

## PUBLIC RECORD

Dates: 24/04/2024 - 25/04/2024

Medical Practitioner's name: Dr Simon ABRAHAM

GMC reference number: 7637537

Primary medical qualification: MBBS 2012 University of Mauritius - Sir Seewoosagur Ramgoolam Medical College

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

## Summary of outcome

Erasure

## Tribunal:

Legally Qualified Chair	Mr Malcolm Dodds
Lay Tribunal Member:	Mrs Sue Wadham
Medical Tribunal Member:	Dr Becky McGee
Tribunal Clerk:	Mrs Jennifer Coakley

## Attendance and Representation:

Medical Practitioner:	Not present, not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Ms Eleanor Fry, 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 & Impairment - 24/04/2024

### Background

1. Dr Abraham qualified in 2012 and, prior to the events which are the subject of the hearing, he worked in India between 2013 and 2018. He first undertook an internship then a clinical attachment in General Surgery, before working as a House Officer in General Surgery then a Resident Medical Officer in Mumbai.
2. Dr Abraham commenced employment with the East Sussex Healthcare Trust ('the Trust') on 7 August 2019 as a FY2 in Gastroenterology based at the Conquest Hospital. From 4 December 2019 he rotated to Elderly Care, again based at Conquest Hospital, before transferring to Eastbourne District General Hospital on 1 April 2020. From 5 August 2020 he moved into the role of Specialty Registrar in Rheumatology, again based at Eastbourne.
3. The allegations that have led to Dr Abraham's hearing relate to the sexual assault of Patient A. Patient A was admitted to the Acute Medical Unit (AMU) having suffered a nose bleed and severe headache and was admitted to hospital between 17-19 October and 22-23 October 2020. Dr Abraham was involved in her treatment on the first occasion.
4. It is alleged that Dr Abraham contacted Patient A following discharge, having obtained her contact details from her medical records. It is alleged that, on 26 October 2020, Dr Abraham visited Patient A in her own home and gave her a massage. In doing so, it is alleged that Dr Abraham sexually assaulted Patient A over her clothing. It is further alleged that Dr Abraham made three further phone calls to Patient A between 26 October and 11 November 2020, when he was no longer involved in her care and treatment.
5. On 23 November 2020, Dr Abraham was informed of the receipt of Patient A's complaint and was excluded from the workplace. On 8 December 2020, Dr Abraham was informed that an investigation was to be commissioned into the allegations under the Trust's Maintaining High Professional Standards in the Modern NHS Policy.

6. Following the investigation, Dr Abraham was informed on 26 March 2021 that it had been decided that the case should proceed to be considered at a disciplinary hearing. This took place on 7 June 2021. The outcome of the disciplinary hearing was that Dr Abraham was issued with a Final written warning to remain on his file for a period of 12 months, and that he will work under the restrictions imposed by the MPTS interim order. This included the requirement for a chaperone to be with him at all times when seeing female patients. Dr Abraham was allowed to practice medicine until the day he was charged. His contract ended in August 2021 and the hospital did not renew it.

7. Dr Abraham was convicted at Lewes Crown Court on 30 May 2023, after trial, of Sexual Assault. On 14 July 2023, Dr Abraham was sentenced to 18 months' imprisonment, to notification requirements (to sign the sex offenders' register) for ten years and to a restraining order not to contact the victim for a period of five years.

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

8. The Tribunal accepted Ms Fry's submissions, on behalf of the GMC, made pursuant to Rule 40 of the Rules, that notice of this hearing had properly been served on Dr Abraham, and granted an application, made pursuant to Rule 31 of the Rules, that this hearing should proceed in his absence. The Tribunal's full decision on these applications is included at Annex A.

### The Allegation and the Doctor's Response

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

1. On 30 May 2023 at Lewes Crown Court you were convicted, after trial, of Sexual Assault. **To be determined**

2. On 14 July 2023 you were sentenced to:

a. 18 months' imprisonment; **To be determined**

b. notification requirements (to sign the sex offenders' register) for ten years; **To be determined**

c. a restraining order not to contact the victim for a period of five years.  
**To be determined**

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

### The Facts to be Determined

10. The Tribunal is required to determine whether Dr Abraham was convicted, after trial, of Sexual Assault at Lewes Crown Court on 30 May 2023. It is also required to determine whether, on 14 July 2023, Dr Abraham was sentenced to 18 months' imprisonment, notification requirements (to sign the sex offenders' register) for ten years and a restraining order not to contact the victim for a period of five years.

