PUBLIC RECORD

Dates: 13/12/2021 - 22/12/2021

Medical Practitioner's name: Dr Ruvini SENASINGHE

GMC reference number: 4756862

Primary medical qualification: MB BS 1992 North Colombo Private Medical College

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Not Impaired

Summary of outcome
Warning

Tribunal:

Legally Qualified Chair	Ms Chitra Karve
Lay Tribunal Member:	Mr Darren Shenton
Medical Tribunal Member:	Dr Priya Iyer

Tribunal Clerk:	Ms Rebecca Paterson

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Daniel Matovu, Counsel
GMC Representative:	Mr Terence Rigby, 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 - 20/12/2021

Background

1. Dr Senasinghe qualified in 1991 from North Colombo Private Medical College in Sri Lanka. Prior to the events which are the subject of the hearing Dr Senasinghe completed her training to become a consultant psychiatrist in the UK before working in various posts including General Adult Psychiatry in the NHS, Crisis and Home Treatment teams, Early Intervention teams, Assertive Outreach team, and the Community Mental Health team. At the time of the events Dr Senasinghe was practising as a Consultant Psychiatrist in the Priory Hospital Ticehurst House ('the Hospital'), acting as the responsible clinician for the female-only unit in Newington court 1 in the Hospital.

2. Prior to the events which are the subject of these proceedings, the Hospital had been subject to an internal enquiry and a Health and Safety Executive prosecution following the death of a patient by means of ligature using a scarf. This resulted in the hospital being fined £300,000.

3. On 25 March 2019 a similar incident occurred whereby a patient self-harmed by tying rubber gloves around her neck in an attempt to self-harm or commit suicide. On this occasion the patient, who was a patient of Dr Senasinghe, was found and treated, resulting in a full recovery. Dr Senasinghe was involved in the investigation which followed and put steps in place to avoid recurrence. The steps involved sending out advice to secure all such items which could be used by a patient to self-harm; this included gloves and plastic aprons.

4. Ms A was a Health Care Assistant ('HCA') at the Hospital who had been in post since 2016. Ms A had not been on duty on 25 March 2019.

5. On 28 March 2019, both Dr Senasinghe and Ms A were on duty at the Hospital. Ms A took a patient to the dining room and supervised the patient while she obtained a meal; the dining room was otherwise empty. Ms A then left the dining room.

6. It is alleged that shortly after Ms A had left the dining room, Dr Senasinghe entered the dining room with Ms A. Dr Senasinghe asked Ms A to identify and open the cupboard in which gloves and aprons were normally kept. It is alleged that Dr Senasinghe placed a plastic apron around Ms A's neck and that, at this point, Dr Senasinghe repeatedly told Ms A that she was going to strangle her. Dr Senasinghe and Ms A were subsequently led into an office in the Hospital by a Senior Health Care Assistant. It is alleged that while in the office, Dr Senasinghe held a plastic apron up against Ms A's neck. It formed part of the Allegation that Dr Senasinghe's actions caused Ms A pain, upset and fear for her safety.

7. The initial concerns were raised with the GMC on 10 April 2019 by Dr B, an employee at the Hospital. The referral was further to a local investigation carried out by the Hospital which arose following a report from the Senior Health Care Assistant present at the time of the second alleged incident.

The Outcome of Applications Made during the Facts Stage

8. The Tribunal refused Dr Senasinghe's application, made pursuant to Rule 17(2)(g) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that there was no case to answer in respect of subparagraphs 1.a., 2, 3.b.i., 3.c., 3.d.i., and 3.d.ii. of the Allegation. The Tribunal's full decision on the application is included at Annex A.

The Allegation and the Doctor's Response

9. The Allegation made against Dr Senasinghe is as follows:

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

1. On 28 March 2019, whilst you were in the dining room at Newington Court One Ward at The Priory Hospital in Ticehurst ('the Hospital'), you:

    a. placed a plastic apron around Ms A's neck; To be determined

    b. shouted at Ms A, "I'm going to strangle you now", or words to that effect. To be determined

2. On 28 March 2019, whilst you were in the nursing station/office at the Hospital, you held a plastic apron up against Ms A's neck. To be determined

3. Your actions as set out at:

    a. paragraph 1 were carried out in the presence of patient(s); To be determined

    b. paragraph 1 caused Ms A:

        i. to fear for her safety; To be determined

ii. upset; To be determined

c. paragraph 1(a) caused Ms A pain; To be determined

d. paragraph 2 caused Ms A:

i. further fear for her safety; To be determined

ii. further upset. To be determined

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

Witness Evidence

10. The Tribunal received evidence on behalf of the GMC from the following witnesses:

- Ms A, Health Care Assistant at the Hospital, in person;
- Mr C, Senior Health Care Assistant at the Hospital, in person.

11. The Tribunal also received evidence on behalf of the GMC in the form of witness statements from the following witness who did not give oral evidence:

- Mr D, Ward Manager and former Nurse at the Hospital, dated 9 August 2021.

12. Dr Senasinghe provided her own witness statement dated 6 December 2021 and also gave oral evidence at the hearing.

Documentary Evidence

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

- CCTV footage of the incidents on 28 March 2019;
- Letter from East Sussex Healthcare NHS Trust Hospital to Ms A's GP regarding Ms A's A&E attendance on 1 April 2019;
- Initial letter of complaint from Ms A to Ms E, described as Ward Manager by Mr C, dated 10 April 2019;
- Various records of correspondence relating to the Police investigation into the incident dated between 15 August 2019 and 19 August 2021;
- Letter from Ms A to the Hospital, dated 17 September 2019;
- Statement from Ms A to Sussex Police, dated 2 April 2019;

- Various records from the Hospital relating to operational procedures and patient incidents dated between 25 March 2019 and 1 April 2019;
- Employer response from the Hospital, enclosing copy of index investigation reports and outcome, dated 6 August 2019;
- Letter from Ms A to the Hospital dated 17 September 2019;
- Letter from Ms A to the CPS 17 August 2019;
- Various records of correspondence from Dr Senasinghe to the GMC enclosing documents presented to the Hospital, patient testimonials, colleague feedback forms and appraisal comments dated between 1 September 2019 and 6 September 2021;
- Email thread between Dr Senasinghe, the Hospital and the BMA dated between 20 June 2019 and 24 June 2019;
- References to Dr Senasinghe from Ms F and Ms E dated 24 May 2021 and 10 October 2021 respectively;
- Statement by Dr Senasinghe which was presented to the Hospital disciplinary panel dated 10 June 2019.

The Tribunal's Approach

14. 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 Senasinghe 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.

15. The Tribunal was mindful that prior to the events which formed the basis of these proceedings, Dr Senasinghe was of good character. It reminded itself that this should be taken into account when determining the likelihood of Dr Senasinghe acting in the manner alleged and also the likelihood of how credible her statements and answers were. A good character direction was not in itself determinative, but it did sit alongside all of the other issues to be considered.

The Tribunal's Analysis of the Evidence and Findings

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

<u>Subparagraphs 1., 3.a., 3.b., and 3.c.</u>

17. In relation to these parts of the Allegation, the Tribunal had to determine whether, whilst in the dining room at the Hospital, Dr Senasinghe placed a plastic apron around Ms A's neck and shouted *'I'm going to strangle you now'* or words to that effect, causing Ms A pain, upset and to fear for her safety.

