PUBLIC RECORD

**Dates**: 15/02/2021 - 19/02/2021

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| **Medical Practitioner's name:** | Dr Sudip SARKER |
| **GMC reference number:** | 3617342 |
| **Primary medical qualification:** | MB ChB 1991 University of Glasgow |

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

**Summary of outcome**

Erasure

Immediate order imposed

**Tribunal:**

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| Legally Qualified Chair | Mr Ian Comfort |
| Lay Tribunal Member: | Ms Jacqueline Telfer |
| Medical Tribunal Member: | Dr Zaheer Khonat |

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| Tribunal Clerk: | Mr Andrew Ormsby |

**Attendance and Representation:**

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| Medical Practitioner: | Present and not represented |
| GMC Representative: | Mr Ciaran Rankin, Counsel |

**Attendance of Press / Public**

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

**Overarching Objective**

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public

confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

## Determination on Facts and Impairment - 17/02/2021

1. This determination will be handed down in private as it includes references to Dr Sarker's health. A redacted version will be published at the close of the hearing. The Tribunal referred the parties to Rule 41 (3)(b) and asked for submissions as to whether the hearing should be held in private as reference would be made to Dr Sarker's dyslexia. Dr Sarker said that he did not want any part of the hearing to be held in private.

## Background

2. Dr Sarker qualified in 1991 at Glasgow University.

3. He commenced Basic Surgical Training in August 1992 and moved into Higher Surgical Training in April 1999. He was originally scheduled to complete his Certificate of Completion of Training ('CCT) by September 2005. However, his progress was assessed as unsatisfactory in many areas. He was issued a notice requiring him to repeat the year's training and delay his CCT until September 2006.

4. Between June 2006 and April 2008, Dr Sarker was placed at the Royal Free Hospital under supervision. Initially, Dr Sarker's practice was restricted and he was permitted to perform only limited procedures, in order to protect patient safety. This restriction was subsequently lifted and it was reported that Dr Sarker was making good progress.

5. In August 2008, Dr Sarker was subject to a review by a panel at the London Deanery. Ms A, Training Programme Director at the London Deanery, stated on her comment sheet that Dr Sarker was *'lacking experience in practical laparoscopic surgery*'.

6. In October 2008, Dr Sarker moved to the Whittington Hospital as a Specialist Registrar and in November 2009 took up the position of Locum Consultant. He applied for a permanent position at the Whittington Hospital, but his application was unsuccessful.

7. Dr Sarker subsequently applied for a Consultant Surgeon's post at Worcestershire Acute Hospitals NHS Trust ('the Trust') in laparoscopic and colorectal surgery. As part of the recruitment process he was interviewed in June 2011 and during the course of the interview, as found proved in the Crown Court, he grossly exaggerated his experience in relation to carrying out those procedures. Having exaggerated his competence and experience he was awarded the position, took up post in August 2011 and was paid approximately XXX per annum. Mr B, the lead surgeon in laparoscopic surgery at the Trust, stated at Dr Sarker's trial that Dr Sarker had falsified his level of experience in respect of complex surgical procedures and that such conduct was so reckless and so dangerous that '*one doesn't expect to come*

*across it*'. According to the Crown Court Judge the appointment was 'disastrous'. Dr Sarker was suspended in October 2012 on full pay.

8. The allegation that has led to Dr Sarker's hearing can be summarised as an allegation that on 2 February 2018 at Worcester Crown Court he was convicted of dishonestly making false representation to make gain for self/another or cause loss to other/expose other to risk. It was further alleged that on 5 February 2018 Dr Sarker was sentenced to six years imprisonment.

9. The conviction indictment stated that between the 9 May 2011 and the 1 September 2011, Dr Sarker dishonestly and intending thereby to make gain for himself made a representation to the Worcestershire Acute Hospitals NHS Trust ('the Trust') which he knew was or might be untrue or misleading, namely exaggerating his experience in conducting laparoscopic surgical procedures by falsely representing that he had undertaken approximately 80 laparoscopic sigmoid colectomies, of which he had performed 51 independently, with a 3% complication rate, in breach of section 2 of the Fraud Act 2006.

10. Dr Sarker was released after three years imprisonment and is currently still on licence and can be returned to prison if he does not comply with the conditions of his licence.

## The Outcome of Applications Made during the Facts Stage

11. The Tribunal refused Dr Sarker's application, made pursuant to Rule 30 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that, the GMC should disclose all correspondence with other public bodies regarding this case. The Tribunal's full decision on the application is included at Annex A.

## The Allegation and the Doctor's Response

> 'That being registered under the Medical Act 1983 (as amended):
>
> 1. On 2 February 2018 at Worcester Crown Court you were convicted of dishonestly making false representation to make gain for self/another or cause loss to other/expose other to risk. Admitted and Found Proved
>
> 2. On 5 February 2018 you were sentenced to six years imprisonment. Admitted 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

## The Admitted Facts

12. At the outset of these proceedings, Dr Sarker made full admissions to the paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of

the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved in full.

## Ground Rules

13. The Tribunal noted that in his documentation Dr Sarker had produced three reports that assessed him as having dyslexia. The assessments were undertaken and reported in 2015 and 2016. Dr Sarker confirmed that although his defence team had the reports, they were not used at the trial. He said this was on the basis of legal advice. The Tribunal considered the recommendations in the reports regarding adjustments that should be made at a hearing to accommodate Dr Sarker's needs arising from his dyslexia. The Tribunal agreed with the parties appropriate ground rules for Dr Sarker giving evidence and any questioning of his evidence.

## Impairment

14. In light of the full admissions made by Dr Sarker, 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 Sarker's fitness to practise is impaired by reason of his conviction.