### Documentary Evidence

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

- Email correspondence between the Trust and the GMC, dated March 2021;
- Documents relating to the Trust investigation including Investigation Report, dated April 2021;
- Dr Abraham's Trust statement and other documents submitted to the disciplinary hearing, dated 28 May 2021;
- Certificate of conviction, dated 31 July 2023;
- Documents provided by Sussex Police including records of police interviews and witness statements, dated 2020 & 2021;
- Transcript of Dr Abraham's evidence, dated 25 May 2023;
- Dr Abraham's pre-sentence report, dated 6 July 2023;
- Transcript of Dr Abraham's sentencing hearing, dated 14 July 2023.

### The Tribunal's Approach

12. 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 Abraham 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.

13. Given this case relates to a criminal conviction, the Tribunal was reminded of Rule 34(3) of the Rules, which sets out that:

*'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 ... shall be conclusive evidence of the offence committed.'*

14. The Tribunal noted that Dr Abraham accepted his conviction and sentence and did not challenge that the certificate of conviction related to him.

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

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

### Paragraph 1

16. The Tribunal considered whether, on 30 May 2023 at Lewes Crown Court, Dr Abraham was convicted of the offences as outlined at paragraph 1 of the Allegation.

17. The Tribunal had regard to the Certificate of Conviction, dated 31 July 2023 and signed by an Officer of the Court, which recorded that Dr Abraham was, on 30 May 2023, convicted of the offences as outlined at paragraph 1 of the Allegation.

18. Having had regard to the signed Certificate of Conviction and Rule 34(3) of the Rules, the Tribunal therefore found paragraph 1 of the Allegation proved.

### Paragraph 2

19. The Tribunal considered whether, on 14 July 2023, Dr Abraham was sentenced to 18 months' imprisonment, to notification requirements (to sign the sex offenders' register) for ten years, and to a restraining order not to contact the victim for a period of five years.

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

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

21. The Tribunal has determined the facts as follows:

1. On 30 May 2023 at Lewes Crown Court you were convicted, after trial, of Sexual Assault. **Determined and found proved**

2. On 14 July 2023 you were sentenced to:

- a. 18 months' imprisonment; **Determined and found proved**
- b. notification requirements (to sign the sex offenders' register) for ten years; **Determined and found proved**
- c. a restraining order not to contact the victim for a period of five years. **Determined and found proved**

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

### **Determination on Impairment**

22. 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, Dr Abraham's fitness to practise is impaired by reason of his conviction.

23. No further evidence was adduced at this stage.

### Submissions

24. On behalf of the GMC, Ms Eleanor Fry, Counsel, submitted that Dr Abraham's fitness to practise remains impaired today by reason of his conviction, particularly given the seriousness of the conviction and since the sentence has not yet expired.

25. Ms Fry submitted that Dr Abraham committed a sexual offence which involved a breach of trust since Patient A had previously been a patient of Dr Abraham's. Ms Fry submitted that, in doing so, Dr Abraham brought the profession into disrepute. She submitted that this is a serious conviction for which Dr Abraham received an immediate custodial sentence. She submitted that there has been a clear breach of *Good Medical Practice* and Dr Abraham's integrity cannot be relied upon.

26. Ms Fry submitted that Dr Abraham initially lied during his first police interview and he repeated his denial in relation to seeking Patient A's contact details, attending her home and telephoning her afterwards. Dr Abraham subsequently requested a further police interview and corrected his 'errors' in this regard, confirming that he had sought Patient A's contact details, attended her home and telephoned her afterwards. Ms Fry drew the Tribunal's attention to the judge's sentencing remarks which state that Dr Abraham showed no remorse. She submitted that there is no evidence to demonstrate remediation. She highlighted that Dr Abraham's sentence is due to expire in January 2025 and that Dr Abraham remains on a licence period.

27. Ms Fry submitted that, given all of the above, and the nature of the offence in particular, a member of the public would be horrified if a finding of impairment was not made in these circumstances.

### The Relevant Legal Principles

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

29. The Tribunal must determine whether Dr Abraham'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 other relevant factors such as any development of insight, whether the matters are remediable or have been remedied and the likelihood of repetition.