Subparagraph 1.a.

18. The Tribunal considered subparagraph 1.a. of the Allegation. It noted that the witness evidence in relation to this subparagraph relied on the accounts of Dr Senasinghe and Ms A. The respective accounts were in dispute.

19. The Tribunal carefully considered the CCTV evidence which captured the incident in the dining room. It found that the footage showed a sequence of events that started from Dr Senasinghe entering the dining room with Ms A. It is not disputed that she instructed Ms A to show her where the gloves and aprons were normally kept. The Tribunal then saw Ms A go towards the cupboard with a key on the end of a chain that was attached at or near her waist, make an unlocking motion and open a cupboard. Dr Senasinghe is then seen bending down and removing gloves and aprons, and putting them on the worktop above the cupboard. The Tribunal then observed her pick up and detach more than one plastic apron from the roll and held each end in either of her hands, extended taut. She then moved quickly towards Ms A and the Tribunal then observed her place both arms around Ms A's neck area, whilst continuing to hold the plastic apron taut.

20. The Tribunal considered Ms A's account given in oral evidence, which was consistent with the CCTV footage, the account she provided in her complaint to the Hospital, her telephone conversation with the police, and the subsequent police statement.

21. The Tribunal carefully considered Dr Senasinghe's account of the incident which she gave during her oral evidence. Dr Senasinghe denied putting the apron around Ms A's neck. She told the Tribunal (and demonstrated for them using a similar plastic apron) that she had held the apron in her left hand. She had then reached around Ms A with both hands, still holding the apron in only her left hand. She stated that she then briefly touched the apron at the back on Ms A's neck with her right hand and immediately let go, dropping both arms. Her account did not accord with what the Tribunal saw in the recorded footage. The Tribunal saw that both hands held the apron, both arms went around Ms A's neck with some force. Ms A was seen to stumble back with Dr Senasinghe moving forward whilst keeping her hold around Ms A's neck and shoulder area, coming so close to Ms A that it appeared as if she was hugging her. The Tribunal accepted that the whole incident lasted a few seconds at the end of which Dr Senasinghe dropped both arms.

22. The Tribunal therefore determined, based on the CCTV footage and the corroborated evidence from Ms A, that Dr Senasinghe had placed the plastic apron around Ms A's neck.

23. Accordingly, the Tribunal found subparagraph 1.a. of the Allegation proved.

Subparagraph 1.b.

24. The Tribunal went on to consider whether Dr Senasinghe shouted at Ms A, *'I'm going to strangle you now'*, or words to that effect. It considered that there was no independent witness evidence corroborating what was said at the time of Dr Senasinghe's actions at subparagraph 1.a. and there was no sound on the CCTV footage.

25. The Tribunal considered Ms A's oral evidence to be consistent with her witness statement in which she stated:

> *'After that she put them around my neck and tried to strangle me shouting out loud "I am going to strangle you, I am going to strangle you, I am going to strangle you!".'*

26. It found that Ms A's account of this was repeated consistently in her initial complaint to Mr C, her telephone conversation with the police and later in her police statement on 2 April 2019. Further, the Tribunal noted that Ms A had provided the same account during her A&E examination on 1 April 2019 and in her initial letter of complaint to Ms E, dated 10 April 2019.

27. The Tribunal considered the context of the incident. It referred itself to Dr Senasinghe's oral evidence in which she had maintained that she was trying to demonstrate that materials such as the plastic aprons could be used by patients to self-harm or by patients with *'auditory hallucinations to kill others'*.

28. In light of the context of the demonstration and Ms A's evidence as repeated on at least four occasions, the Tribunal considered that, on the balance of probabilities, Dr Senasinghe shouted at Ms A, *'I'm going to strangle you now'* or words to that effect. It is likely that this was part of her *'demonstration'* of what a patient might shout in the grip of such a hallucination. Dr Senasinghe did not tell the Tribunal that she had warned Ms A prior to her taking this action so Ms A would not have known the context of these shouted threats.

29. Accordingly, the Tribunal found subparagraph 1.b. of the Allegation proved.

Subparagraph 3.a.

30. The Tribunal considered whether the actions found proved under paragraph 1 of the Allegation were carried out in the presence of patient(s).

31. The Tribunal noted that Dr Senasinghe had admitted in her oral evidence that there were patients present at the time she carried out the demonstration. Additionally, it directed its attention to the CCTV footage which showed a patient sitting at a dining room table at the time the incident occurred and another patient entering the dining room during the interaction. The Tribunal therefore determined that Dr Senasinghe's actions in the dining room were carried out in the presence of patients.

32. Accordingly, the Tribunal found subparagraph 3.a. of the Allegation proved.

Subparagraph 3.b.

33. The Tribunal went on to consider whether Dr Senasinghe's actions in placing the plastic apron around Ms A's neck caused Ms A to fear for her safety and caused her upset.

34. The Tribunal considered Mr Matovu's submission that Ms A would not have remained at work and delayed making a complaint had she feared for her safety. However, the Tribunal found that the wording of subparagraph 3.b. required only that Ms A feared for her safety and was upset at the time the incident occurred in the dining room.

35. The Tribunal noted Dr Senasinghe's oral evidence that she was *'sorry she perceived it that way'* but expressed that this was not her intention. Nevertheless, the Tribunal found that this subparagraph of the Allegation referred to the impact that Dr Senasinghe's actions had on Ms A, and not Dr Senasinghe's intention in carrying out the actions under paragraph 1 of the Allegation.

36. The Tribunal considered the context of Dr Senasinghe's actions as found proved at paragraph 1 of the Allegation and found that her actions had been unexpected. Looking at the CCTV evidence, within seconds of being asked to open the cupboard and the gloves and aprons being removed, Dr Senasinghe pulled the aprons taut and suddenly put her arms around Ms A's neck. The Tribunal also took into account its findings in relation to subparagraph 1.b. and that Ms A had heard Dr Senasinghe shout *'I'm going to strangle you now'*. The Tribunal found that it was highly likely in these circumstances that someone would be fearful. Prior to these incidents, Ms A had indicated that she had a good working relationship with Dr Senasinghe and would have had no reason to expect any strange or threatening behaviour from her. Dr Senasinghe admitted that she did not explain to Ms A what she was wanting to demonstrate. The Tribunal finds that the sudden movement around her neck with the taut plastic apron and the accompanying words could not have been other than shocking.

37. The Tribunal considered Ms A's oral evidence. It noted that when recounting the events in the dining room, Ms A became animated and stated, *'I was seriously traumatised'*. The Tribunal considered that Ms A's evidence was genuine and credible as she described those events. Further, it noted that Ms A had told the police on the telephone and in the police statement, the examining doctor in A&E, and Ms E in both her verbal and written complaints that she was fearful as a result of Dr Senasinghe's actions in the dining room.

38. The Tribunal considered that there was enough evidence to determine on the balance of probabilities, that Ms A feared for her safety because of Dr Senasinghe's actions in the dining room. The Tribunal considered that a finding that Ms A was caused '*upset'* naturally flowed from a finding that Ms A feared for her safety.

39. Accordingly, the Tribunal found subparagraph 3.b. of the Allegation proved in its entirety.

Subparagraph 3.c.