## Evidence

15. Dr Sarker provided his own witness statement(s) which referenced caselaw and various legislation.

16. The Tribunal also heard oral evidence from Dr Sarker. In oral evidence Dr Sarker emphasised the potential effect that his undiagnosed dyslexia may have had upon his understanding of the Trust interview process and alluded to his potential misunderstanding of questions put to him at the Trust interview. He further stated that he was exploring grounds to appeal against his conviction for fraud.

## Documentary Evidence

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

- Dr Sarker's Skeleton Argument (as updated following oral evidence);
- Certificate of Conviction, dated 22 February 2018;
- Police Report, undated;
- Indictment, undated;
- Agreed Facts submitted in Crown Court Trial, undated;
- Sentencing Remarks, dated 5 February 2018;
- Witness statement of Dr Sudip K Sarker and Appendices, dated 17 February 2018;

- Canterbury Dyslexia Centre, Diagnostic Assessment Report, dated 13 January 2015;
- XXX;
- Certificate of Attendance, 'Human factors and Teamwork in the Operating Theatre Workshop', dated 4 December 2012;
- 'Communication Skills' certificate of attendance, dated 23 July 2018;
- 'Samaritans Listening and Support Skills' certificate of attendance, dated 1 February 2019;
- 'Good clinical Practice – online' certificate of attendance, dated 12 November 2014;
- Various University of Kent workshop certificates of attendance, various dates;
- University of Kent, Master of Laws certificate, dated 17 July 2018.

## Submissions

### GMC Counsel's Submissions

18. Mr Rankin, on behalf of the GMC, submitted that Dr Sarker's conviction was the result of persistent dishonesty and not the result of a '*slip*' due to dyslexia.

19. Mr Rankin quoted Good Medical Practise (2013) ('GMP') and the Sanctions Guidance (November 2020) ('SG'). He stated that Dr Sarker was convicted of a serious offence, emphasising the Judge's sentencing remarks, and had shown no remorse for his conduct.

20. Mr Rankin submitted that Dr Sarker had brought the profession into disrepute and breached fundamental tenets of the profession. Mr Rankin further stated that Dr Sarker's dishonesty had resulted in financial gains for the doctor and financial losses for the Trust.

21. Mr Rankin submitted that Dr Sarker had not rehabilitated and had done nothing to deal with what is at the very heart of the case. Mr Rankin further stated that it is quite remarkable that Dr Sarker still considered that he is the wronged party in these circumstances and that he still intends to appeal his conviction.

22. Mr Rankin stated that Dr Sarker's lack of insight is astounding and that the doctor remains convinced that he has done nothing wrong. He stated that Dr Sarker had not reflected on any misconduct, dishonesty or fraud and simply says that it was a mistake.

23. Mr Rankin submitted that the public interest should be at the foremost of the Tribunal's considerations and that a fully informed member of the public would be horrified by Dr Sarker's continued lack of insight and submitted that the doctor remains impaired by reason of his conviction.

### Dr Sarker's Submissions

24. Dr Sarker submitted that he made a mistake during the interview and application process for the position at the Trust. He stated that he had '*done his time so as to say*'.

25. Dr Sarker submitted that human behaviour was all about learning from mistakes and that he can demonstrate that he has effectively remediated.

26. Dr Sarker submitted that he had identified his previously undiagnosed dyslexia as the reason for his mistake at the interview and has identified reasonable adjustments that could be made to prevent any similar mistakes happening again.

27. Dr Sarker stated that he had been in prison for three years and was now back in society. He acknowledged that his conviction was for a serious offence but stated that he could find no evidence that he had harmed any patents while he was employed at the Trust.

28. Dr Sarker stated that he disagreed with Mr Rankin's submission that he did not have insight. Dr Sarker stated that he had produced documental evidence to demonstrate that he does have insight and has tried to move forward to gain further insight.

29. Dr Sarker submitted that it was now up to the Tribunal to decide on his level of culpability.

30. Dr Sarker apologised for his conviction and how it could be perceived by the public. He stated that his conviction was the result of an honest mistake on his part and that it is for the Tribunal to understand the underlying reason for that mistake. He went on to state that in the sentencing remarks the Judge at his trial said that he had worked very hard for 20 years prior to this conviction.

31. Dr Sarker summed up by stating that he did not financially gain from obtaining the position at the Trust and that he hoped that the Tribunal could see that he had embarked on a structured rehabilitation process since he had been diagnosed with dyslexia and convicted of this offence.

## The Relevant Legal Principles

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

33. The Tribunal must determine whether Dr Sarker's fitness to practise is impaired today, taking into account Dr Sarker's conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

34. The Tribunal also had to consider whether Dr Sarker's fitness to practise is currently impaired by reason of his having received a conviction for fraud proved at the facts stage.

35. With regard to impairment, the Tribunal noted the observations of Dame Janet Smith in the *Fifth Report of the Shipman Inquiry* cited in the case of *CHRE v NMC and Grant [2011] EWHC 927*:

> *'an appropriate test for panels considering impairment of a doctor's fitness to practise, [ …].*
>
> *Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/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 and/or is liable to act dishonestly in the future.'*

## The Tribunal's Determination on Impairment

36. The Tribunal considered whether Dr Sarker's fitness to practise is currently impaired by reason of his conviction.

## Conviction

37. The Tribunal had regard to the overarching objective as set out in s1 (1A) of the Medical Act 1983 (the 1983 Act) as amended:

- *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 the profession*

38. The Tribunal also had regard to the following paragraphs of Good Medical Practice (2013) ('GMP'), namely:

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

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

*'66. You must always be honest about your experience, qualifications and current role.'*

*'68. You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.'*

*'77. You must be honest in financial and commercial dealings with patients, employers, insurers and other organisations or individuals.'*

39. The Tribunal bore in mind that Dr Sarker has served half of a custodial sentence and is currently released on licence. The Tribunal cannot go behind the court's decision and has already taken the certificate of conviction to be conclusive proof of Dr Sarker's conviction.

