidence. (see the case of *Yeong v GMC* (2009) WL 2207460. : “...Where a medical practitioner violated such a fundamental rule governing the doctor and patient relationship as the rule prohibiting a doctor from engaging in a sexual relationship with a patient, his fitness to practise might be impaired if the public was left with the impression that no steps had been taken by the GMC to bring forcibly to his attention the profound unacceptability of his behaviour and the importance of the rules he had violated. Where a panel considered that fitness to practise was impaired for such reasons and that a firm declaration of professional standards so as to promote public confidence in that medical practitioner and the profession generally was required, the efforts made by the practitioner to address his problems and to reduce the risk of recurrence of such misconduct in the future might be far less significant than in other cases, such as those involving clinical errors or incompetence, *Meadow v General Medical Council* [2006] EWCA Civ 1390, [2007] Q.B. 462, [2006] 10 WLUK 730, *Cohen v General Medical Council* [2008] EWHC 581 (Admin), [2008] LS Law Medical 246, [2008] 3 WLUK 484, and *Azzam v General Medical Council* [2008] EWHC 2711 (Admin), [2009] LS Law Medical 28, [2008] 11 WLUK 285).

52. The Tribunal has therefore concluded that there is no evidence of remediation.

### Risk of repetition

53. In considering whether or not there was a risk of repetition in Dr Seth's case, the Tribunal reminded itself of the background to the case.

54. The Tribunal noted an extract from the police case summary, which showed Dr Seth's consumption of child sexual abuse images:

*'...between the 4th and 12<sup>th</sup> November 2020 the suspect had been in communication with another individual and during that time had utilised encrypted chat programs to discuss the sexual abuse of children. During the communication the suspect made arrangements to travel from his home address in Dorset to Staines in Surrey in order to carry out the sexual abuse of a 10 year old female child. This abuse was arranged in conjunction with the other adult who indicated that they had the child to offer.'*

55. In interview, Dr Seth admitted that he does have a sexual interest in children and is addicted to looking at such material.

56. The forensic examination of electronic devices seized from him revealed indecent images and videos of children *of all three categories (A, B and C). 'Indecent images of children of all three categories have been found on the phone.'*

57. The evidence in the case also shows that Dr Seth had been engaging in communication on KIK, MEGA and Wick social media applications with other individuals. Forensic examination of Dr Seth's current mobile telephone whilst he was in custody revealed indecent images of children. Links to MEGA were located on this device in the 'NOTES' section on the phone. Two of these links were accessed and the images found scanned against the national Child Abuse Image Database.

58. Upon being confronted with the results of the forensic examination, Dr Seth admitted that he had not been honest in the first interview. He went on to explain that he had developed an addiction to indecent images of children and needed help. He said he first came across indecent images of children on the application KIK. He said he would chat with others in a public chat room and individuals would share links to images and videos.

59. The Tribunal concluded from the evidence above that Dr Seth had developed a sexual interest in children. The result of the forensic examination of devices seized from him show that he has been engaging in online sexualised chats and downloading of child sex abuse

images for some time. On his own admission, he has become addicted to viewing child sex abuse images.

60. The Tribunal noted the reasons outlined by Dr Seth in his interview that led to his offending: stress from losing his job, XXX lack of sleep and XXX. The Tribunal concluded that those are all factors that could reoccur in the future.

61. The Tribunal concluded that given the limited level of insight, no evidence of remediation, there is a significant likelihood of repetition of the offending behaviour in this case.

62. The Tribunal has taken account of the potential mitigating factors highlighted by Ms Goring in the absence of Dr Seth and it noted his previous good character. However, due to the nature of these proceedings, and the need to maintain public confidence and promote and maintain proper professional standards, only limited weight can be given to personal mitigation: *Bolton v Law Society* [1994] 1 WLR 512.

### Statutory Overarching Objective

63. The Tribunal considered the **Overarching objective**:

- Protecting the health, safety and wellbeing of the public.
- Maintaining public confidence in the profession.
- Promoting and maintaining proper professional standards and conduct.

64. The Tribunal considered that whilst this case does not relate to clinical matters and there were no patients harmed or specific patient safety concerns identified, the serious nature of Dr Seth's actions meant that the Tribunal could not be assured that Dr Seth did not pose a risk to patient safety, particularly with regard to the safeguarding of children and vulnerable patients.