40. The Tribunal considered whether Dr Senasinghe's actions in the dining room caused Ms A pain.

41. The Tribunal noted Mr Matovu's submission that the CCTV evidence did not show Ms A demonstrating any indication of pain at the time of the incident in the dining room. Further, that Ms A continued to work that afternoon and on the following day and delayed in seeking medical treatment. Mr Rigby submitted that there was corroborative independent medical evidence and directed the Tribunal to it.

42. The Tribunal accepted Ms A's evidence that she had self-administered paracetamol following the incident. The Tribunal also took into account the A&E notes and discharge letter which noted that Ms A had been given painkillers and had informed the examining doctor that she felt pain. On examination the doctor recorded, '*pain bilateral neck muscles posteriorly'* with decreased range of movement due to pain and diagnosed muscular neck pain. Ms A was prescribed regular analgesia, gentle neck exercises and GP follow up if required.

43. The Tribunal carefully considered the CCTV footage and noted that Ms A touched her neck on at least four occasions in the nursing station, following the incident in the dining room. Both sides of the neck were observed to be touched by Ms A.

44. In the CCTV footage of the incident in the dining room, the Tribunal noted that at the time the apron had been placed around her neck, Ms A appeared to *'scrunch'* her neck down to one side which looked like an instinctive gesture to avoid pressure.

45. Having considered the CCTV footage, Ms A's oral evidence and the medical records relating to her pain, the Tribunal determined that, it was more likely than not that Ms A was caused pain by the incident in the dining room.

46. Accordingly, the Tribunal found subparagraph 3.c. of the Allegation proved.

<u>Paragraph 2 and Subparagraph 3.d.</u>

47. In relation to paragraph 2 and subparagraph 3.d. of the Allegation, the Tribunal had to determine whether Dr Senasinghe held a plastic apron up against Ms A's neck in the nursing station and that this cause Ms A further fear for her safety and further upset.

48. The context of this allegation is that towards the end of the incident in the dining room, two other staff entered. The Tribunal heard that this was in response to a call Ms A had made as instructed by Dr Senasinghe to call a manager. One of the staff was Mr D who gave a witness statement and the other was Mr C who came to the entrance area of the dining room briefly. He told the Tribunal that he had overheard Ms A calling for the manager on the radio and she sounded '*terrified*'. He told the Tribunal that he had stated that the parties should go to the nursing station as patients could see and hear what was happening in the dining room. The CCTV evidence shows that everyone in the incident left the dining room save for one patient who was having her meal. Dr Senasinghe and others left holding the gloves and aprons. Ms A left the room last. The CCTV evidence then shows that Ms A

enters the nursing station first followed by Dr Senasinghe, Mr C and Mr D. There is no CCTV evidence of the journey from the dining room to the nursing station.

49. The Tribunal, in looking at the precursor to the alleged incident in the nursing station, observed Dr Senasinghe holding aprons taut between her hands and clearly talking towards a staff member who was sitting at her desk in the nursing station. Mr C then walks around the doctor to talk with her. Ms A remains behind both individuals. A few seconds later, Ms A comes alongside Dr Senasinghe talking to another staff member and at this point Dr Senasinghe turns, still holding the aprons taut, and approaches Ms A. Ms A is seen to move away quickly.

Paragraph 2

50. In determining paragraph 2 of the Allegation, the Tribunal considered Mr Matovu's submissions on the interpretation of its wording. Mr Matovu submitted that the wording used by the GMC in this part of the Allegation required contact to have been made between the plastic apron and Ms A. In light of both Ms A and Mr C's oral evidence that the plastic apron(s) did not touch Ms A in the nursing station, Mr Matovu submitted that this paragraph could not be found proved. The Tribunal disagreed with Mr Matovu's interpretation of the wording and found *that 'held a plastic apron up against Ms A's neck'* did not mean that there was direct contact.

51. The Tribunal noted that when asked in oral evidence what Dr Senasinghe was doing when she went towards Ms A whilst holding the apron(s) in the nursing station, Dr Senasinghe replied that *'it was a demonstration, and it was around the neck'*. When asked how far away she was from Ms A's neck, Dr Senasinghe stated that she could not comment but that she was *'100% sure I did not touch her neck'*.

52. The Tribunal considered the CCTV evidence with regards to the incident in the nursing station. It found that Dr Senasinghe held the apron(s) taut between her hands and approached Ms A's neck, getting so close that it was not possible to definitively see whether there was a touch or not. At that point Ms A had most of her back to Dr Senasinghe and she immediately moved away from Dr Senasinghe. The Tribunal could not therefore make a finding that there had been any direct contact as at the point where Dr Senasinghe was closest to Ms A, their view was obstructed by Mr C. However, the Tribunal was satisfied that Dr Senasinghe once again approached Ms A with the taut apron(s) between her hands and was very close to her before Ms A moved away. The Tribunal also noted Mr C's witness statement in which he stated very clearly that *'when we got to the office Dr Senasinghe attempted to put the apron around* [Ms A]*'s neck again'.*

53. In light of the CCTV evidence, Mr C's evidence and the Tribunal's findings as to the meaning of paragraph 2 of the Allegation, it determined that, on the balance of probabilities, Dr Senasinghe held a plastic apron up against Ms A's neck in the nursing station.

54. Accordingly, the Tribunal found paragraph 2 of the Allegation proved.

Subparagraph 3.d.

55. The Tribunal went on to consider whether Dr Senasinghe's actions as found proved at paragraph 2 caused Ms A further fear for her safety and further upset.

56. The Tribunal considered Ms A's oral evidence in which she told the Tribunal that she had felt targeted at this point in the events. It considered Ms A's police statement in which she stated that she was, *'worried she* [Dr Senasinghe] *was going to hurt me again.'*. Additionally, it noted Ms A's written complaint to Ms E in which Ms A stated, *'As she continued yelling at me and staff … I feared for my life'*.

57. The Tribunal reminded itself of its findings at subparagraph 3.b. of the Allegation which related to Ms A's fear and upset because of Dr Senasinghe's actions in the dining room. It reminded itself that the incident in the nursing station took place almost immediately after what had happened in the dining room. It considered that when Dr Senasinghe approached Ms A again in the nursing station, it would be highly reasonable and more likely than not that Ms A would once again fear for her safety. The Tribunal found that further upset naturally stemmed from Ms A's further fear for her safety.

58. Accordingly, the Tribunal found subparagraph 3.d. of the Allegation proved in its entirety.

The Tribunal's Overall Determination on the Facts

59. The Tribunal has determined the facts as follows:

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

1. On 28 March 2019, whilst you were in the dining room at Newington Court One Ward at The Priory Hospital in Ticehurst ('the Hospital'), you:

    a. placed a plastic apron around Ms A's neck; **Determined and found proved**

    b. shouted at Ms A, "I'm going to strangle you now", or words to that effect. **Determined and found proved**

2. On 28 March 2019, whilst you were in the nursing station/office at the Hospital, you held a plastic apron up against Ms A's neck. **Determined and found proved**

3. Your actions as set out at:

    a. paragraph 1 were carried out in the presence of patient(s); **Determined and found proved**

b. paragraph 1 caused Ms A:

i. to fear for her safety; **Determined and found proved**

ii. upset; **Determined and found proved**

c. paragraph 1(a) caused Ms A pain; **Determined and found proved**

d. paragraph 2 caused Ms A:

i. further fear for her safety; **Determined and found proved**

ii. further upset. **Determined and found proved**

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

Determination on Impairment - 21/12/2021

1. 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 Senasinghe's fitness to practise is impaired by reason of misconduct.