30. The Tribunal also had to have regard to the public interest and the need to declare and uphold proper standards of behaviour so that confidence in the profession is maintained.

31. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the *Fifth Shipman Report*, as adopted by the High Court in the case of *Council for Healthcare Regulatory Excellence v NMC and Grant* [2011] EWHC 927. In particular, the Tribunal considered whether its findings of fact show that Dr Abraham's fitness to practise is impaired in the sense that he:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or
- d. has in the past acted dishonestly or without integrity and/or liable to act dishonestly or without integrity in the future.

### The Tribunal's Determination on Impairment

32. The Tribunal considered whether Dr Abraham's fitness to practise is impaired as at today's date by reason of his conviction.

33. The Tribunal found that all four elements of the guidance provided by Dame Janet Smith were engaged. Paragraph (a) is engaged by virtue of Dr Abraham being convicted and sentenced for a serious sexual assault on a patient in her own home. Paragraph (b) is engaged given that a conviction and prison sentence for a sexual assault on a patient in her own home by a doctor acting in breach of trust clearly bringing the medical profession into disrepute. Paragraph (c) is engaged since Dr Abraham had breached fundamental tenets of Good Medical Practice (2013 edition in place at the relevant time) namely paragraph 43 (treating patients with dignity), paragraph 53 (not abusing his professional position to pursue a sexual or improper emotional relationship with a patient), paragraph 65 (ensure that his conduct justifies his patient's trust in him and the public's trust in the profession) and paragraph 72 (being honest and trustworthy when giving evidence to courts). Paragraph (d) is engaged since Dr Abraham on his own admission lied in his first police interview, has given contradictory accounts in the criminal proceedings and in the disciplinary proceedings and gave an account which the jury rejected applying the criminal burden and standard of proof.

34. The Tribunal considered whether Dr Abraham's actions fell seriously below the behaviour expected of a doctor. Patient A was a patient who had previously been treated by Dr Abraham. He obtained her contact details from medical records after she had been discharged from hospital, attended her home address and proceeded to sexually assault her

in her bedroom. He then attempted to contact her by telephone after the incident on three occasions. The Tribunal noted that Dr Abraham lied during his first police interview and only later admitted to the police that he had sought Patient A's contact details, attended her home address and subsequently attempted to contact her by telephone.

35. The Tribunal then considered whether Dr Abraham's fitness to practise is impaired on the basis of his conviction.

36. The Tribunal had regard to the fact that Dr Abraham's offending behaviour was so serious that it crossed the custody threshold and resulted in a prison sentence of 18 months' duration; half to be spent in custody and half on licence. The licence period is due to expire in January 2025. The Judge also considered it necessary for Dr Abraham to sign the sex offenders' register for ten years and to impose a restraining order not to contact Patient A for a period of five years in order to guard against ongoing risk. The Tribunal noted the Judge's sentencing remarks which state that *'The pre-sentence report itself is positive although it has to be said that you still do not accept that you committed any offence, there was no remorse.'* The pre-sentence report stated that *'Mr Abraham is assessed as posing a **medium** risk of serious harm to the public.'* *'A MEDIUM risk of serious harm is defined as, "there are identifiable indicators of risk of serious harm. The offender has the potential to cause serious harm but is unlikely to do so unless there is a change in circumstances...'*. The Tribunal concluded that, in the absence of any evidence that Dr Abraham has developed insight, shown remorse or undertaken remediation, there remains a risk of repetition. As such, the Tribunal was of the view that a finding of impairment is necessary in order to protect the public.

37. In terms of insight and remediation the Tribunal took into account the evidence and submissions and asked itself the following questions:

- Are the proven concerns about the doctor's behaviour, skills, performance or health remediable? The Tribunal noted that it is difficult for a doctor to remediate a conviction for a serious sexual assault which the doctor denied and continued to deny after conviction the behaviour for which he was convicted. He continues to deny the sexual assault to this day.
- Have the concerns about the doctor's behaviour, skills, performance or health been remedied? The Tribunal notes that Dr Abraham has presented no evidence of insight or remediation.
- Are the concerns about the doctor's behaviour, skills, or performance likely to be repeated? The Tribunal noted the absence of any acceptance by Dr Abraham of the misconduct that led to his conviction and sentence. It also noted the absence of any sign of remorse or empathy for the victim and an absence of any work done post-conviction to address his misconduct. Therefore, there remains a risk of repetition.

