

PUBLIC RECORD

Dates: 27/11/2023 - 08/12/2023

Medical Practitioner’s name: Dr Umasankar MATHURAM THIYAGARAJAN

GMC reference number: 6113983

Primary medical qualification: MB BS 1998 Tamil Nadu Dr MGR Med University

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

Summary of outcome
Suspension, 6 months

Tribunal:

Legally Qualified Chair	Mr Lindsay Irvine (27/11/2023 to 04/12/2023) Mrs Julia Oakford (05/12/2023 to 08/12/2023)
Lay Tribunal Member:	Mr David Propert
Medical Tribunal Member:	Dr Sarah Woodford

Tribunal Clerk:	Mrs Jennifer Ireland
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Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner’s Representative:	Mr Scott Ivill, Counsel, instructed by Weightmans LLP
GMC Representative:	Mr Terence Rigby, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 04/12/2023

1. This determination will be handed down in private. However, as this case concerns Dr Mathuram Thiyagarajan's misconduct a redacted version will be published at the close of the hearing.

Background

2. Dr Mathuram Thiyagarajan qualified in 1998 in India. He undertook post graduate studies in General Surgery in India, before moving to the UK in 2005. He completed higher surgical training at the London Deanery in 2019. He joined Cambridge University Hospital NHS Foundation Trust ('the Trust') in October 2019 as a Clinical Fellow in Hepato-Pancreato-Biliary surgery. He left this role in April 2021 and is currently living in Canada.

3. The allegation that has led to Dr Mathuram Thiyagarajan's hearing can be summarised as follows: Between 1 December 2020 and 31 January 2021, Dr Mathuram Thiyagarajan was working in both his role at the Trust, and undertaking NHS locum shifts as a clinical fellow in surgery at Medway NHS Foundation Trust ('Medway'). Dr Mathuram Thiyagarajan had advance booked annual leave for 22 December 2020 to 31 December 2020, with him due to return to work at the Trust on 4 January 2021, following a bank holiday and weekend. He had arranged to undertake some shifts at Medway during this period of annual leave, as he was entitled to do. On 14 December 2020, Dr Mathuram Thiyagarajan tested positive for COVID-19. He contacted the Trust to request to change his annual leave to sick leave. The Trust subsequently classified the entire period as sick leave.

4. On 3 January 2021, Dr Mathuram Thiyagarajan emailed the Trust, telling his employers that he was '*making a slow recovery*' from COVID-19, that XXX had tested positive the previous week, and that he felt too unwell to work for the remainder of the week. It is alleged that Dr Mathuram Thiyagarajan made false representations in this email, as he had undertaken shifts at Medway on 1, 2 and 3 January 2021. It is alleged that Dr Mathuram Thiyagarajan's actions in sending this email were dishonest in light of the shifts undertaken at Medway.

5. Following Dr Mathuram Thiyagarajan's positive test result, XXX also tested positive for COVID-19 on 18 December 2020. It is alleged that on 25 and 28 December Dr Mathuram Thiyagarajan undertook shifts at Medway when he should have been isolating due to XXX. On 30 December 2020, XXX tested positive for COVID-19. It is alleged that Dr Mathuram Thiyagarajan undertook shifts at Medway on 1-3 January 2021 when he should have been isolating. It is further alleged that Dr Mathuram Thiyagarajan undertook shifts at Medway on 23 and 24 January 2021 when a person with whom he was sharing hospital accommodation had tested positive for COVID-19 on or around 19 January 2021. It is alleged that, on the three occasions he worked at Medway when he should have been isolating, Dr Mathuram Thiyagarajan put patients and staff at Medway at potential risk of being infected with COVID-19.

6. The initial concerns were raised with the GMC as part of an NHS Counter Fraud Authority investigation that was investigating whether Dr Mathuram Thiyagarajan had worked shifts at Medway while off sick from the Trust.

The Outcome of Applications Made during the Facts Stage

7. The Tribunal invited submissions from parties in respect of an application pursuant to Rule 41 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that parts of the hearing should be heard in private, due to the nature of the Allegation. It granted the application. The Tribunal's full decision on the application is included at Annex A.

8. The Tribunal granted an application, made by Mr Ivill, Counsel, on behalf of Dr Mathuram Thiyagarajan, pursuant to Rule 17(2)(g) of the Rules, that there was no case to answer in respect of paragraphs 5(a) and 6, where it relates to paragraph 5(a), of the Allegation. The Tribunal's full decision on the application is included at Annex B.

The Allegation and the Doctor's Response

9. The Allegation made against Dr Mathuram Thiagarajan is as follows:

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

1. Between 01 December 2020 and 31 January 2021 you were:
 - a. employed on a fixed term contract as a Senior Clinical Fellow in Hepato-Pancreato-Biliary surgery at Cambridge University Hospital NHS Foundation Trust ('the Trust'); **Admitted and found proved**
 - b. undertaking locum shifts as a clinical fellow in surgery at Medway NHS Foundation Trust ('Medway'). **Admitted and found proved**
2. On 03 January 2021 at 22:31 hours you emailed the Trust as set out in Schedule 1. **Admitted and found proved**
3. When you sent the email in Schedule 1 you knew that the representations in it were untrue in that you had completed locum shifts at Medway on:
 - a. 01 January 2021; **To be determined**
 - b. 02 January 2021; **To be determined**
 - c. 03 January 2021. **To be determined**
4. Your actions at paragraph 2 were dishonest by reason of paragraph 3a - c. **To be determined**
5. You attended work at Medway when you should have been isolating in accordance with government issued COVID 19 guidance when you undertook shifts on:
 - a. ~~25 and 28 December 2020 when XXX had tested positive for COVID 19 on 18 December;~~ **Withdrawn following successful 17(2)(g) application**
 - b. 01, 02 and 03 January 2021 when XXX had tested positive for COVID 19 on 30 December; **Admitted and found proved**
 - c. 23 and 24 January 2021 when a person with whom you were sharing hospital accommodation had tested positive for COVID 19. **Admitted and found proved**

6. Your actions at paragraph 5a-c put staff and patients at potential risk of being infected with COVID 19.

Admitted and found proved in relation to paragraphs 5(b) and 5(c).