The Evidence

2. The Tribunal has considered all the evidence received during the facts stage of the hearing, both oral and documentary.

3. The Tribunal received in support of Dr Senasinghe testimonials from colleagues, all of which it has read.

Submissions

Submissions on behalf of the GMC

4. On behalf of the GMC, Mr Rigby submitted that Dr Senasinghe's fitness to practise was currently impaired by reason of her serious misconduct. He reminded the Tribunal of the two-stage process to be adopted and that at this stage, there was no burden of proof upon the GMC.

Misconduct

5. Addressing misconduct, Mr Rigby submitted that the facts determined clearly demonstrated serious misconduct and that fellow members of the profession and the public

would undoubtedly find this conduct to be *'appalling'*. Mr Rigby further submitted that Dr Senasinghe's misconduct was not isolated and that it was aggravated by the fact that she sought to persist with her actions against Ms A.

6. Mr Rigby made reference to Dr Senasinghe's senior status in the hospital and the presence of staff and patients at the time of the '*attack'* on a colleague. He reminded the Tribunal of Ms A's oral evidence in which she stated that she had felt specifically targeted by a doctor who she respected and from whom she thought she could expect respect in turn. Although Mr Rigby acknowledged that Dr Senasinghe had been under stress at the time of the incident, he submitted that she had not shown any consideration or empathy and understanding for Ms A because of her misconduct. In his submission, Mr Rigby stated that Dr Senasinghe had not admitted any of the facts of the Allegation and therefore had not expressed remorse or apologised in a genuine way. In particular, he directed the Tribunal to Dr Senasinghe's response to the Rule 7 letter and submitted that her response was an exercise in self-justification.

7. Mr Rigby submitted that since there had been no evidence of Dr Senasinghe's reflection on the incident, without an understanding or explanation as to why she acted in such a way, it was difficult to say that it would not happen again in similar circumstances.

8. In relation to Dr Senasinghe's character, Mr Rigby drew the Tribunal's attention to the various testimonials provided on her behalf. He submitted that Dr Senasinghe was of positively good character save for the events which led to these proceedings.

Impairment

9. Mr Rigby turned to the issue of impairment and submitted that all three limbs of the overarching objective were clearly engaged.

10. Addressing insight, Mr Rigby acknowledged that not being forthcoming in relation to the Allegation was not an act of misconduct to be considered by itself. Nevertheless, he submitted that Dr Senasinghe had not demonstrated any insight at all and that without full insight, Dr Senasinghe could not properly and genuinely remediate her conduct. Mr Rigby indicated that there had been no repetition of Dr Senasinghe's misconduct in more than two years in practice since the events. However, he submitted that in the absence of any reasoning behind Dr Senasinghe's actions, the Tribunal could not be confident that something similar would not happen again.

11. Mr Rigby submitted that this was a case about public confidence. It was his submission that the public and Dr Senasinghe's colleagues would be surprised and disappointed if no action had been taken upon her registration.

Submissions on behalf of Dr Senasinghe

12. On behalf of Dr Senasinghe, Mr Matovu submitted that Dr Senasinghe's misconduct was not to be regarded as serious misconduct and that her fitness to practise was not currently impaired. In making his submissions, Mr Matovu directed the Tribunal to the relevant caselaw. Additionally, Mr Matovu submitted that the parties to this hearing were bound by the Tribunal's findings of fact and that it would be wrong in principle for the Tribunal to go behind the facts that it had found proved against Dr Senasinghe. He disputed the use of the word *'attack'* by Mr Rigby. He submitted that the Tribunal's deliberations should stay within the confines of the allegations as drafted.

Misconduct

13. Mr Matovu reminded the Tribunal of the context preceding Dr Senasinghe's actions and submitted that this had been a particularly difficult time for the Hospital and in particular, the ward for which Dr Senasinghe had responsibility.

14. In relation to Dr Senasinghe's intention, Mr Matovu submitted that she had only intended to carry out a demonstration and that there was no intention to cause harm to Ms A. He submitted that Dr Senasinghe's actions had been in the heat of the moment, lasted only a few seconds, had not caused any physical injuries, and that no pressure had been applied to the throat.

15. In relation to the threshold for a finding of serious misconduct, Mr Matovu drew the Tribunal's attention to the cases of *Meadow v GMC* [2006] EWCA Civ 1390 and *Nandi v GMC* [2004] EWHC 2317 in which it was outlined that *'single actions are less likely to cross the threshold than multiple'*. Mr Matovu submitted that the events ought to be regarded as a single isolated incident which was not in keeping with Dr Senasinghe's character. He reminded the Tribunal that neither Mr C nor Mr D had viewed the incidents as an *'attack'* and that Dr Senasinghe's actions were primarily out of concern for patient safety.

Impairment

16. Addressing impairment, Mr Matovu submitted that the cases of *Cheatle v GMC* [2009] EWHC 645 (Admin) ('Cheatle') and *Cohen v GMC* [2008] EWHC 581 (Admin) were relevant. In relation to Cheatle, he reminded the Tribunal of the following quote from the judgment:

> *'within the context of a long and otherwise unblemished record a fitness to practise panel could fairly conclude, looking forward, that her fitness to practise is not impaired, despite the misconduct, that the misconduct in question was an isolated error and the chance of it being repeated is so remote that her fitness to practise has not been impaired'.*

17. Mr Matovu referred the Tribunal to the various testimonials provided on behalf of Dr Senasinghe and submitted that she was held in high regard by colleagues and patients alike.

Mr Matovu highlighted the testimonial of Ms E, former Acting Ward Manager at the Hospital, and the positive comments made by Mr C and Mr D.

18. Mr Matovu submitted that Dr Senasinghe had clear insight and that she had fully accepted in front of the Tribunal that she should not have carried out the demonstration in the way she did. He submitted that Dr Senasinghe had apologised profusely, she had continued to hold responsible positions since the incident and the likelihood of repetition was *'so remote'*.

19. Mr Matovu therefore submitted that Dr Senasinghe's fitness to practise was not currently impaired.

The Relevant Legal Principles

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

21. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct, and that the misconduct was serious, and then whether the finding of that misconduct which was serious, could lead to a finding of impairment.

22. The Tribunal had to determine whether Dr Senasinghe's fitness to practise was impaired today, considering Dr Senasinghe's conduct at the time of the events and any relevant factors since then such as whether the matters were remediable, had been remedied and any likelihood of repetition.