40. The Tribunal noted that Dr Sarker was convicted of a very serious offence. The fraud amounted to a loss to the Trust of £300,000 and involved an abuse of trust.

41. The Tribunal further considered that Dr Sarker's conduct in the course of committing the offence put patients at risk by succeeding in gaining a position by lying about his experience in laparoscopy.

42. The Tribunal considered that all four limbs of the *Grant* test were engaged and that Dr Sarker had shown serious dishonesty and committed an act of serious fraud as evidenced by the Judge's sentencing remarks at Dr Sarker's Crown Court case on 5 February 2018 and her statement regarding the abuse of trust involved in the fraud:

*'It is conceded that as far as your culpability is concerned this is plainly a case of high culpability because it involved your abuse of a position of trust, and again I have to say the particular responsibility of a person taking on the kind of work that you were going to be doing which is work that puts people's lives at risk, is a very, very high level of responsibility indeed,'*

43. The Tribunal further noted the that the Judge emphasised the seriousness of the fraud and imposed a substantial prison sentence:

*'I bear in mind that the maximum sentence for fraud is ten years and therefore we are looking at the very top end of this sort of case, but I then look to see what other mitigation there is, and the best mitigation there could have been would have been acceptance by you of your responsibility for obtaining that job by the deceptions that you told of which there was absolutely none. You have fought this at every stage and no doubt will continue to do so and it seems to me that in this particular case, the mitigation that there would*

*normally be for good character is very much lost by reason of the particular breach of trust involved, and therefore I conclude, and not without a real heaviness of heart in one sense that I must pass a substantial prison sentence, and the sentence that I pass in this case is one of six years imprisonment of which you will serve half and the remaining half, the three years which remains you will be subject to review, and if you should commit an offence, which I am sure you will not, but if you should, you might be taken back into custody to serve the whole sentence.'*

44. The Tribunal considered whether Dr Sarker had insight into his conviction. While doing so the Tribunal was mindful of the case of *Blakely v GMC [2019] EWHC 905 (Admin)* where the High Court considered whether insight can be demonstrated in the absence of an admission of dishonesty. In *Blakely* in refusing the doctor's appeal against the extension of her suspension at a review hearing, the court highlighted the distinction between admitting guilt of dishonest conduct and showing insight.

45. In *Blakely* the court highlighted the subtle difference between ensuring a doctor understands their conduct is unacceptable, and forcing a doctor to admit guilt for something he or she does not accept doing. The key consideration is that the doctor must be able to reassure the Tribunal that they have sufficient insight to understand why the conduct was unacceptable and cannot be repeated. In the present case the Tribunal considered that Dr Sarker had failed to demonstrate that he had any insight into why his conduct was unacceptable and had shown no insight into the seriousness of the offence and impact upon the public view of the profession.

46. The Tribunal noted that Dr Sarker continues to maintain that he may appeal against the conviction and that he had been convicted on the basis of a mistake on his part due to a misunderstanding as a result of his previously undiagnosed dyslexia.

47. Dr Sarker was advised at the beginning of this hearing and at various other times that the Tribunal would not go behind the facts on which the jury convicted him. Despite that advice, Dr Sarker focussed much of his evidence and submissions on the factual basis of the conviction. He said that he made a mistake at interview. He went as far as to suggest it was a '*criminal mistake'*. Dr Sarker said the mistake was a result of his undiagnosed dyslexia. He said he now has insight into his dyslexia and this remediates matters. He referred the Tribunal to the case of *Ivey v Genting Casinos [2017]* as a test for dishonesty and submitted that as dyslexia is an accepted disability his dishonesty could not be evaluated by the ordinary standards of reasonable and honest people. He challenged the evidence that was before the Crown Court at trial and sought to argue that the legal elements of the offence of fraud were not made out. All of these were attempts to engage the Tribunal in going behind the facts of the conviction.

48. The Tribunal considered that Dr Sarker had not provided any evidence of remediation for his conviction and noted that Dr Sarker had attempted to apportion blame on others and on his dyslexia. The Tribunal further noted that Dr Sarker had shown no sympathy for the Trust or patients involved. In the circumstances the Tribunal concluded that there was a high

risk of repetition given Dr Sarker's lack of insight into the gravity of his conviction, risk to patients, public perception, and his lack of remediation.

49. Dr Sarker was dishonest in his interview for the position at the Trust and the Tribunal considered that he put patient safety at risk. The Tribunal considered that he has not acted with integrity nor justified the trust the public places in the profession. He has breached fundamental tenets of the profession and fellow practitioners would consider his conduct to be deplorable. The Tribunal had no doubt that Dr Sarker's convictions have brought the medical profession into disrepute.

50. The Tribunal considered that Dr Sarker has seriously undermined public confidence in the profession through his conviction for fraud.

51. The Tribunal determined that Dr Sarker's fitness to practice is currently impaired by reason of his conviction. It determined that a finding of impairment is necessary to protect and promote the health, safety and wellbeing of the public, promote and maintain public confidence in the medical profession, promote and maintain proper professional standards and conduct for the members of the profession.

## Determination on Sanction - 19/02/2021

1. This determination will be handed down in private XXX. A redacted version will be published at the close of the hearing.

2. Having determined that Dr Sarker's fitness to practise is impaired by reason of a 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 Outcome of Applications Made during the Sanction Stage

3. The Tribunal refused Dr Sarker's application, made pursuant to Rule 30 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that, the Tribunal should adjourn in order for Dr Sarker to apply for voluntary erasure ('VE'). The Tribunal's full decision on the application is included at Annex B.