65. Doctors are public-facing professionals who hold a position of trust. There is a need to maintain public confidence by promoting and maintaining proper professional standards and conduct.

66. The case involves a criminal conviction for conduct involving sexual misconduct which seriously undermines public confidence. Dr Seth's actions are a significant and persistent breach of the GMP paragraphs 1 and 65 (see above). The behaviour took place over a period of time. The evidence shows that he engaged in online sexualised chats. His conduct undermines public trust and confidence in the medical profession.

67. The Tribunal considered that a reasonable and properly informed member of the public would be shocked to learn that a doctor convicted of offences such as these involving children was allowed to practise unrestricted. Other doctors would find Dr Seth's conduct deplorable. It was of the view that, given the seriousness of Dr Seth's criminal convictions, the breaches of GMP and the fundamental tenets of the medical profession, that public confidence in the profession would be seriously undermined if a finding of impairment was not made. The seriousness of this offending is marked by the severity of the sentence received by Dr Seth and the ancillary orders of being made subject to a Sexual Harm Prevention Order indefinitely and a requirement to sign on the Sex Offenders' Register indefinitely.

### Conclusion

68. The Tribunal concluded that the conviction was not an isolated incident, but the police interviews and the prosecution case papers as presented show a background to the incident that demonstrate Dr Seth's full involvement and a build-up that led to his offending behaviour. A finding of no impairment in the circumstances of this case would cause public confidence to be severely undermined and would not maintain the high standards of the medical profession. In *GMC V Armstrong* [2021] EWHC 1658 (Admin), in paragraph 52, it was stated "...Undue leniency risks undermining public confidence in the ability of the regulatory regime to protect the public from harm".

69. A finding of no impairment in this case would cause public confidence to be severely undermined and would not help to promote or maintain high standards of the medical profession.

70. The Tribunal has therefore determined that Dr Seth's fitness to practise is currently impaired by reason of his conviction and that such a finding is required in this case to meet all three limbs of the statutory overarching objective.

### Determination on Sanction - 16/08/2023

71. Having determined that Dr Seth'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.

### The Evidence

72. The Tribunal has taken into account all the evidence received during the earlier stages of the hearing, where relevant, in reaching a decision on sanction. The Tribunal received no further evidence at this stage from the GMC or Dr Seth.

### Submissions

73. On behalf of the GMC, Ms Goring referred the Tribunal to the relevant paragraphs of the Sanctions Guidance (SG) and reminded the Tribunal of the overarching objective, which includes protecting the health, safety and wellbeing of the public, promoting and maintaining public confidence in the medical profession and promoting and maintaining proper professional standards and conduct for the members of the profession. She took the Tribunal to the paragraphs within the Sanctions Guidance which indicate that more serious action is likely to be appropriate in cases involving child sex abuse materials.

74. Ms Goring submitted that the only proportionate and reasonable sanction in this case is one of erasure on the basis of Dr Seth's conviction. She submitted that it would not be appropriate for the Tribunal to conclude the case with no action, as there were no exceptional circumstances to justify this. She further submitted that neither undertakings nor conditions would be appropriate in this case due to the serious nature of Dr Seth's criminal conviction; the misconduct is unrelated to his work and there is no evidence to suggest that conditions could be formulated to address his behaviour. Ms Goring submitted that a period of suspension would be an inappropriate and insufficient sanction to mark the nature and seriousness of Dr Seth's conviction. Ms Goring submitted that Dr Seth's conduct was fundamentally incompatible with continued registration and a period of suspension would not be sufficient to meet the public interest. Ms Goring invited the Tribunal to conclude that Dr Seth's conviction is so serious that the only appropriate and proportionate sanction in this case would be erasure from the medical register.

75. Ms Goring reminded the Tribunal of the aggravating factors in this case. She submitted that these included the range, quantity and severity of the material accessed and reminded it that most of the indecent images were of category A. She reminded the Tribunal that Dr Seth had made arrangements to sexually abuse a 10-year-old girl via her father. Ms Goring submitted that it is clear from Dr Seth's messages what his intentions were when meeting the child. She reminded the Tribunal that this was not an isolated incident of offending but a course of conduct which involved child sex abuse. She further submitted that Dr Seth had provided no material such as statements or testimonials to show insight and remediation. Ms Goring reminded the Tribunal of the length of sentence imposed upon Dr Seth by the criminal courts which is indicative of how seriously they viewed these offences. She submitted that the Tribunal must adopt a cautious approach in assessing the risk that Dr Seth poses to the public, in particular young children and those under the age of 18.