Withdrawn in relation to paragraph 5(a) following successful 17(2)(g) application.

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

The Admitted Facts

10. At the outset of these proceedings, through his counsel, Mr Ivill, Dr Mathuram Thiyagarajan made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of 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.

The Facts to be Determined

11. In light of Dr Mathuram Thiyagarajan's response to the Allegation made against him, the Tribunal is required to determine whether Dr Mathuram Thiyagarajan made untrue representations in his email to the Trust as he had completed shifts at Medway on 1, 2 and 3 January 2021, and that his actions in sending the email in light of the completed shifts was dishonest.

Witness Evidence

12. The Tribunal received evidence on behalf of the GMC from the following witness:

- Dr A, Chief Medical Officer at Medway at the time of events, via telephone link.

13. The Tribunal also received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Dr B, Deputy Medical Director and Responsible Officer for Addenbrookes Hospital, dated 14 February 2022;
- Ms C, Local Counter Fraud Specialist for the Trust, dated 5 August 2022 and 6 June 2023;
- Dr E, Responsible Officer for Medway, dated 29 November 2022;
- Ms D, Head of Temporary Resourcing and Medical Rota Coordination Service at Medway, dated 10 July 2023;
- Ms F, Medical Staffing Adviser at the Trust, dated 27 July 2023.

14. Dr Mathuram Thiyagarajan provided his own witness statement, dated 20 November 2023 and also gave oral evidence at the hearing. In addition, the Tribunal received evidence from Dr G, by video link, on Dr Mathuram Thiyagarajan's behalf.

Documentary Evidence

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

- Email from Dr Mathuram Thiyagarajan to Dr B, dated 22 August 2021;
- Email from Dr Mathuram Thiyagarajan to Dr A, dated 22 August 2021;
- Counter Fraud Authority Statement by Dr Mathuram Thiyagarajan, dated 4 December 2022;
- Government Guidance on COVID-19, various dates;
- Email from Dr Mathuram Thiyagarajan to Ms F, dated 3 January 2021.

The Tribunal's Approach

16. 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 Mathuram Thiyagarajan 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. Tribunal had regard to the case of *Byrne v General Medical Council* [2021] EWHC 2237 (Admin) which sets out the following approach:

(1) There is only one civil standard of proof in all civil cases, and that is proof that the fact in issue more probably occurred than not.

(2) There is no heightened civil standard of proof in particular classes of case. In particular, it is not correct that the more serious the nature of the allegation made, the higher the standard of proof required.

(3) [Following the case of Re B [2008] UKHL 35] [t]he inherent probability or improbability of an event is a matter which can be taken into account when weighing the probabilities and in deciding whether the event occurred. Where an event is inherently improbable, it may take better evidence to persuade the judge that it has happened. This goes to the quality of evidence.

(4) However it does not follow, as a rule of law, that the more serious the allegation, the less likely it is to have occurred. So whilst the court may take account of inherent probabilities, there is no logical or necessary connection between seriousness and probability. Thus, it is not the case that "the more serious the allegation the more cogent the evidence need to prove it".'

17. It was not challenged that Dr Mathuram Thiyagarajan is a person of good character who has no previous disciplinary matters recorded against him. There is settled case law that evidence of positive good character is relevant to consideration of dishonesty although the weight to be attached to it is a matter for the Tribunal. Good character goes to credibility that is how reasonable it is to believe or disbelieve the doctor and second it goes to propensity and the probability that Dr Mathuram Thiyagarajan would have behaved as alleged.

18. The Tribunal was advised by the LQC that it must reach its decision on the facts only on the evidence before it and must not speculate. However, the Tribunal was entitled to draw reasonable inferences from what it had heard. When drawing inferences, the Tribunal must be able to safely exclude, as less than probable, any other possible explanations. There must be evidence that justifies the inference. Findings of for example dishonesty are not necessarily linked to a specific motivation, financial or otherwise. However, there must be evidence that justifies the inference of dishonesty. Any absence of motivation can be a relevant consideration.

19. In regard to the allegations of dishonesty, the LQC advised of the test for dishonesty as set out in *Ivey v Genting Casinos (UK) Limited (t/a Crockfords Club)* [2017] UKSC 67, which provides:

'When dishonesty is in question the fact-finding Tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held.

When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the

fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'

The Tribunal's Analysis of the Evidence and Findings

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

Paragraphs 3(a), (b) and (c)

21. The Tribunal first considered the facts not in dispute. It is agreed that Dr Mathuram Thiyagarajan was entitled to work shifts at Medway during periods of annual leave from the Trust or when not rostered. It is also not disputed that Dr Mathuram Thiyagarajan was not rostered for work at the Trust between 1 and 3 January 2021 those dates constituting a Bank Holiday and a weekend. It also noted Dr Mathuram Thiyagarajan's admission to Paragraph 2 of the Allegation that he did send the email in Schedule 1 and considered that this case largely turned on an interpretation of a relatively few words in the body of the email.

22. The Tribunal took into consideration that Dr Mathuram Thiyagarajan's had been asked to provide on more than one occasion his account of events. In an email to Dr B, sent 22 August 2021, Dr Mathuram Thiyagarajan stated:

'Sadly, [XXX] on 12/12/20 night, informed the rota manager ([Mr H]) and had my COVID test on 14/12/2020. Still remember clearly as [XXX], and I asked [XXX] to drive the car. The test result was reported on 15/15/21 as positive (See the test result 2).

Unfortunately, [XXX] also turned positive subsequently and [XXX] was also self-isolating [XXX].