4. The Tribunal also refused Dr Sarker's application to the Registrar for the voluntary erasure of his name from the Medical Register, XXX. This application was submitted to the Registrar at 21:02 18 February 2021 and referred to the Tribunal by the registrar at 09:52 on 19 February 2021 while it was in camera on the sanction stage. When the Tribunal received the application for VE XXX, it halted discussions as to any possible sanction, and only returned to considering a possible sanction after it had produced a determination regarding Dr Sarker's application for VE. The Tribunal's full decision on the application is included at Annex C.

## The Evidence

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

## Submissions

### GMC Counsel's Submissions

6. On behalf of the GMC, Mr Rankin submitted that Dr Sarker has shown no insight into the seriousness of his conviction and effect of his offence on the public view of the profession.

7. Mr Rankin referred to the SG and caselaw and stated that Dr Sarker engaged in very serious dishonesty and misled his employer through clear lies. He submitted that, in the circumstances, the appropriate sanction was one of erasure.

8. Mr Rankin submitted that the recurring theme in this case was one of persistent dishonesty. He stated that Dr Sarker had abused the trust placed in him and continued to deny the fraud he committed. Mr Rankin stated that this combination of factors must mean his behaviour is incompatible with continued registration.

9. Mr Rankin further submitted that Dr Sarker had shown deliberate disregard for patient safety, which, at very least, was reckless.

10. Mr Rankin referred the Tribunal to the case of *CRHP v GDC and Fleischmann [2005] EWHC 87 (Admin)* and submitted that as Dr Sarker had yet to complete his sentence he should not be allowed to practise.

11. Mr Rankin stated that Dr Sarker's persistent lack of insight into the seriousness of his conviction and his abuse of trust must mean that the proportionate and appropriate sanction is one of erasure.

### Doctor's Submissions

12. Dr Sarker first drew attention to some factual errors that he believed were contained in the facts and impairment determination. The Tribunal advised Dr Sarker that the facts that he was referring to were taken from the Agreed Facts submitted for the Crown Court trial. Dr Sarker said that he had not agreed those facts with his defence counsel.

13. Dr Sarker put forward the following amendments to the facts:

> 3. He was originally scheduled to complete his Certificate of Completion of Training ('CCT) by September 2005. However, his progress was assessed as unsatisfactory in one area in 2002. He was issued a notice requiring him to repeat the

year's training. He completed a PhD in 2007 which further delayed his CCT until November 2009.

4. Between October 2006 to September 2008, Dr Sarker was placed at the Royal Free Hospital under supervision. Initially, Dr Sarker's practice was restricted for three months and he was permitted to perform only limited procedures, in order to protect patient safety. This restriction was subsequently lifted after three months and it was reported that Dr Sarker was making good progress.

6. In October 2008, Dr Sarker moved to the Whittington Hospital as a Specialist Registrar till January 2010. In February 2010 took up the position of Locum Consultant. He applied for a permanent position at the Whittington Hospital but his (application) interview was unsuccessful.

7. Dr Sarker subsequently applied for a Consultant Surgeon's post at Worcestershire Acute Hospitals NHS Trust ('the Trust') in General Surgery with a subspecialty interest in colorectal surgery (in laparoscopic and colorectal surgery). As part of the recruitment process he was interviewed in June 2011 and during the course of the interview, as found proved in the Crown Court, he grossly exaggerated his experience in relation to carrying out those procedures. Having exaggerated his competence and experience he was awarded the position, took up post in August 2011 and was paid XXX per annum. Mr B, the lead surgeon in laparoscopic surgery at the Trust, stated at Dr Sarker's trial that Dr Sarker had falsified his level of experience in respect of complex surgical procedures and that such conduct was so reckless and so dangerous that 'one doesn't expect to come across it'. According to the Crown Court Judge the appointment was 'disastrous'. Dr Sarker was suspended in October 2012 on full pay.

14. The Tribunal agreed to note Dr Sarker's amendments and indicated that they were not material to its decision.

15. Dr Sarker referred to the SG and various caselaw and stated that he had no prior convictions and that he hoped to learn from his experiences.

16. Dr Sarker submitted that he had demonstrated insight into his dyslexia and apologised for risking public confidence in the profession. He further apologised for making a mistake stating that he had learnt from his errors.

17. Dr Sarker also submitted that he had been informed of the hearing at short notice and agreed with Mr Rankin, that whilst serving his sentence, he should not practise as a doctor, while further emphasising that he hoped to learn from his errors. He repeated his request for VE which he said was the appropriate way to dispose of this matter.

## The Tribunal's Determination on Sanction

18. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement.

19. In reaching its decision, the Tribunal has borne in mind that the purpose of a sanction is not to be punitive, but to protect the public, although a sanction may have a punitive effect.

20. Throughout its deliberations, the Tribunal has taken into account the overarching objective and applied the principle of proportionality, balancing Dr Sarker's interests with the public interest.

21. The Tribunal has taken into account the SG and GMP, and all the evidence before it, together with the submissions of Mr Rankin and Dr Sarker. The Tribunal has taken into account and carefully considered its findings of fact as to misconduct and impairment as set out in the earlier parts of this determination.

## Mitigating and Aggravating factors

22. The Tribunal first considered the mitigating factors in relation to Dr Sarker's conviction:

- The Tribunal noted that Dr Sarker has maintained his professional development but considered that this factor does not go toward demonstrating his probity.

23. Dr Sarker has relied heavily on his diagnosis of dyslexia as mitigation for his conduct. He accepts that on legal advice this was not put forward in his defence at trial. Dr Sarker has repeatedly said that his dyslexia led to him making a mistake but at no time has he accepted his dishonesty or the impact that dishonesty has had on the reputation of the profession.

24. The Tribunal considered that Dr Sarker had put forward no genuine mitigation regarding his impairment by reason of his conviction.

25. The Tribunal then considered the aggravating factors:

- Dr Sarker's lack of insight and lack of remediation;
- The serious nature of Dr Sarker's fraud conviction and the substantial custodial sentence he received;
- The abuse of trust involved in Dr Sarker's conviction;
- The high degree of culpability involved in the offence; and
- The persistent dishonesty involved in Dr Sarker's conviction.