38. Dr Abraham could demonstrate insight if he had demonstrated that he had reflected on this own performance or conduct and understood what went wrong; accepted he should have behaved differently in the circumstances; shown understanding of the impact of his



conduct; demonstrated empathy for the victim; and taken timely steps to remediate and identify how he will act differently in the future to avoid similar issues arising. Dr Abraham had produced no evidence to satisfy any of the above.

39. The Tribunal was of the view that the nature of the conviction is such that the public interest demands a finding of impairment. Dr Abraham's behaviour was so serious that public confidence in the profession would be undermined, and proper standards and conduct for members of the profession would not be maintained, if a finding of impairment were not made. The Tribunal was of the view that a fully informed member of the public would be shocked if a finding of impairment was not made. Dr Abraham's behaviour would be considered deplorable by colleagues and a finding of impairment is also required to reflect the complete unacceptability of his actions.

40. The Tribunal's findings of current impairment is reflected in the ongoing restrictions imposed by the Court; Dr Abraham's sentence is ongoing and he remains subject to notification requirements (to sign the sex offenders' register) for ten years and a restraining order not to contact Patient A for five years.

41. Accordingly, the Tribunal determined that Dr Abraham's fitness to practise is currently impaired by reason of his conviction.

#### Determination on Sanction - 25/04/2024

1. Having determined that Dr Abraham'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

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

3. No further evidence was provided at this stage.

#### Submissions

4. On behalf of the GMC, Ms Fry drew the Tribunal's attention to various paragraphs of the *Sanctions Guidance* ('the SG') (2024 edition), which she submitted were relevant to the Tribunal's decision at this stage. This included paragraph 17, which states:

*'17 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 81 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.'*

5. Ms Fry noted that paragraph 81 of the current *Good Medical Practice* is referred to as paragraph 65 in the previous version. She submitted that there have been breaches of Good Medical Practice in this case which undermine the public's trust in the profession.

6. Ms Fry submitted that the Tribunal should consider the aggravating features in this case including the breach of trust as a doctor, the use of medical systems to obtain details of a vulnerable patient, attending the patient's home, encouraging her to remove clothing and sexually assaulting her in her home.

7. Referring to paragraph 30 of the SG, Ms Fry submitted that the stage of a doctor's career should have limited influence on the Tribunal's decision about what action to take in cases such as this which involve predatory behaviour to establish a relationship with a patient.

8. Ms Fry submitted that, sadly, no form of mitigation has been presented in relation to remediation or insight. She submitted that it would be inappropriate for no action to be taken, and neither undertakings nor conditions would be adequate to meet the public protection requirement.

9. Ms Fry drew the Tribunal's attention to paragraph 97 of the SG, which details factors which indicate that suspension may be appropriate. She noted that there has been no evidence of repetition of similar behaviour, however, Dr Abraham has been subject to bail conditions, restrictions on his practice and had been in prison. She submitted that suspension would have a deterrent effect and send out a signal that such behaviour is inappropriate. However, she noted that there is no evidence to demonstrate insight, reflection or remediation. She submitted that there is a need for significant protective measures to mitigate the risks identified, given the nature of the conviction.

10. Ms Fry drew the Tribunal's attention to paragraph 109 of the SG, which details factors which indicate that erasure may be appropriate. She submitted that it can be argued that all of the factors a-f and i are present in this case. She also drew the Tribunal's attention to the paragraphs in the SG which relate to convictions (112 and 115-119) and, in particular, sexual misconduct (150):

*'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.'*

She submitted that Dr Abraham's offending behaviour has seriously undermined the public's trust in the profession. She reminded the Tribunal that Dr Abraham is required to sign the sex

offender's register for 10 years and he received a custodial sentence, factors which make this case particularly serious.

11. Ms Fry submitted that, in the particular circumstances of this case, erasure is the only appropriate sanction which is commensurate with nature of the allegations which have been found proven.

### The Tribunal's Determination on Sanction

12. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement. It had regard to the SG.