It was [XXX]

In fact, [XXX].

I emailed the medical staffing and my team during the illness [XXX]. I did tell them about the annual leaves booked in the following weeks but received no reply from medical staffing.

In line with NHS advice, my self-isolation period ended on 23/15/20, and I was desperate to go out as this is safe now. Hence with my understanding, as I am on annual leave now, I went to Medway Hospital on 25 and 28th December 2020. The shift was not busy, other registrars could handle the take, and I managed to advise as necessary.

I also did the same on 01-03/01/21 with a planned return to work at Cambridge on 04/01/21 (Monday after a bank holiday weekend). Unfortunately [XXX]'

23. Further, in his statement to NHS Counter Fraud, dated 4 December 2022, Dr Mathuram Thiyagarajan states:

'My leave ended on 31 December 2020. 1 January 2021 was a Bank Holiday and 2 and 3 January 2021 were a Saturday and a Sunday. I was not therefore expected to work at the Trust on these days. I worked locum shifts at Medway on 1, 2 and 3 January 2021. On 3 January 2021 while at Medway I became ill. I believed that I had recovered from my Covid infection but [XXX] and I had to be collected from Medway. I was due to return to work at the Trust on 4 January 2021 but I emailed the Trust at 10.30 pm on 3 January 2021 to inform them that I was not fit to return to work. I returned to work at the Trust on 10 January 2021.'

24. The Tribunal also took into account Dr Mathuram Thiyagarajan's written statement for the hearing in which he stated:

'The email was not untrue. It states that I was unwell at that point and unfit to work. I had been well enough to do so over the previous 3 days but [XXX] while I was at work at Medway, hence the email. I was not acting dishonestly as I was genuinely unfit to work when I sent this email'

25. In his oral evidence, Dr Mathuram Thiyagarajan repeated to the Tribunal that XXX while he was working a shift at Medway on 3 January 2021, and that XXX had needed to collect him from work XXX. The Tribunal heard oral evidence from XXX, Dr G, who told the Tribunal that Dr Mathuram Thiyagarajan had appeared 'XXX' when she collected him and confirmed his account of events.

26. The Tribunal noted Mr Rigby's contention that, based on the contemporaneous emails to the Trust in December 2020, Dr Mathuram Thiyagarajan presented a single trajectory of COVID-19 illness during this period and yet he completed shifts at Medway without informing them of his COVID-19 symptoms or positive test. Further, the Tribunal noted Mr Rigby's position that the wording of the email was '*perfectly clear*' and its meaning was that from the last contact with the Trust in December he had continued to suffer from COVID-19 and continued to be unfit to work because of COVID-19. He further argued that Dr Mathuram Thiyagarajan should have told the Trust that this illness on 3 January 2021 was not COVID-19 but another illness, so that it could be addressed through occupational health assessments, if indeed he was unfit to work, but with the email implying COVID-19 this would not have been a possibility if it was considered he still had COVID-19 symptoms.

27. The Tribunal noted Dr Mathuram Thiyagarajan's explanation that the focus of his attention in the wording of the email was to let the team '*know at the earliest time that he was not coming Monday 4th*'. He told the Tribunal that the email was to ensure there was cover for his shift on 4 January 2021. On subsequent questioning, Dr Mathuram Thiyagarajan agreed there could have been more information in the email, but XXX. The Tribunal considered his explanation credible, convincing and consistent.

28. The Tribunal also noted the GMC's submission that Dr Mathuram Thiyagarajan has a propensity to give minimal information, with regard to both the Trust and Medway. However, no evidence was adduced to prove that he had a duty to provide updates on his condition to Medway, which was not his main employer. It was satisfied that he was only obliged to provide details of his illness to the Trust as his main employer, which he did. This does not, in the Tribunal's view, support the GMC's assertion of deliberate recklessness on the part of Dr Mathuram Thiyagarajan.

29. The Tribunal was satisfied that Dr Mathuram Thiyagarajan had provided a consistent account over a period of time that he had become unwell during the shift at Medway on 3 January 2021, and that as a result he had felt too unwell to return to work at the Trust the next day. It was satisfied that his accounts were consistent with the known facts of case and that there are no moments where he has contradicted himself. It noted that it was not suggested by Mr Rigby that Dr G was lying only that she may have been mistaken about the date she picked up Dr Mathuram Thiyagarajan which she firmly denied. Whilst observing that Dr G is not a truly independent or disinterested witness, it noted that she gave her evidence straightforwardly and admitted where she could not remember specific details.

30. The Tribunal also considered the GMC's submissions regarding Dr Mathuram Thiyagarajan's motive for the alleged false representations. The Tribunal accepted Mr Rigby's legal submission that the GMC are not obliged to prove motivation to fulfil the test of dishonesty. However, the Tribunal noted the direction in *Soni v General Medical Council* [2015] EWHC 364 (Admin) that an absence of motivation can be a relevant consideration in assessing the likelihood of a registrant being untruthful.

31. The Tribunal first considered the GMC's submission of a financial motivation, or a justification for additional time off. It was not satisfied that there was evidence before it to show Dr Mathuram Thiyagarajan had made a financial gain, nor is there evidence of him needing to justify further time off. The Tribunal noted that Dr Mathuram Thiyagarajan cancelled shifts at Medway in the period between 14 December 2020 and 4 January 2021 and further noted that he was due to be on leave from the Trust from 22 to 31 December 2020. It also noted that he did not pick up any additional shifts as a result of sending the email on 3 January. It further noted in the GMC evidence that the annotation of the entire period from 22 December 2020 to 10 January 2021 as sick leave was a Trust decision and not as a result of a request from Dr Mathuram Thiyagarajan save in relation to the days following his initial COVID-19 symptoms.