## No action

26. In reaching its decision as to the appropriate sanction, if any, to impose in this case, the Tribunal first considered whether to conclude the case by taking no action.

27. The Tribunal determined that there were no exceptional circumstances to justify taking no action in this case and that to do so would be wholly inappropriate, would not be sufficient to protect the public, uphold confidence in the profession or declare and uphold professional standards.

## Conditions

28. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Sarker's registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable.

29. The Tribunal considered that there were no conditions that could be workable or measurable in the circumstances.

30. The Tribunal further concluded that the imposition of conditions would not address the seriousness of the conviction in this case and would not therefore serve to maintain public confidence in the profession.

## Suspension

31. The Tribunal then went on to consider whether imposing a period of suspension of Dr Sarker's registration would be appropriate and proportionate.

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

33. The Tribunal took account of factors in the following paragraphs of the SG which indicate circumstances in which it may be appropriate to impose a sanction of suspension and which state:

> *'93 Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions.'*
>
> *'97 Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.*
>
> *...*
>
> *g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.'*

34. The Tribunal considered that Dr Sarker has little insight into his conviction and has received no evidence that he has taken steps to mitigate his actions. Further, the Tribunal noted that Dr Sarker had not acknowledged his abuse of trust and the seriousness of his conviction.

35. The Tribunal determined that the seriousness of the conviction and his lack of insight were incompatible with continued registration due to the need to protect the public, to maintain public confidence and uphold proper professional standards. In these circumstances, the Tribunal determined that suspension of Dr Sarker's registration, in the absence of insight or mitigation, would not be proportionate or appropriate.

## Erasure

36. The Tribunal considered the following paragraphs of the SG to be relevant and apply in Dr Sarker's case:

> *'14 The main reason for imposing sanctions is to protect the public. This is the statutory overarching objective, which includes to:*
>
> *a protect and promote the health, safety and wellbeing of the public*
>
> *b promote and maintain public confidence in the medical profession*
>
> *c promote and maintain proper professional standards and conduct for the members of the profession.'*
>
> *'20 In deciding what sanction, if any, to impose the tribunal should consider the sanctions available, starting with the least restrictive. It should also have regard to the principle of proportionality, weighing the interests of the public against those of the doctor …'*
>
> *'31 Remediation is where a doctor addresses concerns about their knowledge, skills, conduct or behaviour. Remediation can take a number of forms, including coaching, mentoring, training, and rehabilitation (this list is not exhaustive), and, where fully successful, will make impairment unlikely'*
>
> *'45 Expressing insight involves demonstrating reflection and remediation.'*
>
> *'52 A doctor is likely to lack insight if they:*
>
> *a refuse to apologise or accept their mistakes*
>
> *b promise to remediate, but fail to take appropriate steps, or only do so when prompted immediately before or during the hearing*

*c do not demonstrate the timely development of insight*

*d fail to tell the truth during the hearing'*

*'109 Any of the following factors being present may indicate erasure is appropriate*
*…*
*h dishonesty, especially where persistent and/or covered up*

*i Putting their own interests before those of their patients (see Good medical practice paragraph 1: – 'Make the care of [your] patients [your] first concern' …'*

*'112 Convictions refer to a decision by a criminal court in the British Islands, or a finding by an overseas court of an offence, which, if committed in England and Wales, would constitute a criminal offence'*

*'115 If the tribunal receives a signed certificate of a conviction or determination, unless it also receives evidence to the effect that the doctor is not the person referred to in the conviction or determination, then it must accept the certificate as conclusive evidence that the offence was committed, or that the facts are as found by the determination. A tribunal can make an exception to this if it receives evidence to the effect that the doctor is not the person referred to in the conviction or determination. In accepting a caution, the doctor will have admitted committing the offence'*

*'116 The purpose of the hearing is not to punish the doctor a second time for the offences they were found guilty of. The purpose is to consider whether the doctor's fitness to practise is impaired as a result. If so, the tribunal then needs to consider whether to restrict the doctor's registration to protect the public (who might come to the doctor as patients) and to maintain the high standards and good reputation of the profession. The tribunal should take account of paragraphs 65–67 of Good medical practice regarding the need to be honest and trustworthy, and to act with integrity'*

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

37. The Tribunal considered the SG alongside relevant case law. This was helpfully summarised in the case of *Nkomo v GMC [2019] EWHC 2625*, which involved a doctor who was convicted of fraud by false representation, and was referenced in the recent case of *Simawi v GMC [2020] EQHC 2168 (Admin)* in which Knowles J stated the following:

*"34. … there is an important dividing line between conduct which is fundamentally incompatible with continued registration (which requires erasure) and that which falls short of that standard (which may not).*

*35. The starting point is that dishonesty by a doctor is almost always extremely serious. There are numerous cases which emphasise the importance of honesty and integrity in the medical profession, and they establish a number of general principles. Findings of dishonesty lie at the top end of the spectrum of gravity of misconduct: GMC v Theodoropolous [2017] EWHC 1984 (Admin) [35]. Where dishonest conduct is combined with a lack of insight, is persistent, or is covered up, nothing short of erasure is likely to be appropriate: Naheed v General Medical Council [2011] EWHC 702 (Admin), [22]. The sanction of erasure will often be proper even in cases of one-off dishonesty: Nicholas-Pillai v General Medical Council [2009] EWHC 1048 (Admin) [27]. The misconduct does not have to occur in a clinical setting before it renders erasure, rather than suspension, the appropriate sanction. Misconduct involving personal integrity that impacts on the reputation of the profession is harder to remediate than poor clinical performance: (Yeong v General Medical Council [2009] EWHC 1923, [50]; General Medical Council v Patel [2018] EWHC 171 (Admin) at [64]). In such cases, personal mitigation should be given limited weight, as the reputation of the profession is more important than the fortunes of an individual member: (Bolton v Law Society [1994] 1 WLR 512 at 519; General Medical Council v Stone [2017] EWHC 2534 (Admin) at [34], Patel supra, [47]).”*