13. The Tribunal considered the sanctions available, starting with the least restrictive. It has borne in mind that the purpose of a sanction is not to be punitive, but to protect patients and the wider public interest, although it may have a punitive effect. If it chooses to impose a sanction, the sanction should be appropriate and proportionate, although the reputation of the profession as a whole is more important than the interests of any individual doctor.

14. The Tribunal considered and balanced the aggravating and mitigating factors in Dr Abraham's case.

### Aggravating factors

15. Dr Abraham abused his position as a doctor by obtaining Patient A's contact details using medical records after she had been discharged, arranging to attend her at her home address and sexually assaulting her. This included him encouraging her to undress and Patient A being able to feel his erect penis against her. He massaged her thighs, buttocks and touched her vagina over clothing. Patient A wet herself to add to her distress and degradation. He then contacted her three times after the assault. Dr Abraham showed a deliberate disregard for the principles set out in *Good Medical Practice* ('GMP') (2013 edition) and to his professional obligations and duties. His abuse of trust was particularly serious because Patient A was vulnerable; it was known to Dr Abraham that Patient A had mental health issues and was taking medication. He accepts that he lied in his first police interview. He has given contradictory accounts of what occurred when interviewed for the police investigation and separately for the hospital trust disciplinary proceedings. He continues to deny that he assaulted her despite having been found guilty by a jury on the criminal burden and standard of proof. He has expressed no remorse or empathy for the victim. Patient A felt unsafe in her own home. She has lost trust in doctors. The sentencing judge placed the case in the highest category for culpability. The judge also referred to Dr Abraham posing a medium risk of serious harm to the public. Dr Abraham's behaviour was so serious that it crossed the custody threshold. He was sentenced to 18 months' imprisonment and was ordered to sign the sex offender's register for 10 years and was made subject to a restraining order for five years. The Tribunal also noted the lack of evidence of any insight or remorse. Accordingly, the Tribunal concluded that there remains a real risk of repetition.

### Mitigating factors

16. The Tribunal acknowledged that Dr Abraham is a doctor of previous good character and there is no evidence of repetition of the offending behaviour. It took into account the positive references provided on his behalf. It also bore in mind the personal circumstances including the delay to Dr Abraham's criminal proceedings and to the delay in these proceedings.

17. In balancing the aggravating and mitigating factors in this case, the Tribunal was mindful of Dr Abraham's previous good character and references which show that he has been a good doctor. There has been no repetition of the offending behaviour, although the Tribunal was mindful that Dr Abraham has largely been on bail, had restrictions on his practice or been in prison since the offence took place. The Tribunal also had regard to the serious nature of the offending behaviour. Dr Abraham was willing to disregard his professional obligations and abuse his position as a doctor to access medical records to obtain contact details of a patient and to subsequently attend her home and sexually abuse her. The Tribunal considered that in this case, the aggravating factors significantly outweighed any mitigation.

18. The Tribunal considered each sanction in ascending order of severity, starting with the least restrictive.

### No action

19. In reaching its decision as to the appropriate sanction, if any, to impose in Dr Abraham's case, the Tribunal first considered whether to conclude this case by taking no action. Taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. The Tribunal determined that there are no exceptional circumstances in this case and that, given the seriousness of its findings, it would not be sufficient, proportionate, or in the public interest to conclude this case by taking no action.

### Warning

20. The sanction of a warning is not available since the Tribunal has found Dr Abraham's fitness to practise to be impaired.

### Undertakings

21. The option of undertakings is not available since none have been offered by the GMC or proposed by the doctor.

### Conditions

22. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Abraham's registration. Applying SG the purpose of conditions in many cases is to help the doctor to deal with health issues and/or remedy any deficiencies in their practice or knowledge of English, while protecting the public (paragraphs 80-81 SG). These factors do not apply in Dr Abraham's case. Conditions are likely to be workable where: the doctor has insight; a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings; the tribunal is satisfied the doctor will comply with them; and the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised (paragraph 82 SG). In this case the Tribunal has found that Dr Abraham lacks insight. The Tribunal cannot see how any form of retraining is an appropriate response to a conviction for a serious sexual assault. Given Dr Abraham's continued denial of the sexual assault the Tribunal is not satisfied that Dr Abraham would respond to any form of remediation. The Tribunal is also satisfied that given the serious nature of the sexual assault the sanction of conditions is not a proportionate response. Members of the public and medical professionals would regard the imposition of conditions as an unduly lenient response to such serious misconduct.