32. The Tribunal noted the GMC's submission that Dr Mathuram Thiyagarajan had been well enough on 3 January 2021, at approximately the same time as he emailed the Trust, to submit a time sheet to Medway for the shifts worked in December 2020 and January 2021. It took into account Dr Mathuram Thiyagarajan's explanation that this email had been drafted prior to him becoming unwell, so all he had needed to do was make some amendments and send it. The Tribunal found this explanation to be credible and accepted that it was a practice he did follow, as evidenced by an email sent to Medway Surgical Rotas in April 2021, included in the GMC bundle.

33. The Tribunal therefore could not agree with the GMC case that there was a motivation for Dr Mathuram Thiyagarajan to make false representations, and accepted he genuinely felt too unwell to work and had attributed this to his recent COVID-19 illness.

34. The Tribunal considered the likelihood of the events having occurred in the way alleged. It took into account that Dr Mathuram Thiyagarajan is of previous good character, has enjoyed a long career and that he has provided positive testimonials as to his honesty

and integrity. It also considered the lack of obvious motivation, and Dr Mathuram Thiyagarajan's consistent accounts of his sudden illness on 3 January 2021. It was not satisfied that the GMC had discharged the evident burden of proving the fact that simply by working the shifts at Medway at the beginning of January meant that the representations made in the email to the Trust were false. It had not demonstrated on the balance of probabilities that Dr Mathuram Thiyagarajan's explanation of taking ill was untrue.

35. Having considered all of the above factors, the Tribunal determined paragraph 3 of the Allegation not proved in its entirety.

Paragraph 4

36. Having found paragraph 3 not proved in its entirety, the Tribunal subsequently found paragraph 4 of the Allegation also not proved.

The Tribunal's Overall Determination on the Facts

37. The Tribunal has determined the facts as follows:

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

1. Between 01 December 2020 and 31 January 2021 you were:
 - a. employed on a fixed term contract as a Senior Clinical Fellow in Hepato-Pancreato-Biliary surgery at Cambridge University Hospital NHS Foundation Trust ('the Trust'); **Admitted and found proved**
 - b. undertaking locum shifts as a clinical fellow in surgery at Medway NHS Foundation Trust ('Medway'). **Admitted and found proved**
2. On 03 January 2021 at 22:31 hours you emailed the Trust as set out in Schedule 1. **Admitted and found proved**
3. When you sent the email in Schedule 1 you knew that the representations in it were untrue in that you had completed locum shifts at Medway on:
 - a. 01 January 2021; **Not proved**
 - b. 02 January 2021; **Not proved**
 - c. 03 January 2021. **Not proved**

4. Your actions at paragraph 2 were dishonest by reason of paragraph 3a - c. **Not proved**

5. You attended work at Medway when you should have been isolating in accordance with government issued COVID 19 guidance when you undertook shifts on:
 - a. ~~25 and 28 December 2020 when XXX had tested positive for COVID 19 on 18 December;~~ **Withdrawn following successful 17(2)(g) application**
 - b. 01, 02 and 03 January 2021 when XXX had tested positive for COVID 19 on 30 December; **Admitted and found proved**
 - c. 23 and 24 January 2021 when a person with whom you were sharing hospital accommodation had tested positive for COVID 19. **Admitted and found proved**

6. Your actions at paragraph 5a-c put staff and patients at potential risk of being infected with COVID 19.
Admitted and found proved in relation to paragraphs 5(b) and 5(c).
Withdrawn in relation to paragraph 5(a) following successful 17(2)(g) application.

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

Determination on Impairment - 07/12/2023

38. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Mathuram Thiyagarajan's fitness to practise is impaired by reason of misconduct.

The Evidence

39. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received further evidence, namely a reflective statement from Dr Mathuram Thiyagarajan and four testimonials from colleagues, all of which it has read.

Submissions

On behalf of the GMC

40. On behalf of the GMC, Mr Rigby submitted Dr Mathuram Thiyagarajan's actions amounted to serious misconduct and that his fitness to practise is currently impaired. Throughout his submissions, Mr Rigby referred the Tribunal to the relevant authorities on determining misconduct and impairment as well as to paragraphs 1, 28 and 65 of Good Medical Practice (2013) ('GMP').

41. In respect of 1 to 3 January 2021, Mr Rigby submitted that Dr Mathuram Thiyagarajan either knew that the guidance was to self-isolate and decided to ignore it or was wilfully blind to it. Mr Rigby submitted that Dr Mathuram Thiyagarajan definitely knew that he should have self-isolated on 23 and 24 January 2021 as demonstrated by the contemporaneous evidence. Mr Rigby submitted that Dr Mathuram Thiyagarajan was reckless in not self-isolating on these dates and in putting patients and colleagues at potential risk of being infected. He stated that, for those reasons, this was conduct that members of the profession and the public would find deplorable and would amount to serious misconduct.

42. Mr Rigby noted that Dr Mathuram Thiyagarajan has apologised in his reflections and his statement. He submitted however, that Dr Mathuram Thiyagarajan has continued to claim his actions were accidental and not a deliberate failure to self-isolate which put the health of colleagues and patients at risk. He submitted that Dr Mathuram Thiyagarajan, on that basis, does not have full insight into his actions.

43. Mr Rigby submitted that, without full insight, Dr Mathuram Thiyagarajan cannot remediate his conduct. He stated that in the absence of insight and remediation, the Tribunal cannot conclude that the risk of repetition is low. Mr Rigby submitted that, notwithstanding Dr Mathuram Thiyagarajan's previous good character, the seriousness of his misconduct is such that the overarching objective and the expectations of the public would require a finding of impairment.

On behalf of Dr Mathuram Thiyagarajan

44. On behalf of Dr Mathuram Thiyagarajan, Mr Ivill submitted that impairment was a matter for the Tribunal, first considering whether any of the admitted allegations equate to misconduct. He referred the Tribunal to relevant authorities throughout his submissions.