76. As Dr Seth was neither present nor represented at the hearing, Ms Goring presented the Tribunal with some potential mitigating factors in this case. She submitted that prior to this misconduct, Dr Seth had no previous convictions or previous findings in relation to his fitness to practice. She also submitted that Dr Seth has engaged in a limited way with these proceedings, and, in the course of his police interview, he offered an apology XXX to the GMC and the wider public. Ms Goring submitted that Dr Seth made admissions to the police and entered a guilty plea which he later attempted to vacate in the Crown Court. She also reminded the Tribunal that Dr Seth did not make full admissions as to what his true intentions were when he attended the address in Staines. Ms Goring submitted that, notwithstanding these limited potential mitigating factors, Dr Seth's misconduct was so severe that it is fundamentally incompatible with continued registration, and that erasure was the only appropriate sanction in this case.

### **The Tribunal's Approach**

77. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgment. The Tribunal is required to consider the least restrictive sanction first before going on to consider more serious sanctions. In reaching its decision, the Tribunal has taken account of the Sanctions Guidance (November 2020) and the Statutory Overarching Objective. The Tribunal recognises that the purpose of a sanction is not to be punitive, although it may have a punitive effect. The Tribunal has noted that all three limbs of the overarching objective were engaged in this case.

78. Throughout its deliberations, the Tribunal has applied the principle of proportionality balancing Dr Seth's interests with the public interest, the protection of patients and the wider public, the maintenance of public confidence in the profession, and declaring and upholding of proper standards of conduct and behaviour.

79. In reaching its decision, the Tribunal has given careful consideration to the SG generally. It has borne in mind that the purpose of imposing sanctions is to protect the public pursuant to the overarching objective set out in section 1 of the Medical Act 1983 (as amended), already rehearsed in the determination on impairment. Sanctions are not imposed to punish or discipline doctors, but they may have a punitive effect.

80. The Tribunal has borne in mind that in deciding what sanction, if any, to impose, it should consider the sanctions available, starting with the least restrictive. In making its decision, the Tribunal also had regard to the principle of proportionality and weighed Dr Seth's interests against those of the public.

81. The Tribunal has already set out its decision on the facts and impairment and it took those determinations into account during its deliberations on sanction. It first considered the aggravating and mitigating factors in this case and then moved on to consider each sanction in ascending order of severity.

82. The Tribunal had regard to paragraph 17 of the SG:

*“Patients must be able to trust doctors with their lives and health, so doctors must make sure that their conduct justifies their patients’ trust in them and the public’s trust in the profession (see paragraph 65 of Good medical practice). Although the tribunal should make sure the sanction it imposes is appropriate and proportionate, the reputation of the profession as a whole is more important than the interests of any individual doctor.”*

83. The Tribunal also considered the case of *Fleischmann* and paragraph 119 of the SG which states:

*“As a general principle, where a doctor has been convicted of a serious criminal offence or offences, they should not be permitted to resume unrestricted practice until they have completed their sentence.”*

### The Tribunal’s Determination on Sanction

84. The Tribunal considered whether there are any mitigating and aggravating factors and the weight, if any, that should be attached to these factors. The Tribunal was mindful that mitigating factors are likely to carry much less weight in cases of this nature.

### Aggravating Factors

85. The Tribunal identified the following aggravating factors:

- Dr Seth’s conviction involved sexual misconduct;
- His conviction involved child sex abuse material and the lion share of the images were category A, the most serious category;
- Indecent images spanning multiple devices;
- There were serious breaches of GMP;
- The nature and seriousness of the offence;

- The length of sentence. Dr Seth was sentenced to 40 months' imprisonment and made subject to ancillary orders of sexual harm prevention order for an indefinite period and notification on the sex offenders' register for an indefinite period;
- This was not an isolated incident of offending but a course of conduct
- Elements of premeditation and planning involved;
- The age and vulnerability of the child (10 years old);
- Conduct in a doctor's personal life (paragraph 56 of the SG);
- Lack of insight;
- Dr Seth has offered no evidence of remediation and therefore there is a significant risk of repetition.