23. Whilst there was 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 *CHRE v NMC and Paula Grant* [2011] EWHC 297 Admin. The Tribunal noted that any of the following features were likely to be present when a doctor's fitness to practise is found to be impaired:

> *'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 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 to breach in the future one of the fundamental tenets of the medical profession; and/or*
>
> *d. …'*

The Tribunal's Determination on Impairment

Misconduct

24. The Tribunal first considered whether Dr Senasinghe's conduct on 28 March 2019 amounted to serious misconduct.

25. The Tribunal considered the following paragraphs of Good Medical Practice ('GMP') to be relevant in its deliberations:

> *'36 You must treat colleagues fairly and with respect.*
>
> *37 You must be aware of how your behaviour may influence others within and outside the team.'*

26. The Tribunal acknowledged the challenging circumstances at the time of the incident. Although the Tribunal accepted Mr Matovu's submission that this was an isolated incident in which Dr Senasinghe had a momentary lapse of control, it noted that Dr Senasinghe had sought to display her frustration forcibly, unnecessarily and uninvitedly. In determining whether this was a persisting conduct, the Tribunal did not consider that Dr Senasinghe's conduct in the nursing station was significant aggravation. However, the Tribunal had particular regard to the fact that the interaction involved the same junior member of staff and that the incident in the dining room had involved physical contact. The Tribunal concluded that Dr Senasinghe's actions were in breach of paragraphs 36 and 37 of GMP.

27. The Tribunal has therefore concluded that Dr Senasinghe's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.

Impairment

28. The Tribunal having found that the facts found proved amounted to misconduct went on to consider whether, as a result of that misconduct, Dr Senasinghe's fitness to practise was currently impaired.

29. The Tribunal considered that the context to Dr Senasinghe's serious misconduct was important when determining whether Dr Senasinghe's fitness to practise was currently impaired. It acknowledged the particularly challenging circumstances on the ward of the Hospital and Dr Senasinghe's responsibility for vulnerable patients. On 28 March 2019, the Tribunal noted that the Hospital was awaiting the judgment following the Health and Safety Executive prosecution. On this particular day, following further critical incidents with a patient of hers, Dr Senasinghe had just emerged from a community meeting in which she had been trying to reassure patients and their families that staff were working hard to protect patient safety. As part of the risk management plan, Dr Senasinghe had earlier instructed that gloves and aprons were to be removed from the dining room where they had been stored in a cupboard. Immediately following the meeting, Dr Senasinghe decided to carry out a 'spot

check' that her instructions had been carried out. On the way to the dining room she happened to encounter Ms A and asked her to open the cupboard in the dining room. When the gloves and aprons were seen in the dining room cupboard, this was unanticipated and unexpected, and took Dr Senasinghe by surprise. Her conduct thereafter was as a result of her loss of control and the Tribunal reminded itself of its finding that this conduct – which continued into the nursing station – amounted to serious misconduct.

30. The Tribunal considered Mr Matovu's submission that Dr Senasinghe's misconduct was an isolated incident and therefore not representative of a course of conduct. Mr Rigby on the other hand had submitted that this incident persisted over a period of time. The Tribunal accepted that Dr Senasinghe's actions arose out of a completely misguided attempt at demonstrating the dangers of having the gloves and aprons in the dining room where patients may have access to them. However, the Tribunal was mindful that the conduct did continue for a few minutes as there was an, albeit less serious, incident in the nursing station. The Tribunal determined that while this was a single incident it lasted a few minutes.

31. The Tribunal considered Dr Senasinghe's insight. The Tribunal noted that Dr Senasinghe had sought to minimise the seriousness of her actions which were initially alleged to be attempted murder by Ms A. However, it had regard to these serious allegations and acknowledged that Dr Senasinghe had a right to conduct a defence. The Tribunal found that when asked in her oral evidence, Dr Senasinghe informed the Tribunal that, in hindsight, if she had been in control of herself at the time, she would not have carried out her actions at all. The Tribunal found that throughout these proceedings, Dr Senasinghe had been consistent in her evidence that she should not have acted in such a way. Although the Tribunal considered that Dr Senasinghe had not apologised unconditionally for the impact of her action of the reputation of the Profession, it noted that Dr Senasinghe had apologised to Ms A on at least two occasions, the first of which was the day after the incident. The Tribunal therefore determined that Dr Senasinghe's insight was developing.

32. In relation to remediation, the Tribunal found that although Dr Senasinghe had not provided evidence that she had undertaken any courses to remediate, she had referred to a willingness to complete an anger management course. The Tribunal considered that there was evidence that Dr Senasinghe had carried out a reflective practice and had been open with her colleagues and employers about what had taken place. This was evident in the testimonials provided to the Tribunal from her colleagues that knew about the incident. The Tribunal further noted that Dr Senasinghe had continued to practise for more than two and three quarter years since the incident with no evidence of any further concerns.

33. The Tribunal went on to consider the risk of repetition. The Tribunal was mindful that Dr Senasinghe's misconduct on 28 March 2019 was not reflective of any animosity towards Ms A; instead, it arose out of a concern for patient safety. It reminded itself of the disciplinary proceedings carried out by the Hospital, those conducted by the GMC and the police investigation that had arisen as a result of Dr Senasinghe's misconduct. It considered that the totality of the investigations and proceedings were a salutary lesson for Dr Senasinghe, as would be the finding of serious misconduct by her regulator. Further, the Tribunal had regard

to Dr Senasinghe's continued practice without incident throughout the challenging circumstances of the pandemic. The Tribunal accepted that her misconduct was out of character. There had been no evidence of any incidents prior to this one, during her long career, and Dr Senasinghe had been held in good regard by both junior and senior colleagues. The Tribunal concluded that in the absence of evidence that Dr Senasinghe had acted in such a way prior, or subsequent, to 28 March 2019, the risk of repetition was low.

34. The Tribunal had regard to the overarching objective. It considered that the need to maintain public confidence and the need to maintain proper professional conduct were engaged by Dr Senasinghe's misconduct. However, the Tribunal determined in light of the low likelihood of repetition, evidence of reflection, and developing insight, there were no current concerns that these limbs continued to be engaged.

35. The Tribunal considered the public interest. It found that a well-informed member of the public would not find that professional standards would be undermined without a finding of impairment. The Tribunal considered that a well-informed member of the public would be satisfied that a finding of serious misconduct would be a proportionate response to the facts of this case, taking into account Dr Senasinghe's good character prior to the events, the context in which the misconduct took place, and the lack of evidence of any further concerns since the events. Further, the Tribunal gave due regard to Dr Senasinghe's good character prior to these events and the positive testimonials of colleagues who were aware of Dr Senasinghe's misconduct.

36. The Tribunal has therefore determined that Dr Senasinghe's fitness to practise is not impaired.

Determination on Warning - 22/12/2021

1. As the Tribunal determined that Dr Senasinghe's fitness to practise was not impaired it considered whether in accordance with s35D (3) of the 1983 Act, a warning was required.

Submissions

Submissions on behalf of the GMC

2. On behalf of the GMC, Mr Rigby invited the Tribunal to impose a warning on Dr Senasinghe's registration.

3. In making his submissions, Mr Rigby referred the Tribunal to its Determination on Impairment. He highlighted that it had found breaches of specific paragraphs of Good Medical Practice ('GMP') such that her conduct had fallen so far short of that reasonably to be expected so as to amount to serious misconduct.

4. Mr Rigby directed the Tribunal to the '*Guidance on Warnings*'. He submitted that paragraph 25 was of relevance:

> *'25 There will be some cases involving dishonesty or violence that are not related to the doctor's professional practice and/or which are sufficiently low level in nature that taking action on the doctor's registration would be disproportionate. A warning is likely to be appropriate in these cases. Examples might include, in the absence of any other concerns, police cautions for theft or common assault.'*

Referring to this paragraph, Mr Rigby submitted that Dr Senasinghe's misconduct was in fact related to her professional practice and was more serious.