45. Mr Ivill submitted that Dr Mathuram Thiyagarajan was a doctor of good character who had never deliberately or intentionally put patients or colleagues at potential risk. In relation to the 1 to 3 of January 2021, Mr Ivill submitted that Dr Mathuram Thiyagarajan considered at that time that he was able to leave isolation and return to work as he had self-isolated for ten days from the onset of his symptoms, in line with the message from NHS Test and Trace, and he had no fever. He submitted that it is acknowledged by Dr A and Ms F that the advice was constantly evolving and there was confusion about the rules of when it was necessary to isolate. Mr Ivill stated that Dr Mathuram Thiyagarajan accepts now that his understanding was wrong, but it was a genuinely held belief and an unintentional breach of the guidance.

46. In respect of the 23 and 24 January 2021, Mr Ivill submitted that Dr Mathuram Thiyagarajan's actions were well-intentioned. Mr Ivill submitted that Dr Mathuram Thiyagarajan had been recovered from COVID-19 for several weeks, that he felt well and very much back to normal with no symptoms. He submitted that the Tribunal may conclude that Dr Mathuram Thiyagarajan's actions were the result of an error of judgement which occurred at a time when he was under a degree of pressure. Mr Ivill submitted that Dr Mathuram made a mistake, with the potential risk to staff and patients an unintended consequence of a genuine misunderstanding of the guidance and in the context of a well-intentioned act. Mr Ivill submitted that, in the circumstances, there is an entirely rational basis to find that it is not conduct which fellow professionals would regard as '*deplorable*' and is not sufficiently serious as to amount to serious misconduct.

47. Mr Ivill submitted, that should the Tribunal conclude that the actions do amount to misconduct, then he would remind the Tribunal that a finding of misconduct does not necessitate a finding of impairment. Mr Ivill submitted that Dr Mathuram Thiyagarajan has demonstrated insight by admitting the allegations at an early stage. Further, he has shown an understanding of the significance of his actions, has acknowledged that he was wrong and understands why his actions cannot be repeated. Mr Ivill submitted that Dr Mathuram Thiyagarajan has recognised the impact his actions can have on patients, colleagues and public confidence in the profession, and has apologised for his actions.

48. Mr Ivill stated that Dr Mathuram Thiyagarajan has practiced without further issue since the events in January 2021. He submitted that the lapse of time without further incident was evidence that the conduct is remediable and that there is no risk of repetition. Mr Ivill reminded the Tribunal that Dr Mathuram Thiyagarajan has explained the impact the

investigation has had upon him, and it would be highly unlikely that he would place himself in a similar position to face allegations of this nature again.

49. Mr Ivill invited the Tribunal to conclude that Dr Mathuram Thiyagarajan has insight, has embedded remediation and that the risk of repetition is low. He submitted that this is not a case where there is a sufficiency of evidence to suggest that Dr Mathuram Thiyagarajan poses a demonstrable current risk to patient safety, nor where there is a need to make a finding on public interest grounds. He therefore invited the Tribunal to find that Dr Mathuram Thiyagarajan's fitness to practice is not currently impaired.

The Relevant Legal Principles

50. 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.

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

52. The Tribunal must determine whether Dr Mathuram Thiyagarajan's fitness to practise is impaired today, taking into account his 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.

53. In relation to misconduct, the Tribunal bore in mind the case of *Roylance v General Medical Council (No.2)* [2000] 1 A.C. 311, which provided:

'Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a [medical] practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word professional which links the misconduct to the profession [of medicine]. Secondly, the misconduct is qualified by the word serious. It is not any professional misconduct which would qualify. The professional misconduct must be serious.'

54. The Tribunal also had regard to the case of *R (on the application of Remedy UK Ltd) v General Medical Council* [2010] EWHC 1245 (Admin), which provided:

‘Misconduct is of two principal kinds. First, it may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise.

Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur outwith the course of professional practice itself, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession.’

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

a. *‘Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

b. *Has in the past and/or is liable in the future to bring the medical profession into disrepute; and/or*

c. *Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d. *...’*

The Tribunal’s Determination on Impairment

Misconduct

56. In determining whether Dr Mathuram Thiyagarajan’s fitness to practise is impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amount to serious misconduct.

Paragraph 5(b)

57. The Tribunal first considered whether Dr Mathuram Thiyagarajan’s actions in working on 1 to 3 January 2021, when XXX had tested positive for COVID-19, amounted to serious misconduct.

58. The Tribunal had regard to paragraphs 1, 12, 28, 37 and 65 of GMP, which provide:

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

...

12 *You must keep up to date with, and follow, the law, our guidance and other regulations relevant to your work.*

...

28 *If you know or suspect that you have a serious condition that you could pass on to patients, or if your judgement or performance could be affected by a condition or its treatment, you must consult a suitably qualified colleague. You must follow their advice about any changes to your practice they consider necessary. You must not rely on your own assessment of the risk to patients.*

...

37 *You must be aware of how your behaviour may influence others within and outside the team.*

...

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

59. The Tribunal noted that the COVID-19 guidance at the time made it a legal requirement for Dr Mathuram Thiyagarajan to isolate if a member of his household tested positive for COVID-19. It also took into account that Dr Mathuram Thiyagarajan was working in a hospital, on a surgical ward, and could have potentially exposed vulnerable patients to COVID-19, putting them at risk of harm.

60. However, the Tribunal did take into consideration that the guidance at the time was unclear. It noted that there were a number of changes to guidance around the time of Dr Mathuram Thiyagarajan's breach. It also took into account the evidence of Dr A, who agreed that the guidance at the time was 'opaque' and could be interpreted in a number of ways.

61. Given that Dr Mathuram Thiyagarajan had recently tested positive for COVID-19 and isolated in accordance with the guidance, the Tribunal could see where a misinterpretation of the guidance could be made. Therefore, the Tribunal was not satisfied that this could be considered a reckless disregard for the guidance.