### Mitigating Factors

86. The Tribunal was able to identify some mitigating factors in relation to Dr Seth's Misconduct:

- Previous good character with no previous convictions
- No previous findings in relation to his fitness to practise;
- Dr Seth has engaged in a limited way with the GMC in these proceedings;
- Dr Seth made limited admissions, entered guilty pleas at an early stage in the Magistrates' Court. However, the Tribunal noted his conduct in the police interview where he only made further admissions in later interviews when confronted with the results of forensic examination of his seized devices;
- Dr Seth has offered an apology to XXX the GMC and the wider public in the course of his police interview.

87. The Tribunal was mindful that it is less able to take mitigating factors into account when the concern is about patient safety, or is of a more serious nature than if the concern is about public confidence in the profession.

88. The Tribunal found limited insight at impairment stage. The Tribunal found no evidence of remediation at impairment stage.

### No action

89. In reaching its decision as to the appropriate sanction, if any, to impose in Dr Seth's case, 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.

90. The Tribunal determined that there were no exceptional circumstances in this case. It considered that, given the seriousness of the conviction and its findings of impaired fitness to practise, taking no action would not be appropriate, proportionate or in the public interest.

### Undertakings

91. The Tribunal noted that undertakings have not been offered or agreed in this case as it is not appropriate.

### Conditions

92. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Seth's registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

93. The GMC submitted that there are no suitable conditions in this case that would be suitable to address the type of offending behaviour that gave rise to Dr Seth's conviction. Tribunal concluded that, even if conditions were workable, it would not be possible to formulate any conditions which would adequately address Dr Seth's conviction as his underlying behaviour completely undermines the public's trust and confidence in him as a doctor and the profession as a whole. As was stated in the case of *Armstrong v GMC*, undue leniency in a case of this seriousness can undermine public trust and confidence in the profession and its regulator.

94. Therefore, the Tribunal determined that it would not be sufficient, appropriate or proportionate to direct the imposition of conditions on Dr Seth's registration. The Tribunal concluded that an order of conditions would not adequately maintain trust and confidence in the medical profession.

### Suspension

95. The Tribunal then went on to consider whether to impose a period of suspension on Dr Seth's registration. Paragraph 92 of the SG provides:

*"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)."*

96. Taking into consideration paragraphs 93 and 97 of the SG the Tribunal considered that Dr Seth's criminal actions were serious departures from the principles set out in GMP and the professional standards that members of the profession must uphold. The Tribunal considered that members of the public would be appalled by the knowledge that a medical practitioner had committed such criminal offences.

*'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.*

*...*

*e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.*

*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.'*

97. The Tribunal took account of the aggravating factors it had identified and the SG in determining whether Dr Seth's conduct was fundamentally incompatible with continued registration.

98. Taking all of those matters into consideration, alongside its findings at the impairment stage in relation to insight, remediation, risk of repetition and breaches of fundamental tenets of the medical profession, the Tribunal determined that Dr Seth's conduct was fundamentally incompatible with continued registration. A period of suspension would not be sufficient or proportionate to protect the public, maintain public confidence in the profession and maintain proper professional standards and conduct for members of the profession.

### Erasure

99. Having concluded that a suspension order would be inappropriate and insufficient, the Tribunal went on to consider the sanction of erasure. In reaching this conclusion the Tribunal considered the following factors as set out in paragraphs 107, 108 and 109 of the Sanctions Guidance:

*“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.*

*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.*

*c Doing serious harm to others (patients or otherwise), either deliberately or through incompetence and particularly where there is a continuing risk to patient....*

*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’).*

*e Violation of a patient’s rights/exploiting vulnerable people (see Good medical practice, paragraph 27 on children and young people, paragraph 54 regarding expressing personal beliefs and paragraph 70 regarding information about services).*

*f. Offences of a sexual nature, including involvement in child sex abuse materials.”*

100. The Tribunal also considered paragraphs 149, 151, 152, 153 and 154 of SG to be of particular relevance to its decision, these provide:

*“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...*

*150. Sexual misconduct seriously undermines public trust in the profession. The misconduct is particularly serious where there is an abuse of the special position of trust a doctor occupies, or where a doctor has been required to register as a sex offender. More serious action, such as erasure, is likely to be appropriate in such cases.*

*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. Sexual offences include accessing and viewing, or other involvement in, child sex abuse materials, which involves the exploitation or abuse of a child. 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 (paragraph 65 regarding honesty and integrity, particularly paragraph 47 regarding respecting patients’ dignity, and paragraph 27 regarding children and young people).*