38. The Tribunal also considered the case of *Makki v GMC [2009] EWHC 3180 (Admin)*, referenced in *Theodoropolous,* which dealt with a doctor who had misrepresented the extent of their experience when applying for a post in a hospital. Irwin J said:

*‘the degree of dishonesty here and its nature, affecting not registration, but qualification and the integrity of the system of job applications, affects something which is every bit as fundamental to the proper respect for the system, to the proper operation of the system of medicine and of appointments to medical positions, as is the system of registration’.*

39. The Tribunal was also mindful of the case of *CRHP v GDC and Fleischmann [2005] EWHC 87 (Admin)* noting that Dr Sarker is currently released from prison on licence and is serving the remaining part of his sentence in the community. In *Fleischmann* the court held that where a registered professional has been convicted of a serious criminal offence and is still serving their sentence, normally the tribunal should not allow them to return to practice until the sentence has concluded, unless otherwise justified. In *Fleischmann* Newman J stated:

*“I am satisfied that, as a general principle, where a practitioner has been convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he has satisfactorily completed his sentence. Only circumstances which plainly justify a different course should permit otherwise. Such circumstances could arise in connection with a period of disqualification from driving or time allowed by the court for the payment of a fine. The rationale for the principle is not that it can serve to punish the practitioner whilst serving his sentence, but that good standing in a profession must be earned if the reputation of the profession is to be maintained.”*

40. In the view of the Tribunal, the doctor's conviction involved serious departures from the standards of GMP as set out above in its Determination on Impairment.

41. The Tribunal further considered that Dr Sarker's conviction involved conduct which fellow professionals and members of the public would consider to be deplorable and risked undermining public confidence in the profession.

42. Considering the evidence as a whole, the conviction in this case was of a serious nature. The risk of repetition of his unacceptable behaviour remains high, given the doctor's lack of insight and so the Tribunal concluded that Dr Sarker's behaviour is fundamentally incompatible with continued registration.

43. Accordingly, the Tribunal determined that erasure was the only proportionate sanction to protect the public, to promote and maintain public confidence in the medical profession, and to uphold proper professional standards and conduct for members of the profession. The Tribunal therefore directs that Dr Sarker's name be erased from the Medical Register.

44. Unless Dr Sarker exercises his right of appeal, his name will be erased from the Medical Register 28 days from the date on which written notice of this decision is deemed to have been served upon him. A note explaining his right of appeal will be sent to him.

## Determination on Immediate Order - 19/02/2021

1. Having determined that a sanction of erasure was appropriate, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Sarker's registration should be subject to an immediate order.

### Submissions

2. On behalf of the GMC, Mr Rankin submitted that an immediate order of suspension was appropriate as there was a risk to patient safety, and it would be in the public interest.

3. Mr Rankin further submitted that this case cries out for an immediate order given the seriousness of the conviction.

4. Mr Rankin stated that an immediate order was also necessary given the likelihood that Dr Sarker, although he is not currently working, may choose to appeal the Tribunal's decision.

5. Dr Sarker indicated that he wished to make no submissions.

### The Tribunal's Determination

6. The Tribunal determined that given the serious nature of Dr Sarker's conviction, an immediate order was necessary to maintain public confidence in the profession and to protect the public.

7. The Tribunal therefore determined that Dr Sarker's registration should be subject to an immediate order of suspension. The Tribunal concluded that public confidence in the profession would be undermined if there were not an immediate order given the nature of Dr Sarker's conviction.

8. This means that Dr Sarker's registration will be suspended from today. The substantive direction, as already announced, will take effect 28 days from when the written notice of this determination has been served upon Dr Sarker, 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.

9. The interim order currently imposed on Dr Sarker's registration will be revoked when the immediate order takes effect.

10. This concludes the case.

Confirmed
**Date** 19 February 2021 Mr Ian Comfort, Chair

ANNEX A – 15/02/2021

## Application under Rule 30 for disclosure of evidence

1. Dr Sarker made an application under Rule 30 for disclosure of GMC correspondence with other public bodies regarding this case. He submitted a detailed skeleton argument in support of his application.

2. Dr Sarker stated that he needed this material as he had now been released from prison and that such material would help him gain insight into how his dyslexia may have had an effect on the decision to investigate his case, for him to rehabilitate back into society, and learn from his mistakes in a positive manner.

## Submissions on behalf of the GMC

3. Mr Rankin, on behalf of the GMC, submitted that Dr Sarker has already been given all relevant material. He further stated that he did not see the relevance of the application as the matter had already been dealt with by a preliminary hearing in March 2020.

4. Mr Rankin submitted that there have been no material changes regarding this case since March 2020. He noted that Dr Sarker had now been released from prison but that the material facts of the case, and the background of the case, remain the same. He stated that a further application to disclose evidence was not in the interests of justice and that Dr Sarker already has access to all relevant materials.

5. A preliminary decision was made on the application on 16 March 2020. The 16 March 2020 Tribunal considered that, "when taking into account Rules 34(1) and 34(3) and the allegation it has been asked to make a determination on, it had been fair in determining the relevance of each request Dr Sarker has put before it. It therefore considered that Article 6 of the European Convention of Human Rights and the Human Rights Act was not engaged. It also considered that Dr Sarker's requests were not in keeping with the desire to ensure that hearings are disposed of efficiently, and therefore it would not be in the interests of justice to allow them".

6. The March 2020 Tribunal considered Dr Sarker's application to request and submit any correspondence between the GMC and public bodies in relation to the formulation of the allegation that resulted in his conviction. It considered that this information would not be relevant to the Tribunal's decision making at this time, which is focused on the allegation before it, and not any decisions or allegations that have occurred previously, which may have led to the investigation commencing.