62. The Tribunal considered that this issue, while clearly misconduct, was not so serious as to amount to serious misconduct.

Paragraph 5(c)

63. The Tribunal next considered whether Dr Mathuram Thiyagarajan's actions in working on 23 and 24 January 2021, when a person with whom he was residing had tested positive for COVID-19, amounted to serious misconduct.

64. The Tribunal took into account an email sent to Dr Mathuram Thiyagarajan from his hospital accommodation provider, dated 19 January 2021, which clearly stated that he needed to isolate due to exposure within the flat:

'You are possibly aware that one of your flatmates suspects they may be at risk of having contracted Coronavirus COVID-19. This has not been confirmed but as a precaution they are self-isolating in their room. The resident has been advised to keep a safe distance (around 2 metres) from other people to reduce the risk of further infections.

Therefore, as per government guidance, all residents of the flat will need to self isolate for 10 days. We would ask all residents to take extra care with hygiene measures

within their bedrooms and flats to protect themselves. Do not have visitors in your flat and any deliveries should be left outside the flat door.'

65. The Tribunal also noted that Dr A agreed that Dr Mathuram Thiyagarajan should have self-isolated, as stated in his witness statement to the GMC, dated 28 July 2023:

'Dr Mathuram Thiyagarajan informed us on 20 January 2021 that his flatmate tested positive for COVID-19. He did not state on what date the positive test was. I am not sure who this flatmate is, but according to the regulations, Dr Mathuram Thiyagarajan should then have self-isolated from that point for 10 days.'

66. The Tribunal agreed that it was very clear from the guidance that Dr Mathuram Thiyagarajan needed to isolate after his flatmate tested positive for COVID-19. Further, it noted that Dr Mathuram Thiyagarajan, in his statement to NHS Counter Fraud, stated:

'On 19 January 2021 at 8.50 am I received the attached email from "Sanctuary" at the Trust informing me that there had been a Covid case in my hospital accommodation and that I should isolate. I did not see this email until the afternoon of that day. I knew that I had contracted Covid in December and that I would have some protection from a further infection as a result. I informed Occupational Health at the Trust that I was able to work and I did not need to isolate. I was told that I should nevertheless not return to work until 27 January. I was available remotely to assist the team.'

67. The Tribunal, taking account of the evidence, was of the view that Dr Mathuram Thiyagarajan had been informed that he needed to isolate regardless of his recent illness, and he chose to ignore that advice. The Tribunal therefore did not accept that this incident was a misunderstanding of the guidance. The Tribunal was satisfied that, in relation to the 23 and 24 January 2021, this was a blatant disregard for the legal requirements, required of all persons in the UK at the time. It was of the view that Dr Mathuram Thiyagarajan had consciously taken a risk, which had potentially serious consequences.

68. The Tribunal found that Dr Mathuram Thiyagarajan had breached paragraphs 1, 12, 28, 37 and 65 of GMP, as set out above.

69. The Tribunal has concluded that Dr Mathuram Thiyagarajan's conduct fell so far short of the standards reasonably to be expected of a doctor as to amount to serious misconduct.

Paragraph 6

70. The Tribunal then went onto consider whether Dr Mathuram Thiyagarajan’s actions which put patients and staff at potential risk of contracting COVID-19 could amount to serious misconduct. As it did not find serious misconduct in relation to paragraph 5(b), it only considered this paragraph in relation to paragraph 5(c).

71. The Tribunal took into consideration paragraphs 1, 12, 28, 37 and 65 of GMP, and considered that all of these applied in relation to this issue.

72. Dr Mathuram Thiyagarajan was notified that he should isolate, and he therefore posed a potential risk of infection. He did not isolate, and attended work, in a clinical setting, for two days in a row, in a patient facing role. The Tribunal could not ignore the fact that Dr Mathuram Thiyagarajan put patients and colleagues at risk, for which the consequences could have been extremely serious.

73. The Tribunal has therefore concluded that Dr Mathuram Thiyagarajan’s conduct fell so far short of the standards reasonably to be expected of a doctor as to amount to serious misconduct.

Impairment by reason of Misconduct

74. Having found that the facts found proved amounted to serious misconduct, the Tribunal went on to consider whether, as a result of that misconduct, Dr Mathuram Thiyagarajan’s fitness to practise is currently impaired.

75. The Tribunal considered whether Dr Mathuram Thiyagarajan’s misconduct was capable of being remediated, has been remediated, and whether it was likely to be repeated.

76. The Tribunal looked for evidence of insight, remediation and the likelihood of repetition and balanced those against the three limbs of the statutory overarching objective, namely:

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

77. In considering the issue of insight, the Tribunal was of the view that Dr Mathuram Thiyagarajan had shown limited insight. Expressing an acknowledgment of the action is only the first step in gaining insight and remediation. Therefore, the Tribunal was of the opinion that he still lacks insight into the potential impact his actions could have had on the patients and staff he put at risk. The Tribunal was provided a reflections document, which it has read, but found that Dr Mathuram Thiyagarajan has not yet recognised that he used his own medical interpretation of the guidance to rationalise ignoring the legal requirement to isolate.

78. Further, the Tribunal noted that, while Dr Mathuram Thiyagarajan has apologised to the Tribunal, and expressed personal regrets, the focus of his reflections was very much on the impact these proceedings have had upon himself. The Tribunal was of the view that Dr Mathuram Thiyagarajan has not fully explored the risk he posed to patients and staff at Medway, or reflected on why the rules existed, and why they should have been followed by everyone.

79. The Tribunal noted that it has seen no evidence of Continuing Professional Development ('CPD'), including activities specifically addressing his self-confessed '*error of judgment*'. Therefore, it could not be satisfied that he has remediated for his actions. The Tribunal did take into consideration Dr Mathuram Thiyagarajan's positive testimonials, albeit these did not relate to his current practice, and his previous good character, but attached limited weight, given the lack of other evidence of remediation.