152. *Taking, making, sharing and possessing an indecent image or pseudo-photograph of a child is illegal and regarded in UK society as morally unacceptable. For these reasons, where there is any involvement in child sex abuse materials by a registered doctor the tribunal should consider whether the public interest demands that their registration be affected.*

153. *While the courts distinguish between degrees of seriousness, any conviction for child sex abuse materials 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. It is therefore highly likely that, in these cases, the only proportionate sanction will be erasure. However, the tribunal should bear in mind paragraphs 20–23 and 61–111 of this guidance, which deal with the options available to it, and the issue of proportionality. If the tribunal decides to impose a sanction other than erasure, it is important that it fully explains the reasons and the thinking that has led it to impose this lesser sanction so that it is clear to those who have not heard the evidence in the case.*

154. *The tribunal should be aware that any conviction relating to child sex abuse materials will lead to registration as a sex offender and possible inclusion on the Children's Barred List by the Disclosure and Barring Service under the Safeguarding Vulnerable Groups Act 2006 (as amended). The Council of the GMC has made it clear that no doctor registered as a sex offender should have unrestricted registration. The tribunal will therefore need to make sure that, in cases where it imposes a period of suspension or conditions, the case is reviewed before the end of this period to consider whether a further period is appropriate."*

101. The Tribunal considered the case of *Fleischmann* and paragraph 119 of the SG to be relevant at this stage of its deliberation.

102. The Tribunal determined that there had been a particularly serious departure from the principles set out in GMP, the offences for which he was convicted were of a sexual nature, involving young children. Dr Seth had shown limited insight into the seriousness of his actions or the consequences and that his behaviour is fundamentally incompatible with being a doctor.

103. The Tribunal took the view that the actions of Dr Seth in downloading and viewing child sex abuse materials and engaging in online chats regarding child sexual abuse are deplorable for all of the reasons set out in the impairment determination, namely, the age and vulnerability of the victim and the number of images downloaded and viewed by the



doctor over a considerable period of time. The Tribunal at impairment stage concluded that even though there was no evidence of harm to patients in this case, Dr Seth's conviction will give rise to a potential risk to patients in terms of safeguarding.

104. The Tribunal concluded that, given all the evidence it has before it, erasure is the only sanction available to it that would sufficiently protect, promote and maintain the health, safety and well-being of the public, promote and maintain public confidence in the medical profession and promote and maintain proper professional standards and conduct for members of that profession. The Tribunal determined that the only proportionate and necessary sanction is one of erasure.

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

#### Determination on Immediate Order - 16/08/2023

106. Having determined to erase Dr Seth's name from the Medical Register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Seth's registration should be subject to an immediate order.

107. On behalf of the GMC, Ms Goring submitted that an immediate order is necessary and appropriate in this case and the current interim order should be revoked.

#### The Tribunal's Determination

108. In reaching its decision, the Tribunal considered the relevant paragraphs of the Sanctions Guidance 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.*

109. The Tribunal decided to impose an immediate order of suspension on Dr Seth's registration. It determined that such order was necessary to protect members of the public or was otherwise in the public interest due to the seriousness of Dr Seth's conviction and the circumstances leading up to it. The Tribunal took into account the need to balance Dr Seth's interests against wider public interests.

110. This means that Dr Seth'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.

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

112. That concludes this case.

ANNEX A – 14/08/2023

**Application on Service and Proceeding in absence**

113. Dr Seth was neither present nor legally represented at the hearing. Dr Seth's absence is, in part, due to him currently serving a custodial sentence.

114. The Tribunal had to consider firstly whether service had been properly effected as required by the General Medical Council (Fitness to Practise) Rules 2004 as amended ('The Rules') and the Medical Act 1983 ('The Act'). If it found service had been effected in accordance with the Rules, it would need to consider whether to proceed in Dr Seth's absence. In reaching its decision it has taken into account all the information before it, including a 'Service Bundle' and the submissions by Ms Georgina Goring, Counsel, on behalf of the General Medical Council ('GMC'). It accepted the advice of the LQC who referred to the relevant Rules and caselaw.