7. The present Tribunal noted that although Dr Sarker's personal circumstances had changed, in that he had been released from prison, the material facts of the case and the

background of the case had not changed and, as such it was not in the interests of justice for an application of disclosure of evidence to be granted.

8. The Tribunal further noted that it was in the public interest to carry on with the case. It considered that, in terms of the application, there was nothing in the present application to disclose evidence that is materially different from Dr Sarker's last application to disclose evidence on 16 March 2020 and that the matter had been dealt with in depth.

9. In the circumstances, the Tribunal determined to refused Dr Sarker's application for disclosure of all correspondence between the GMC and other public bodies regarding this case.

ANNEX B – 18/02/2021

Application to adjourn in order to apply for voluntary erasure

1. While making submissions at the sanction stage Dr Sarker said that he wished to adjourn to allow him to apply to the Registrar for Voluntary Erasure ('VE').

Submissions

2. The Tribunal, mindful that it had not reached a decision on Dr Sarker's sanction, invited submissions from the parties on the application for VE.

3. Mr Rankin, on behalf of the GMC, submitted that the GMC opposed granting Dr Sarker an adjournment in order to apply for VE.

4. Mr Rankin referred the Tribunal to the 'Guidance on making decisions on voluntary erasure applications and advising on administrative erasure' (the 'VE Guidance') and the GMC (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations 2004, as amended ('the Regulations') and stated that the Tribunal must strike a balance between fairness to Dr Sarker and the public interest.

5. Mr Rankin asked the Tribunal to consider whether this was a timely application, noting that Dr Sarker had previously made enquiries of the GMC regarding VE in 2018. He noted that there had already been delays in this hearing coming before the Tribunal.

6. Mr Rankin further submitted that this application was the most recent of a long line of applications and will be the eighth such application, although he conceded that two of Dr Sarker's previous applications had been agreed to.

7. Mr Rankin further stated that the Tribunal should consider whether it is safe to agree to an adjournment for the doctor to seek VE given that Dr Sarker's fitness to practise has already been found to be impaired by reason of a conviction and that the doctor still maintains that he was not

dishonest and did not commit any fraud. In those circumstances, any application for VE was not likely to be granted.

8. Mr Rankin also submitted that any adjournment to allow Dr Sarker to apply for VE may result in delay as the speed of any application would be reliant on Dr Sarker and that, considering the seriousness of this case and the seriousness of the conviction, this would not be in the public interest.

9. Dr Sarker submitted that he would like to make an application for VE at this stage as he had been unsure of the exact process and at what stage he could apply for VE. He stated that he had initially believed that it would be possible for the Tribunal to consider such an application for VE during the hearing.

## The Tribunal's Decision

10. In considering Dr Sarker's application for an adjournment in order to apply for VE the Tribunal was mindful of the following paragraphs of the Regulations:

> *'3. (1) A practitioner may apply in writing to the Registrar in accordance with this regulation for his name to be erased from the register.'*
>
> *'3. (8) Where, on the date the Registrar receives an erasure application, an allegation against the practitioner has been referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal under the Fitness to Practise Rules and the hearing before the Medical Practitioners Tribunal has commenced, the Registrar shall refer the application to the MPTS for them to arrange for it to be determined by the Medical Practitioners Tribunal, and the application shall be determined by the Medical Practitioners Tribunal accordingly.'*

11. The Tribunal was also mindful on of the following paragraphs of the VE Guidance:

> *'9 Case examiners should consider the following key principles when making VE decisions and giving advice on AE.*
>
> *...*
>
> *b Case examiners must have enough information to assess whether it is in the public interest to erase the doctor. Although a doctor can apply for VE and be at risk of AE at any point in an investigation, case examiners should be very cautious about allowing erasure in the following circumstances.*
>
> *...*
>
> *iii VE and AE are not necessarily permanent and a doctor can apply for restoration at any time. As part of their overall assessment of the public interest, case examiners must assess the risk posed by a future restoration application. This can be done by considering the likelihood of the doctor seeking restoration and whether we will be able to revive the unresolved allegation(s) should they do so.'*

*'16 Case examiners should assess the seriousness of the allegations and whether it would undermine public confidence in the medical profession if they were not fully investigated. This may involve the allegations being heard in public at a tribunal hearing and the doctor receiving a sanction. This in itself strengthens public confidence that proper standards of conduct and performance are being upheld.'*

*'23 The following are examples of cases where (except in exceptional circumstances) it will not be in the public interest to allow voluntary erasure or proceed with administrative erasure before the conclusion of fitness to practise proceedings, including a MPT hearing in some cases. This is because they involve a conviction for a serious criminal offence or the allegation carries a presumption of impaired fitness to practise.*

*…*

*g. Allegations of dishonesty'*

12. The Tribunal balanced Dr Sarker's interests against the public interest and was mindful of the overarching objective.

13. The Tribunal considered that this case involved a very serious conviction and concluded that any further delays would not be in the public interest.

14. The Tribunal further considered that there was not a realistic prospect of VE being granted due to the seriousness of the conviction and the need to promote confidence in the profession.

15. The Tribunal noted that it had yet to consider any possible appropriate sanction and that the application for an adjournment to seek VE had come at a very late stage in proceedings.

16. The Tribunal concluded that, on balance, granting an application to adjourn in order to allow Dr Sarker to make an application for VE would not be in the public interest, would not protect the public and would not promote confidence in the profession.

## ANNEX C – 19/02/2021

### Application for voluntary erasure

1. This determination will be handed down in private as it includes references to XXX. A redacted version will be published at the close of the hearing.