80. The Tribunal next considered the risk of repetition. The Tribunal was satisfied that Dr Mathuram Thiyagarajan would not ignore COVID-19 guidelines in this way in the future. However, it could not be satisfied that, without an attitudinal shift, Dr Mathuram Thiyagarajan would obey guidelines for other diseases or situations. This, coupled with his limited insight, meant the Tribunal was unable to conclude that the risk of repetition was low.

81. In considering the test set out by Dame Janet Smith and adopted in *Grant*, the Tribunal concluded that limbs a, b and c of the test were engaged. The Tribunal considered that Dr Mathuram Thiyagarajan's actions in working when he was supposed to be isolating because of his exposure to COVID-19, and therefore put patients at potential risk of harm. While there is no evidence of any actual harm, the Tribunal concluded that the exposure to the risk of harm was unwarranted. The Tribunal also concluded that Dr Mathuram

Thiyagarajan's conduct brought the medical profession into disrepute and that he breached a fundamental tenet of the profession.

82. In considering whether Dr Mathuram Thiyagarajan's fitness to practise is currently impaired, the Tribunal balanced his limited insight and the assessed risk of repetition against the overarching objective.

83. The Tribunal further considered that Dr Mathuram Thiyagarajan's actions would damage public confidence in the profession if a finding of impairment were not made. The Tribunal was satisfied that a member of the public in full knowledge of the facts of the case would be concerned about a doctor acting in the way Dr Mathuram Thiyagarajan did. The Tribunal was also of the view that given its findings of fact and serious misconduct, a finding of impairment of fitness to practise was necessary to promote and maintain proper standards of conduct for the medical profession.

84. The Tribunal has therefore determined that Dr Mathuram Thiyagarajan's fitness to practise is currently impaired by reason of misconduct.

Determination on Sanction - 08/12/2023

85. Having determined that Dr Mathuram Thiyagarajan's fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

Submissions

On behalf of the GMC

86. On behalf of the GMC, Mr Rigby submitted that the appropriate sanction was one of suspension. He referred the Tribunal to the Sanctions Guidance (2020) ('the SG') and the Tribunal's own findings at the previous stages of the hearing.

87. Mr Rigby submitted that the Tribunal has found that Dr Mathuram Thiyagarajan had a blatant disregard for the legal requirements in relation to COVID-19 and breached several paragraphs of GMP. Further, the Tribunal has found his insight is limited and that there is limited, if any, real remediation at this stage, and that there remains a risk of repetition.

88. Mr Rigby submitted that Dr Mathuram Thiyagarajan's conduct can be remedied and acknowledged his general good character and his long and valuable service to the NHS. He submitted that, in all the circumstances, suspension is the more appropriate and proportionate sanction in accordance with the SG. He did not make a specific submission as to the length of sanction but stated that it should be a substantial period with a review.

On behalf of Dr Mathuram Thiyagarajan

89. On behalf of Dr Mathuram Thiyagarajan, Mr Ivill agreed that the appropriate sanction in this case was one of suspension and referred the Tribunal to the SG.

90. Mr Ivill submitted that there were a number of mitigating factors in this case, which the Tribunal should take into consideration. He submitted that Dr Mathuram Thiyagarajan admitted the allegations found proved. Further, Dr Mathuram Thiyagarajan has shown some insight and reflection, albeit that the Tribunal's view is that this is currently limited. Mr Ivill also directed the Tribunal to the positive testimonials submitted and reminded the Tribunal that close to three years has now lapsed since the incident without further repetition of the misconduct.

91. Mr Ivill submitted that the conduct can be described as out of character and an isolated episode, that Dr Mathuram Thiyagarajan has accepted that he should have behaved differently and apologised for this in a timely manner. Mr Ivill reminded the Tribunal of Dr Mathuram Thiyagarajan's previously unblemished career with no previous fitness to practise history in more than 20 years of practice. He submitted that Dr Mathuram Thiyagarajan has also fully engaged with the process throughout and is committed to maintaining high standards in the future. Mr Ivill stated that Dr Mathuram Thiyagarajan and his family would be impacted financially by any period of time when he is not permitted to work as a doctor.

92. Mr Ivill submitted that a sanction of erasure was inappropriate as this was not a case of fundamental incompatibility with continued registration, and there is no evidence that Dr Mathuram Thiyagarajan is incapable of remediating his actions. He submitted that there was a public interest in Dr Mathuram Thiyagarajan being able to return to practice in the future. Mr Ivill told the Tribunal that a sanction of a period of suspension would afford Dr Mathuram Thiyagarajan an opportunity to further reflect on and develop his insight and to fully remediate his misconduct. It would also send out a sufficiently strong message to him, the profession and the public.

The Relevant Legal Principles

93. The Tribunal reminded itself that the decision as to the appropriate sanction to impose, if any, was a matter for it alone, exercising its own judgment. In reaching its decision on sanction, the Tribunal had regard to the SG, reminding itself that it is guidance and could be departed from with good reason. It bore in mind that the purpose of a sanction is not to be punitive, but to protect patients and the wider public interest, although it noted that any sanction imposed may have a punitive effect. It reminded itself that in deciding what sanction, if any, to impose, it should consider the sanctions available, starting with the least restrictive.

94. Throughout its deliberations, the Tribunal had regard to the overarching objective, which includes the protection of the public, the maintenance of public confidence in the profession, and the promotion and maintenance of proper professional standards and conduct for members of the profession. It applied the principle of proportionality, balancing Dr Mathuram Thiyagarajan’s interests with the public interest.

The Tribunal’s Determination on Sanction

95. The Tribunal first identified what it considered to be the aggravating and mitigating factors in this case.

Aggravating factors

96. The Tribunal first considered the aggravating factors in this case. It was not satisfied that Dr Mathuram Thiyagarajan had developed sufficient insight into his actions, and noted that it had been not provided with adequate evidence of remediation.