#### Suspension

23. The Tribunal then went on to consider whether a period of suspension would be an appropriate and proportionate sanction to impose on Dr Abraham's registration.

24. The Tribunal acknowledged that suspension has a deterrent effect and can be used as a signal to the doctor, the profession and the public about what is regarded as behaviour unbecoming of a registered doctor.

25. The Tribunal had regard to all of the evidence it had received and its determinations on facts and impairment. It was mindful of paragraphs 147, 150 and 151 of the SG, which state:

*'147 If a doctor has demonstrated predatory behaviour, motivated by a desire to establish a sexual or inappropriate emotional relationship with a patient, there is a significant risk to patient safety, and to public confidence and/or trust in doctors. More serious action is likely to be appropriate where there is evidence of (this list is not exhaustive):*

*a inappropriate use of social networking sites to approach a patient outside the doctor-patient relationship*

*b use of personal contact details from medical records to approach a patient outside their doctor-patient relationship*

*c visiting a patient's home without an appointment or valid medical reason.'*

*'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... 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 81 regarding honesty and integrity, particularly paragraph 16 regarding respecting patients' dignity ...).'*

26. The Tribunal notes that the SG states that suspension may be appropriate where there may have been acknowledgement of fault and where the Tribunal is satisfied that the behaviour or incident is unlikely to be repeated and where the Tribunal has seen evidence that the doctor has taken steps to mitigate their actions. The Tribunal notes that in this case there has been no acknowledgement of fault, that there remains a risk of repetition and Dr Abraham has provided no evidence of taking steps to mitigate his actions. The Tribunal concluded that Dr Abraham's sexual misconduct was particularly serious. It involved the sexual assault of a vulnerable ex-patient in her own home. Dr Abraham's offending behaviour engaged all three limbs of the overarching objective and amounted to a significant breach of principles set out in GMP. There is also no evidence that Dr Abraham has acknowledged fault, shown remorse, attempted to remediate his actions or developed any insight. The Tribunal concluded that given the seriousness and nature of Dr Abraham's actions, his behaviour was fundamentally incompatible with continued registration. Therefore, to suspend Dr Abraham's registration would not uphold the overarching objective and sufficiently mark the seriousness with which the Tribunal viewed his conviction.

### Erasure

27. The Tribunal went on to consider whether the sanction of erasure was appropriate and proportionate in this case. The Tribunal reminded itself of the aggravating factors it had identified in this case and noted the following paragraphs of the SG were relevant to its deliberations:

*'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 difficult to remediate.*

***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 patients (see further guidance below at paragraphs 129–132 regarding failure to provide an acceptable level of treatment or care).
- d* Abuse of position/trust (see Good medical practice, paragraph 81: ‘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 41 on children and young people, paragraph 87 regarding expressing personal beliefs and paragraph 90 regarding information about services).
- f* Offences of a sexual nature, including involvement in child sex abuse materials (see further guidance below at paragraphs 151 - 159).
- ...
- i* Putting their own interests before those of their patients (see Good medical practice introduction on page 7 ‘Patients must be able to trust medical professionals with their lives and health. To justify that trust you must make the care of patients your first concern, and meet the standards expected of you in all four domains.’ and paragraphs 94–97 regarding conflicts of interest).
- j* Persistent lack of insight into the seriousness of their actions or the consequences.’

The Tribunal was satisfied that all of the above factors applied in Dr Abraham’s case.

28. Paragraphs 142-143 of the SG state that trust is the foundation of the doctor-patient partnership and highlights a doctors’ duties in paragraph 53 of GMP to maintain a professional boundary between doctor and patient and not using their professional position to pursue a sexual or improper emotional relationship with a patient. Paragraphs 144-145 highlight the vulnerability of the patient and that where a patient is particularly vulnerable, there is an even greater duty on the doctor to safeguard the patient. Patient A was particularly vulnerable because of her characteristics or circumstances, including her mental health and the treatment she was receiving. Paragraph 146 states that using their professional position to pursue a sexual or improper emotional relationship with a vulnerable patient is an aggravating factor that increases the gravity of the concern and is likely to require more serious action against a doctor. Paragraph 147 states that if a doctor has demonstrated predatory behaviour, motivated by a desire to establish a sexual or inappropriate emotional relationship with a patient, there is a significant risk to patient safety, and to public confidence and/or trust in doctors. More serious action is likely to be