5. Mr Rigby drew the Tribunal's attention to paragraph 20 of the Guidance on Warnings which outlines factors to be considered when making its decision. Mr Rigby submitted that subparagraphs a, b, and d of the listed factors in paragraph 20 applied to Dr Senasinghe's case.

6. Mr Rigby therefore submitted that, taking into account the relevant mitigation and aggravation, it was both proportionate and in the public interest to impose a warning on Dr Senasinghe's registration.

Submissions on behalf of Dr Senasinghe

7. On behalf of Dr Senasinghe, Mr Matovu submitted that it would not be proportionate to impose a warning on Dr Senasinghe's registration.

8. Mr Matovu submitted that, in line with the Guidance on Warnings, the purpose of a warning was that of a deterrent. He reminded the Tribunal of its findings within its Determination on Impairment. He submitted that in light of the salutary lessons learnt by Dr Senasinghe throughout this process, and the finding of serious misconduct, there was no need for a warning.

9. Mr Matovu drew the Tribunal's attention to paragraph 32 of the Guidance on Warnings and invited the Tribunal to consider the following factors, which he submitted were present:

> *'a the level of insight into the failings*

b a genuine expression of regret/apology
c previous good history
d whether the incident was isolated or whether there has been any repetition
e any indicators as to the likelihood of the concerns being repeated
f any rehabilitative/corrective steps taken
g relevant and appropriate references and testimonials.'

When considering these factors, Mr Matovu requested that the Tribunal have regard to the statement of Dr Senasinghe's Responsible Officer and the appraisal conducted by the Director of the Hospital.

10. Mr Matovu addressed the matter of proportionality. He submitted that the public interest did not require a warning in this case because there was no danger of repetition. He submitted that the incident did not involve the public and that it was material to bear in mind that Dr Senasinghe's actions were motivated by a concern for patient safety. Addressing Dr Senasinghe's interests, Mr Matovu submitted that a warning, which would remain on her record for two years, would act as an additional penalty. He submitted that this case did not merit taking a step beyond the finding of serious misconduct to impose a warning on her record.

11. Mr Matovu therefore submitted that, following the Tribunal's finding of serious misconduct, the imposition of a warning would be disproportionate.

The Approach of the Tribunal

12. The power of the Tribunal to issue a formal warning is central to public protection, maintaining public confidence in the profession, and declaring and upholding proper standards of conduct and behaviour. A warning is a formal response drawing a doctor's attention to specific concerns and highlighting that any repetition is likely to result in a finding of impaired fitness to practise.

13. Even in an exceptional case involving an isolated lapse in an otherwise unblemished career, where the risk of repetition is extremely low, a warning may be required to uphold professional standards, particularly where there has been a significant departure from GMP.

14. Throughout its considerations, the Tribunal was mindful of the principle of proportionality and its duty to weigh the interests of the public against those of the practitioner.

The Tribunal's Determination on Warning

15. The Tribunal took account of all the evidence, submissions, relevant law, Sanctions Guidance and Guidance on Warnings in its deliberations, as well as the statutory overarching objective. It identified the need to maintain public confidence in the profession as relevant, as well as the need to declare and uphold the standards of conduct expected of a doctor.

16. In considering whether a warning was appropriate in this case, the Tribunal was guided by the factors outlined in the Guidance on Warnings. It acknowledged that Dr Senasinghe had reflected, apologised, and expressed regret for her actions. Additionally, the Tribunal noted the numerous testimonials provided on her behalf and the low risk of repetition. However, it was significant that Dr Senasinghe's insight was still developing.

17. The Tribunal considered whether Dr Senasinghe's misconduct represented a significant departure from GMP. It found that her departures from GMP were more serious because of her level of seniority in the Hospital. Additionally, it considered that the following factors, as outlined at paragraph 20 of the Guidance on Warnings were relevant in this case:

> 'a *There has been a clear and specific breach of Good medical practice or our supplementary guidance.*
>
> b *The particular conduct, behaviour or performance approaches, but falls short of, the threshold for the realistic prospect test or in a case before a tribunal, that the doctor's fitness to practise has not been found to be impaired.*
>
> c *A warning will be appropriate when the concerns are sufficiently serious that, if there were a repetition, they would likely result in a finding of impaired fitness to practise …*
>
> d *There is a need to record formally the particular concerns (because additional action may be required in the event of any repetition).'*

18. In light of Dr Senasinghe's serious misconduct, the Tribunal concluded that Dr Senasinghe's behaviour needed to be formally recorded as unacceptable and that a warning would achieve this. It concluded that a warning would serve as a deterrent to Dr Senasinghe. It noted that whilst the warning would remain on Dr Senasinghe's record for a period of two years, it would not restrict her ability to practise, and it was therefore a proportionate step to take, in the public interest.

19. The Tribunal determined that a warning should be given to Dr Senasinghe in the following terms:

> 'On 28 March 2019 Dr Senasinghe, in the presence of patient(s), placed a plastic apron around Ms A's neck and shouted *'I'm going to strangle you now'*, or words to that effect. This caused Ms A pain, upset and fear for her safety. Immediately

following this incident, Dr Senasinghe again held a plastic apron up against Ms A's neck in a nursing station causing her further upset and further fear for her safety.

This conduct does not meet with the standards required of a doctor. It risks bringing the profession into disrepute and it must not be repeated.

The required standards are set out in *Good medical practice* and associated guidance, in particular paragraphs 36 and 37:

> *'36 You must treat colleagues fairly and with respect.*
>
> *37 You must be aware of how your behaviour may influence others within and outside the team.'*

Whilst this failing in itself is not so serious as to require any restriction on Dr Senasinghe's registration, it is necessary in response to issue this formal warning.

The Tribunal concluded it is necessary to issue this formal warning to act as a deterrent to Dr Senasinghe and as a formal record in the event of any repetition of this type of conduct. Any repetition of the conduct that has led to this warning, is likely to lead to a finding that Dr Senasinghe's fitness to practise is impaired.

This warning will be published on the medical register in line with our publication and disclosure policy, which can be found at www.gmc-uk.org/disclosurepolicy.'

20. That concludes this case.

ANNEX A – 20/12/2021

Rule 17(2)(g) Application

1. At the close of the case on behalf of the GMC, Mr Matovu, on behalf of Dr Senasinghe, made an application pursuant to Rule 17(2)(g) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). Rule 17(2)(g) states:

> *'the practitioner may make submissions as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed no further as a result, and the Medical Practitioners Tribunal shall consider any such submissions and announce its decision as to whether they should be upheld'.*

2. Mr Matovu submitted that the GMC had failed to adduce sufficient evidence upon which the Tribunal could find the following charges proved:

Submissions

<u>On behalf of Dr Senasinghe</u>

3. On behalf of Dr Senasinghe, Mr Matovu submitted that particular subparagraphs of the Allegation were linked. In this respect he submitted that paragraph 2 and paragraph 3.d. were linked and that paragraph 1 was linked to 3.a., 3.b., and 3.c., although 3.c. was limited to 1.a..