Service

115. Ms Goring provided the Tribunal with a Service Bundle of documents evidencing that notice was properly served, which included but was not limited to:

- Screenshot of Dr Seth's registered address with the GMC;
- Email from the Police confirming Dr Seth's residence;
- Letter to Dr Seth regarding service dated 5 July 2023;
- MPTS Notice of Hearing dated 10 July 2023 and Proof of Service, delivered 11 July 2023;
- Rule 34(9) letter dated 13 July 2023 and Proof of Service, delivered 15 July 2023;
- MPTS Letter to Dr Seth confirming names of Tribunal members dated 14 July 2023;
- Letter from Dr Seth dated 20 July 2023 acknowledging the MPTS letter dated 14 July 2023;
- Letter from GMC to Dr Seth dated 28 July 2023;
- Letter from Dr Seth dated 09 August 2023 acknowledging the GMC's letter of 28 July 2023.

116. Having considered the evidence, the Tribunal was satisfied that Notice of this Hearing had been served on Dr Seth in accordance with Rule 15 and Rule 40 of the GMC (Fitness to Practise) Rules 2004 (the Rules), and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended.

117. The Tribunal then went on to consider whether it would be appropriate to proceed in Dr Seth's absence pursuant to Rule 31 of the Rules. The Tribunal was mindful that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution and with a regard to the overall fairness of the proceedings. In doing so, it considered the need to balance Dr Seth's interests with the overarching statutory objective. The Tribunal had borne in mind the judgments in the cases of *R v Jones* [2003] 1 AC 1; [2002] UKHL 5 and *GMC v Adeogba* [2016] EWCA Civ 163.

118. The Tribunal noted in particular the following relevant considerations:

- The nature and circumstances of the doctor's behaviour in absenting himself;
- Whether the behaviour was voluntary and therefore that the doctor waived the right to be present;
- Whether an adjournment would result in the doctor attending on a subsequent occasion;
- The likely length of any such adjournment;
- Whether the doctor, although absent, wished to be represented, or whether he had waived his right to be represented;
- The general public interest.

119. Ms Goring submitted that it would be appropriate for the Tribunal to proceed in Dr Seth's absence. She submitted that there is a clear inference that the correspondence was sent on from HMP XXX to Dr Seth once he had been transferred to HMP XXX. Ms Goring submitted that this established that Dr Seth had received correspondence from the GMC. she submitted that once the GMC was notified that Dr Seth had been transferred to HMP XXX, all correspondence, including the Rule 34(9) letter and Notice of Hearing, was sent to HMP XXX. Ms Goring referred the Tribunal to the letter received by the GMC from Dr Seth asking for an adjournment proving that he is aware of today's hearing.

120. In light of the evidence of letters containing the Notice of Allegation and the Notice of Hearing being served by post to both HMP XXX and HMP XXX, and the responses to those letters, the Tribunal was satisfied that Dr Seth had been properly served with the Notice of Hearing in accordance with Rules 15 and 40 of the Rules.

#### Proceeding in Dr Seth's Absence

121. In making its determination the Tribunal noted that the decision as to whether or not the hearing should proceed in Dr Seth's absence was a matter for its discretion and that such discretion was to be exercised with great care.

122. Having been satisfied in relation to service the Tribunal went on to consider whether to proceed in absence in accordance with Rule 31 which provides:

*'31. Where the practitioner is neither present nor represented at a hearing, the Committee or Tribunal may nevertheless proceed to consider and determine the allegation if they are satisfied that all reasonable efforts have been made to serve the practitioner with notice of the hearing in accordance with these Rules.'*

123. 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 noted the guidance from Jones that the decision to proceed should only be exercised in exceptional circumstances, particularly where a party is unrepresented.

124. Ms Goring submitted that the GMC strongly oppose any application for an adjournment. She submitted that Dr Seth's earliest possible release date is January 2025 and the Tribunal would need to consider whether Dr Seth would wish to be legally represented. She submitted that there has been no indication from Dr Seth that he would wish to be legally represented. Ms Goring submitted that the Tribunal should also consider the extent of the potential disadvantage to Dr Seth of not being able to give his account of events. She reminded the Tribunal that it has already seen Dr Seth's certificate of conviction and submitted that there is no defence that Dr Seth could put forward at stage one.

125. Ms Goring reminded the Tribunal of the serious nature of Dr Seth's conviction as they relate to child sex abuse materials and arranging or facilitating sexual activity with a child. She further reminded the Tribunal that any such conviction 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.

126. Ms Goring submitted that there is a clear difference between criminal trials and disciplinary hearings, and with disciplinary hearings, the Tribunal must be guided by the overarching statutory objective, and that means that there should be a fair, economical, expeditious and efficient disposal of allegations.