2. At 21:02 on 18 February 2021, Dr Sarker made an application to the Registrar for the voluntary erasure of his name from the Medical Register, XXX, in accordance with paragraph 3(1) of the GMC (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations 2004, as amended (the Regulations).

3. At 09:54 on 19 February 2021, the Registrar referred Dr Sarker's application to this Tribunal in accordance with Regulation 3(8) of the Regulations which reads as follows:

> *'Where, on the date the Registrar receives an erasure application, an allegation against the practitioner has been referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal under the Fitness to Practise Rules and the hearing before the Medical Practitioners Tribunal has commenced, the Registrar shall refer the application to the MPTS for them to arrange for it to be determined by the Medical Practitioners Tribunal, and the application shall be determined by the Medical Practitioners Tribunal accordingly.'*

## Submissions on application

4. Mr Rankin submitted that the GMC opposed Dr Sarker's application for VE and took the Tribunal through the paragraphs of the VE Guidance that he considered were important and relevant to the Tribunal's decision.

5. Mr Rankin submitted that Dr Sarker has not provided the Tribunal with any documentary evidence of XXX. He stated that, given this is a case which involved a serious conviction for fraud, he does not regard Dr Sarker's word as prima facie evidence in the absence of documentary evidence.

6. Mr Rankin further submitted that this was a very serious conviction and that it was important that the facts of the case were released in the public domain. VE would result in the facts not being released in the public domain which would undermine public confidence.

7. Mr Rankin also drew the Tribunal's attention to Dr Sarker's previously stated intention to return to work in the profession. He stated that this would be inappropriate and that it was important for this matter that VE was refused.

8. Dr Sarker submitted XXX.

9. He stated that he hoped to return to professional work at some point in the future but not within the medical profession.

## Tribunal Decision

10. The decision as to whether to accede to the application for voluntary erasure is a matter for this Tribunal alone to determine, exercising its own judgement. In reaching a decision on this matter, the Tribunal had regard to the Regulations, the VE Guidance, and the submissions made by Mr Rankin and Dr Sarker. It had regard to all the documentary evidence provided to it on behalf of the GMC, and on Dr Sarker's behalf.

11. The Tribunal noted that it may accept an application for voluntary erasure if it determines that it is appropriate to do so in all the circumstances of the case, being mindful

of the statutory overarching objective. This involved balancing the interests of the doctor, which included XXX and intentions with regard to 'retirement' from medical practice, and the public interest in the appropriate investigation and assessment of complaints such as this. The Tribunal considered all elements of the application, including XXX; the seriousness of the conviction; how genuine his desire was to cease practising and the likelihood of an application in the future for restoration.

12. The Tribunal considered the following paragraphs of the VE Guidance:

*'23 The following are examples of cases where (except in exceptional circumstances) it will not be in the public interest to allow voluntary erasure or proceed with administrative erasure before the conclusion of fitness to practise proceedings, including a MPT hearing in some cases. This is because they involve a conviction for a serious criminal offence or the allegation carries a presumption of impaired fitness to practise.*

*…*

*g Allegations of dishonesty'*

*'24 There may sometimes be exceptional circumstances when it is appropriate to allow voluntary or administrative erasure prior to the conclusion of the fitness to practise process, even if a case falls into one of the categories above. These may include cases:*

*a where a careful balancing of the relevant factors leads to the conclusion that erasure is in the public interest. …*

*b where the allegation is at the lower end of the spectrum of seriousness of conduct that attracts a presumption of impairment and the likelihood of the doctor ever returning to practice is extremely remote due to the stage of their career, their retirement status and/or the length of time they have been out of practice.*

*c where the doctor does not have capacity to understand the allegations or to seek/act on legal advice*

*d where the doctor is suffering from a terminal or very serious illness and there is no prospect they will recover sufficiently to practise medicine again*

*e where the complainant is unwilling or unable, for example due to serious illness or being deceased, to provide evidence to support the allegation and there is no prospect of obtaining it from other sources.'*

*'XXX.'*

*'29 A doctor can apply for restoration at any time regardless of any statements they made about their career intentions when applying for VE. Restoration is not automatic and any application where fitness to practise issues arise (either because of the investigation underway when erasure was granted or new concerns) would be considered by two case examiners in accordance with the relevant regulations. Doctors cannot be restored with conditions or undertakings and will (if agreed by two case examiners or a MPT) return to the register with unrestricted registration. Any outstanding concerns about their fitness to practise must therefore be addressed prior to the point of restoration.'*

*'31 VE should not be granted where there is evidence to suggest the doctor has applied solely to avoid a sanction or otherwise circumvent the fitness to practise process and their intention to cease practice is not genuine. However, in cases where the public interest would not be compromised by allowing erasure, applications should not be refused merely because there is evidence our investigation has contributed to a doctor's decision to retire or stop practising.'*

13. The Tribunal noted Dr Sarker's stated intention in his '*Skeleton Legal Argument*' dated 11 February 2021 which states:

*'At the time of the interview in 2011, I had approximately 25 years of professional life to complete. Currently, I have approximately 15 years of professional life. I am highly likely to apply and attend job interviews in the future. Therefore, I need to gain insight how professional bodies conduct and communicate between themselves so I can remediate my own behaviour to prevent any future misinterpretations'*

14. The Tribunal has considered Dr Sarker's stated intentions in his '*Skeleton Legal Argument*' and was not reassured that he would not look to restoration at some time in the future.

15. The Tribunal also noted that in his application to the Registrar for VE he states *'I am currently facing a MPTS FTP hearing for a conviction and am likely to have a severe sanction imposed*.'

16. The Tribunal has considered Dr Sarker's application for VE and has concluded that it is an attempt to avoid a sanction that will be imposed for a conviction for serious fraud which was a significant breach of professional standards expected of a doctor.

17. Taking all matters into consideration the Tribunal has concluded that it would not be in the public interest to grant Dr Sarker's application for VE.