4. With regards to the evidence that could be considered by the Tribunal when determining an application of no case to answer, Mr Matovu submitted that it ought to be restricted to that of the witnesses called by the GMC and the CCTV footage. Beyond that referred to in the evidence, he submitted that the evidence within the bundles had not actually been adduced. Mr Matovu submitted that any additional evidence would require an application, but that the GMC had closed its case on the basis that it was content to rely on the evidence adduced during the course of the hearing. Mr Matovu acknowledged the Tribunal's '*very wide powers'* as regards admissibility and submitted that it was entitled to admit beyond what a criminal court would admit. However, it was his submission that the Tribunal would need to be asked to exercise that power before it actually comes in.

5. On behalf of Dr Senasinghe, Mr Matovu submitted that there was no case to answer in respect of the following paragraphs:

> 4. On 28 March 2019, whilst you were in the dining room at Newington Court One Ward at The Priory Hospital in Ticehurst ('the Hospital'), you:
>
> a. placed a plastic apron around Ms A's neck;

5. On 28 March 2019, whilst you were in the nursing station/office at the Hospital, you held a plastic apron up against Ms A's neck.

6. Your actions as set out at:

b. paragraph 1 caused Ms A:
i. to fear for her safety;

c. paragraph 1(a) caused Ms A pain;

d. paragraph 2 caused Ms A:
i. further fear for her safety;
ii. further upset.

Subparagraphs 1.a., 3.b.i., and 3.c.

6. In relation to subparagraph 1.a. of the Allegation, Mr Matovu submitted that the Tribunal could only rely on the evidence provided by Ms A, as the evidence given by Mr C in relation to this issue was hearsay; his account was of what he had been told by Ms A. Mr Matovu stated that Ms A referenced a looping movement over the head to place the plastic apron to the back of the neck and a subsequent pull. Mr Matovu submitted that this did not correspond with the charge *'placed a plastic apron around Ms A's neck'*. Mr Matovu submitted that Ms A's description of the events was not reflected in the CCTV evidence.

7. Mr Matovu made submissions on subparagraph 3.b.i. of the Allegation. He submitted that there was no indication or evidence to suggest that Ms A was in genuine fear for her safety. Further, it was his submission that Ms A's failure to move a significant distance away from Dr Senasinghe or remove herself from the situation was entirely inconsistent with someone in fear for their safety. Further he submitted that Ms A had stated in oral evidence that her radio call following the incident in the dining room was not a call for help. Mr Matovu submitted that there was no concrete evidence before the Tribunal on the basis of which it could properly make a finding that as a result of the actions of Dr Senasinghe, Ms A was genuinely in fear for her safety.

8. Mr Matovu informed the Tribunal that subparagrah 3.c. was consequent upon subparagraph 1.a. being established. Mr Matovu submitted that it was not enough for Ms A to state that she felt pain. He submitted that Ms A had accepted in her oral evidence both that no pressure had been applied to her throat and that the plastic apron exhibited to the Tribunal was soft to touch. He therefore submitted that it would not cause pain on its own, unless applied with some degree of force. Mr Matovu directed the Tribunal to the CCTV evidence exhibited and submitted that this could not be seen. Mr Matovu drew the Tribunal's attention to the A&E report in which the examining doctor confirmed that no pressure had been applied to the anterior part of the neck and reassured Ms A that no damage had been caused to the thyroid. He submitted that the police report written on 2 April 2019, which referred to *'pressing on the throat'* was inconsistent with the evidence provided by Ms A

which was that the apron was pulled, affecting the posterior and the sides of her neck. Additionally, Mr Matovu submitted that if there had been significant pain, there would have been some evidence in the form of bruising or some mark to signify that there had been force applied.

Paragraph 2 and subparagraph 3.d.

9. Mr Matovu addressed paragraph 2 of the Allegation. He reminded the Tribunal that both Ms A and Mr C had accepted that Dr Senasinghe did not touch Ms A's neck with the plastic apron whilst in the nursing station. He submitted that, *'by the normal understanding of English'* , the meaning of the words 'held a plastic apron up against Ms A's neck' required there to have been contact. On this basis, Mr Matovu submitted that there was no case to answer in relation to paragraph 2 of the Allegation.

10. With regard to subparagraph 3.d., Mr Matovu submitted that where it is found that there is no case to answer in respect of paragraph 2 of the Allegation, this subparagraph must fall away.

Mr Matovu further submitted that it was difficult to see how there could be a case to answer with regard to further fear of safety or upset if no contact was made.

<u>On behalf of the GMC</u>

11. Addressing the evidence which could be relied upon by the Tribunal when making its decision, Mr Rigby submitted that the parties have agreed as to which documentary evidence should go before the Tribunal in the form of the bundles presented. He submitted that the weight to which the evidence was given was a matter for the Tribunal.

12. On behalf of the GMC, Mr Rigby submitted that there was a case to answer in relation to all of the parts of the Allegation raised by Mr Matovu. In his submissions, Mr Rigby referred the Tribunal to the relevant caselaw and set out the two stage test to be applied. Mr Rigby submitted that there was clear evidence to support all parts of the Allegation. Mr Rigby submitted that Ms A's written and oral evidence and the CCTV footage provided clear evidence. Further, Mr Rigby submitted that the Tribunal could consider that which Dr Senasinghe had said in the bundle by way of admission.

13. In relation to subparagraph 1.a., Mr Rigby drew the Tribunal's attention to the evidence of Ms A and the CCTV footage. He submitted that through the CCTV footage it was very clear that a degree of force was used, that Ms A was pushed backwards that Dr Senasinghe put apron around Ms A's neck. Mr Rigby referred the Tribunal to the Management Report conducted by Dr G and submitted that this demonstrated that Dr Senasinghe had told Dr G that she had put the apron around the neck of Ms A.

14. Mr Rigby addressed paragraph 2 of the Allegation. He submitted that the paragraph did not say that Dr Senasinghe '*forcibly held'* or that the apron touched Ms A's neck, nor that

the apron went round her neck. He stated that the Allegation did not require any touch. He submitted that the witnesses had not tried to say that the apron had touched Ms A's neck. Nevertheless, Mr Rigby referred the Tribunal to the CCTV footage and submitted that the Tribunal may conclude, if it mattered, that it did indeed touch her neck.

15. In addressing subparagraph 3.b.i., Mr Rigby acknowledged Mr Matovu's submission about Ms A's behaviour subsequent to the incident. However, he submitted that she did very much fear for safety at the time that the incident was happening and that this was sufficient. He referred the Tribunal to Ms A's evidence and submitted that she had told it how upset she was. He submitted that whether or not there was any immediate physical injury, it would be hard to imagine how Ms A would not be upset by what happened. Mr Rigby submitted that a reasonable Tribunal could easily find that proved.

16. Mr Rigby submitted that in relation to subparagraph 3.c., Ms A had told the Tribunal that she was in significant pain and there was clear evidence to prove the subparagraph. In relation to subparagraph 3.d., Mr Rigby submitted that, if at the time Dr Senasinghe went toward Ms A with a rolled up apron between her hands, Ms A says she was in fear for her safety, there was evidence upon which the Tribunal could find that she was and additionally that she had been caused further upset.