127. Ms Goring submitted that there is no evidence to suggest that Dr Seth is not engaging as he sent a letter to the GMC requesting an adjournment. However, she submitted that within his letter, there is no good reason why this matter should be adjourned. Ms Goring submitted that Dr Seth set out that he would like to be present in person and provide supporting documentation but does not set out what this supporting documentation may be. She submitted that given the grave nature of these criminal offences, the assumption is that the documentation would not assist the Tribunal in discharging its duties under the overarching objective.

128. The Tribunal was mindful that any prejudice to Dr Seth in proceeding in his absence must be balanced against other factors including the statutory overarching objective, the public interest including ensuring that hearings should take place within a reasonable time of the events to which it related and the fair, economic, expeditious and efficient disposal of the hearing.

129. The Tribunal noted the matters giving rise to Dr Seth's conviction in November 2020 in that he was convicted of arranging/facilitating the commission of a child sex offence and three counts of making indecent photograph/pseudo-photograph of a child, on 3 March 2023. The Tribunal considered whether an adjournment would result in Dr Seth attending the hearing. The Tribunal considered that Dr Seth's earliest possible release date is January 2025. Further the Tribunal noted that given that the hearing was being held virtually, despite Dr Seth serving a custodial sentence, steps could have been taken to facilitate his attendance.

130. The Tribunal was satisfied that any delay in these proceedings would be prejudicial to the statutory overarching objective as well as the fair, economic, expeditious and efficient disposal of the hearing. In balancing the prejudice to Dr Seth in proceeding in his absence against all of the other factors, the Tribunal was satisfied that the balance fell in favour of proceeding with the hearing in Dr Seth's absence.

131. Accordingly, the Tribunal determined to proceed in the absence of Dr Seth.

## **ANNEX B - 14/08/2023**

### **Application to amend the Allegation**

132. On day one of the hearing, during its deliberation on facts, the Tribunal requested that Ms Georgina Goring, Counsel on behalf of the GMC, considers an application to amend the Allegation, pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise) Rules 2004 ('the Rules').

133. Ms Georgina Goring, on behalf of the GMC, submitted that there was an error within the Allegation. She invited the Tribunal to amend the stem of paragraph 1 of the Allegation from:

3. On 14 November 2020 at Guildford Crown Court you were convicted of:

To:

1. On 14 November 2020 at Guildford Magistrates Court you were convicted of:

134. She also requested that the Tribunal amend paragraph 2 of the Allegation from:

2. On 3 March 2023 you were sentenced to:

To:

2. On 3 March 2023 at Guildford Crown Court you were sentenced to: **Amended under rule 17(6)**

#### LQC advice to the Tribunal

135. Under Rule 17 (6) of the Fitness to Practise Rules, where it appears to the FTP Panel at any time that: the particulars of the allegation or the facts upon which it is based, of which notice has been given under rule 15, should be amended; and the amendment can be made without injustice, it may, after hearing the parties and consulting with the Legal Assessor, amend the particulars on appropriate terms.

136. In this case, the application to amend was made by the GMC following observations of the Tribunal. It was considered by the Tribunal without hearing from Dr Seth due to him being absent. The advice to the Tribunal was that the amendment can be made in the circumstances of this case without any injustice due to the minor nature of the amendment. Dr Seth pleaded guilty to the offences and was convicted at Guildford Magistrates' Court on 14 November 2020. He was subsequently sentenced on 3 March 2023 at Guildford Crown Court. The amendment to the particulars of the allegation will now correctly reflect the true position. It does not alter the substance of the allegation and it does not relate to any disputed facts. There is therefore no injustice caused to Dr Seth by hearing the application and allowing the amendment in Dr Seth's absence.

## The Tribunal's Approach

137. Paragraph 17(6) of the Rules states:

*'17(6) Where, at any time, it appears to the Medical Practitioners Tribunal that—  
(a) the allegation or the facts upon which it is based and of which the  
practitioner has been notified under rule 15, should be amended; and*

*(b) the amendment can be made without injustice,*

*it may, after hearing the parties, amend the allegation in appropriate terms.'*

138. The Tribunal was satisfied that the amendment could be made without injustice to either party. It therefore granted the application and the stems of paragraphs 1 and 2 of the Allegation were amended as above.