appropriate where there is evidence of personal contact details from medical records to approach a patient outside their doctor-patient relationship and visiting a patient's home without an appointment or valid medical reason. These factors apply in Dr Abraham's case. Paragraph 148 states that more serious action, such as erasure, is likely to be appropriate where a doctor has abused their professional position and their conduct involves predatory behaviour or a vulnerable patient, or constitutes a criminal offence. This guidance applies directly in this case. In relation to sexual misconduct paragraph 148 states that such 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. Again, the Tribunal is satisfied that these considerations apply in this case.

29. The Tribunal has already concluded that Dr Abraham's conduct was fundamentally incompatible with continued registration. It concluded that in the circumstances erasure is the only appropriate sanction to protect patients, promote and maintain public confidence in the medical profession, and to uphold proper professional standards and conduct for members of the profession.

30. The Tribunal therefore determined that Dr Abraham's name be erased from the Medical Register.

#### **Determination on Immediate Order - 25/04/2024**

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

#### **Submissions**

2. On behalf of the GMC, Ms Fry submitted that, given the nature of the offence, it is necessary to impose an immediate order in this case.

#### **The Tribunal's Determination**

3. The Tribunal had regard to the relevant paragraphs of the SG. In particular:

*'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.'*

4. The Tribunal had regard to the serious nature of Dr Abraham's conviction which involved the abuse of trust of his position as a doctor. It determined that the imposition of an immediate order was required to prevent Dr Abraham from resuming unrestricted practice. It was of the view that this was necessary given the ongoing risk to the public which has been identified. The Tribunal considered that an immediate order of suspension is necessary and in the public interest to maintain confidence in the medical profession and to uphold proper professional standards.

5. This means that Dr Abraham'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.

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

ANNEX A – SERVICE AND PROCEEDING IN ABSENCE – 24/04/2024

Service

1. Dr Abraham is not present today at this Medical Practitioners Tribunal ('MPT') hearing. The Tribunal therefore considered whether the relevant documents had been served in accordance with Rule 40 of the General Medical Council ('GMC') Fitness to Practise Rules 2004 ('the Rules') and paragraph 8 of the fourth Schedule to the Medical Act 1983.

2. Ms Eleanor Fry, Counsel, on behalf of the GMC, drew the Tribunal's attention to various documents regarding service of the notice of hearing. These included:

- GMC Notice of Allegation letter, dated 4 March 2024, sent to Dr Abraham via the Prison Governor at HMP XXX;
- Proof of delivery of the above letter, dated 5 March 2024;
- Email to Dr Abraham requesting confirmation that the above letter was received, dated 26 March 2024;
- Above letter returned unopened, dated 27 March 2024;
- Email to Dr Abraham stating that the above letter had been returned, dated 27 March 2024;
- Notice of Allegation letter resent to Dr Abraham's registered address, dated 27 March 2024;
- Proof of delivery of resent letter, dated 28 March 2024;
- MPTS Notice of hearing letter, dated 6 March 2024, sent to Dr Abraham via the Prison Governor at HMP XXX;
- Proof of delivery of above letter, dated 7 March 2024;
- Various email correspondence between the GMC, Dr Abraham and the MPTS regarding this hearing;
- Telephone note of call between GMC and Dr Abraham, dated 16 April 2024;
- Email from Dr Abraham confirming content for the hearing to take place in his absence, dated 23 April 2024.

3. Ms Fry submitted that service can be considered to have been effected in accordance with Rule 40 of the Rules.

4. The Tribunal had regard to the documents before it and the submissions made by Ms Fry. It was satisfied that notice of this hearing has been served in accordance with Rule 40. In particular, the Tribunal was satisfied that the relevant notice of hearing and documents were properly served by registered post to Dr Abraham's home address on 28 March 2024 giving him 27 days' notice of today's hearing on 24 April 2024. It noted that the attempted service earlier in March 2024 via the Governor of HMP XXX had not been successful. The Tribunal noted that at the time of service at his home address on 28 March 2024 that Dr Abraham was detained at an immigration removal centre and was not released from there until 4 April 2024.