Relevant Legal Principles

132. The Tribunal reminded itself that, at this stage, its purpose was not to make findings of fact but to determine whether sufficient evidence, taken at its highest, had been presented by the GMC such that a Tribunal, correctly directed as to the law, could properly find the relevant paragraphs proved to the civil standard of proof. The Tribunal considered the oral submissions of Mr Matovu and Mr Rigby.

133. The Tribunal considered that any evidence provided by this stage which had been agreed by both parties was open for it to consider but that the weight of any such evidence was to be carefully thought through. It bore in mind that greater weight may be attributed to evidence that had been heard under oath or affirmation and which had therefore been tested during the hearing. It considered that where it was deemed appropriate to consider evidence within the provided bundles, the Tribunal must also consider evidence provided on behalf of Dr Senasinghe, which included her own statements. In relation to the credibility of witness evidence, the Tribunal bore in mind that it was entirely possible to find a witness credible in one or some aspect and less so in other areas. It reminded itself that caution must be applied in any judgment as to the overall credibility of a witness.

134. The Tribunal had regard to the case of *R v Galbraith* [1981] 2 All ER 1060 *('Galbraith')* which sets out a two-part test to follow to ascertain the strength of the GMC's evidence. It states (wording adapted for use in fitness to practise hearings):

'How then should the Tribunal approach a submission of 'no case'?

(1) If there is no evidence that the fact alleged has been committed by the medical practitioner, there is no difficulty. The Tribunal will of course stop the case.

(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence.

(a) Where the Tribunal comes to the conclusion that the GMC evidence, taken at its highest, is such that a properly directed Tribunal could not properly find the fact proved upon that evidence, it is the Tribunal's duty, upon a submission being made, to stop the case in relation to that alleged fact.

(b) Where however the GMC evidence is such that its strength or weakness depends on the view to be taken of a witness' reliability, or other matters which are generally speaking within the province of the Tribunal, and where on one possible view of the facts there is evidence upon which a Tribunal could properly find the fact proved, then the Tribunal should not make a direction of no case to answer.'

135. The Tribunal bore in mind the case of *R. (on the application of Tutin) v General Medical Council* [2009] EWHC 553 (Admin) in which it was found that the principles as laid out in Galbraith applied to proceedings brought by the General Medical Council. It laid outlined the following questions to be considered:

'• Was there any evidence before the Panel upon which it could find that matter proved. The Panel resolved that if there was no evidence of any particular fact, then it would allow your submission.

• Was there some evidence, but of such an unsatisfactory character that the Panel, properly directed as to the burden and standard of proof, could not find the matter proved? If so, the Panel would allow your submission.

• Was there some evidence, the relative strength or weakness of which was dependent upon the Panel's view of the reliability of a witness?'

136. The Tribunal further reminded itself that it must determine each paragraph of the Allegation on an individual basis, unless it is linked to another paragraph. However, the Tribunal does not have to consider them in the order that they are drafted.

The Tribunal's Decision

22. The Tribunal had regard to the relevant legal principles and considered all the evidence that had been presented by the GMC at the close of its case.

23. The Tribunal kept foremost in its mind that, at this stage, it was required to determine the sufficiency of the evidence taken at its highest and not to make any findings of fact.

24. The Tribunal considered the GMC's case in relation to subparagraph 1.a. of the Allegation, which alleged that on 28 March 2019, whilst in the dining room, Dr Senasinghe *'placed a plastic apron around Ms A's neck'*. The Tribunal considered Mr Matovu's submission in relation to the way in which Ms A described the incident in her police statement on 2 April 2019; *'looped them over my head'*. Having regard to the wording of the charge itself, the Tribunal did not consider Ms A's description to be inconsistent with placing a plastic apron around her neck. The Tribunal considered the CCTV footage relating to the incident in the dining room, Ms A's written description and her oral evidence, given under oath, *'she adjusted it and placed around my neck'*. Considering the evidence put before the Tribunal at this stage, it determined that, taken at its highest, a properly directed Tribunal could properly find the fact proved upon that evidence. The Tribunal therefore concluded that there was a case to answer in relation to subparagraph 1.a. of the Allegation.

25. The Tribunal considered subparagraph 3.c. of the Allegation which alleged that Dr Senasinghe's actions as alleged at paragraph 1.a. above caused Ms A pain. The Tribunal directed itself of the A&E record of Ms A's appointment on 1 April 2019 and the subsequent GP discharge letter which both indicated that Ms A complained of pain on examination and was prescribed painkillers. The Tribunal therefore considered that this evidence, taken at its highest, was such that a properly directed Tribunal could properly find subparagraph 3.c. of the Allegation proved.

26. The Tribunal considered paragraph 2 of the Allegation which alleged that whilst in the nursing station, Dr Senasinghe *'held a plastic apron up against Ms A's neck'*. The Tribunal acknowledged that Ms A and Mr C had agreed in their oral evidence that the apron did not touch Ms A's neck in the nursing station. However, the Tribunal did not consider that the wording of this paragraph required any contact to be made between the plastic apron and Ms A. The Tribunal took account of the CCTV footage of the incident in the nursing station and the police statement made on 2 April 2019, in which Ms A stated,

> *'She cut another apron from the roll and came towards me again, holding the apron as she had before.'*

The Tribunal therefore considered that the evidence, taken at its highest, was such that a properly directed Tribunal could properly find paragraph 2 of the Allegation proved upon that evidence.

27. The Tribunal considered subparagraph 3.b. of the Allegation in which it was alleged that Dr Senasinghe's alleged actions in the dining room caused Ms A to fear for her safety. The Tribunal considered Mr Matovu's submissions regarding Ms A's continued presence in the dining room following the incident. However, it referred itself to the police statement made on 2 April 2019, in which Ms A stated in relation to the events in the nursing station:

'I leaned back towards … another member of staff who was in the office, and said "Dr S, I'm still hurting from what you did to me earlier. Please can you stop". I was worried she was going to hurt me again. I don't recall her words but she kept yelling, this time towards the senior health care assistant.'

28. The Tribunal found that the statement provided an account from Ms A as to how she felt following Dr Senasinghe's alleged actions in the dining room. The Tribunal also considered the A&E report which detailed, '*very fearful and shaken up by attack when recounting incident*'. It also considered Ms A's consistent evidence under oath regarding a fear for her safety. The Tribunal considered subparagraph 1.b. of the Allegation and Ms A's written and oral evidence, which alleged that Dr Senasinghe had shouted *'I'm going to strangle you now',* to be evidence in support of a fear for safety. The Tribunal therefore determined that the evidence, when taken at its highest, was such that a properly directed Tribunal could properly find the subparagraph 3.b. of the Allegation proved upon it.

29. The Tribunal considered subparagraph 3.d. of the Allegation which alleged that because of Dr Senasinghe's actions in the nursing station, she caused Ms A further fear for her safety and further upset. The Tribunal reminded itself of its findings under subparagraph 3.b. of the Allegation, in which it took account of Ms A's statement to the police on 2 April 2019, Ms A's consistent oral and written evidence and the A&E report. The Tribunal determined that the evidence, when taken at its highest, was such that a properly directed Tribunal could properly find subparagraph 3.d. of the Allegation proved.

30. The Tribunal therefore determined to refuse the application made on behalf of Dr Senasinghe pursuant to Rule 17(2)(g) in full.