Proceeding in Absence

5. Having been satisfied that notice was properly served upon Dr Abraham, the Tribunal then considered whether to proceed with this hearing in his absence, in accordance with Rule 31 of the Rules. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution, balancing the interests of the doctor with the wider public interest.

6. Ms Fry submitted that it was in the interests of justice and the overarching objective for this case to proceed today in Dr Abraham's absence. She reminded the Tribunal that Dr Abraham was advised that he had the option to submit a postponement application and he chose not to do so. She highlighted the email from Dr Abraham in which he states that he is content for the hearing to proceed in his absence.

7. The Tribunal takes into account that these proceedings were first listed for hearing on 18-21 December 2023. Dr Abraham asked for the hearing to be postponed which it was on 11 October 2023. The Tribunal is satisfied that Dr Abraham was then aware of the proceedings so had knowledge of the charge to be determined. There is no acknowledgement of service from Dr Abraham until 9 April 2024 so it is not exactly clear when Dr Abraham received the notice of hearing and bundle served at his home address. He attended the pre-hearing meeting on 10 April 2024 when he confirmed that he would attend today's hearing and not be represented and that he would file his documents by 17 April 2024. The Tribunal then noted the phone call and e-mail dated 16 April 2024 in which the doctor explained that he was unable to attend the hearing and his reasons for that decision. The Tribunal determined that Dr Abraham has chosen to voluntarily absent himself from this hearing. Furthermore, it has not received any indication that Dr Abraham has requested an adjournment despite being specifically advised of his right to do so. The Tribunal could not be satisfied that, were there to be an adjournment, Dr Abraham might engage with proceedings at any later date.

8. The factors against the Tribunal proceeding in Dr Abraham's absence are the unfairness to him of him not being able to fully present his case. The Tribunal takes into account that Dr Abraham has been restricted in his ability to prepare his case by being in prison to 21 March 2024 and then in immigration detention until 4 April 2024. The Tribunal also takes into account that he is unrepresented with all the difficulties that entails, that he and his wife have a new born baby XXX. The Tribunal notes that Dr Abraham feels unable to attend since he feels overwhelmed by the proceedings in the context of his current circumstances.

9. The factors in favour of proceeding in absence are that Dr Abraham has voluntarily waived the right to attend and has waived the right to be represented. The Tribunal took into account that this is a conviction case so there is no disadvantage to the doctor of him being absent for the fact finding stage though disadvantage to him of being absent for the impairment stage and, if found impaired, the decision as to sanction. The Tribunal notes that

Dr Abraham has agreed to the hearing proceeding in his absence and has not applied for an adjournment. The Tribunal takes into account that this is the second time the hearing has been listed. The Tribunal takes into account that the offence was on 26 October 2020 some three and a half years ago. The Tribunal was of the view that a member of the public and of the profession would be greatly concerned if the hearing was further adjourned. The Tribunal is unsure that if it adjourned it might result in the doctor attending. The pressures of the proceedings and of a new born baby are likely to continue. Dr Abraham may continue to feel overwhelmed. The Tribunal also takes into account that if the hearing is adjourned any new hearing may be 6 months or more in the future given the pressure on the Tribunal. There is a general public interest and general assumption that delay is the enemy of justice and fairness and that hearings should be held within a reasonable time. There is an important regulatory objective namely the fair, economical, expeditious and efficient disposal of allegations made against doctors. The GMC represent the public interest in relation to standards of healthcare. It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a doctor could effectively frustrate the process and challenge a refusal to adjourn when he had chosen not to attend the hearing. The Tribunal also takes into account the consequential cost and delay to other cases if the hearing was adjourned. It is difficult to fill vacated days at short notice so adjournments are likely to lead to wasted valuable hearing days. There is a burden on doctors subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession. The onus is on the doctor to take steps to attend the hearing and arrange representation if they wish to do so, and that 'although attendance by the practitioner is of prime importance, it cannot be determinative' due to the adverse impact on the effective and efficient running of hearings.

10. The Tribunal has balanced Dr Abraham's interests with the public interest in deciding whether to proceed in his absence. The Tribunal concluded that it is in the public interest and in the interests of justice to proceed with this hearing today, particularly given the length of time since the alleged offence occurred.

11. Accordingly, the Tribunal determined that it was fair and reasonable to proceed in Dr Abraham's absence.