97. The Tribunal also considered the potential serious consequences Dr Mathuram Thiyagarajan’s actions could have had on patients, and other members of staff at Medway.

98. The Tribunal also took into account his failure to inform Medway of his exposure to COVID-19 and the need to isolate. It was of the view that Dr Mathuram Thiyagarajan failed to work collaboratively, as it was his duty to inform Medway that he had been exposed.

Mitigating factors

99. The Tribunal acknowledged that Dr Mathuram Thiyagarajan has no previous findings made against him and is previously of good character.

100. The Tribunal was of the view that the incident could properly be described as an isolated period of time, in that it occurred on two separate, but consecutive, days. It noted that there has been no evidence provided of any repetition of his misconduct in the almost three years since the incident, nor of any other concerns been raised in that time. There is no evidence provided regarding concerns about Dr Mathuram Thiyagarajan’s clinical abilities or practice.

101. The Tribunal accepted that this behaviour was out of character for Dr Mathuram Thiyagarajan. It also acknowledged that it took place against a background of significant pressure on the profession, occurring during a global pandemic and a period of national lockdown.

102. The Tribunal also took into consideration Dr Mathuram Thiyagarajan’s full cooperation with the GMC throughout the investigation and his admissions before this Tribunal. He has also apologised to this Tribunal.

103. The Tribunal had regard to the testimonials it has received in support of Dr Mathuram Thiyagarajan. Although the testimonials are positive, the Tribunal noted that the testimonials are not related to his current practice. Further, there is no testimonial from a current employer or responsible officer. For that reason, the Tribunal attached limited weight to the testimonials.

104. The Tribunal balanced the aggravating and mitigating factors throughout its deliberations and went on to consider each sanction in order of ascending severity, starting with the least restrictive.

No action

105. The Tribunal first considered whether to conclude the case by taking no action. It noted that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

106. The Tribunal was satisfied that there were no exceptional circumstances in Dr Mathuram Thiyagarajan’s case which could justify it taking no action. Further the Tribunal considered that concluding the case by taking no action would be insufficient to protect the

public interest and would not mark the seriousness of Dr Mathuram Thiyagarajan’s misconduct.

Conditions

107. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Mathuram Thiyagarajan’s registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable. The Tribunal noted that conditions may be workable where a doctor has insight into their misconduct, is likely to comply with conditions, and where a doctor is likely to respond positively to remediation or retraining. The Tribunal considered that this was not a case in which conditions would sufficiently address the issues of the case.

108. The Tribunal also noted that neither counsel suggested that conditions were appropriate in this case.

Suspension

109. The Tribunal then went on to consider whether a period of suspension would adequately protect the public, maintain public confidence in the profession and uphold proper standards for its members. In considering whether to impose a period of suspension on Dr Mathuram Thiyagarajan’s registration, the Tribunal had regard to paragraphs 91, 92, 93 and 97(a), (e), and (f) of the SG which provide:

‘91 Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. ...

92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (i.e. for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).

93 *Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions.*

...

97 *Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.*

a A serious breach of Good medical practice, but where the doctor’s misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.

...

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

f No evidence of repetition of similar behaviour since incident.’

110. The Tribunal had regard to the factors it has identified as aggravating and mitigating Dr Mathuram Thiyagarajan’s misconduct, and its assessment of the scale of his misconduct. It was satisfied that this case fell within the ambit of paragraphs 91 to 93 of the SG as set out above. It considered that the matters listed above from paragraph 97 of the SG fitted this case.

111. The Tribunal had regard to Dr Mathuram Thiyagarajan’s actions, and considered that while his misconduct was serious, it was remediable. However, it could not ignore that there was a potential for serious harm to patients, as well as failure to act as an appropriate role model for junior colleagues.

112. Overall, the Tribunal decided that this case was not one where Dr Mathuram Thiyagarajan’s misconduct is ‘*fundamentally incompatible with continued registration*’ and therefore it considered that erasure would not be appropriate or proportionate, nor would it be in the public interest. Erasure would deny the public of an otherwise competent and well-regarded doctor.

113. In light of the above, the Tribunal determined that a period of suspension would be an appropriate and proportionate sanction when considering Dr Mathuram Thiyagarajan’s interests alongside the public interest. The Tribunal took into account the impact that this sanction may have upon Dr Mathuram Thiyagarajan. However, in all the circumstances the Tribunal concluded that his interests are outweighed by the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and behaviour.

114. The Tribunal determined therefore that an order of suspension was required in this case. It then went on to determine the length of the suspension.

Length of Suspension

115. In determining the length of the suspension, the Tribunal had regard to paragraphs 99 to 102 of SG and the table following paragraph 102.

116. The Tribunal considered the aggravating factors in this case and acknowledged that this was a serious departure from the principles set out in GMP, and that Dr Mathuram Thiyagarajan had put patients at risk of serious harm.

117. The Tribunal also had regard to the mitigating factors of the case in considering the length of the suspension.

118. Taking all these elements into account, the Tribunal was satisfied that imposing a period of six months’ suspension was appropriate and proportionate. In the Tribunal’s view this would be sufficient to satisfy the need to promote and maintain public confidence and to send out a clear message to the profession that this type of conduct is unacceptable, in order to maintain proper professional standards. It will also give Dr Mathuram Thiyagarajan sufficient time to develop his insight, reflect further, and remediate for his actions. A reasonable and well-informed member of the public or the profession would be satisfied that this was a proportionate response to Dr Mathuram Thiyagarajan’s behaviour.

119. Accordingly, the Tribunal determined to suspend Dr Mathuram Thiyagarajan's registration for a period of six months.

Review

120. The Tribunal determined to direct a review of Dr Mathuram Thiyagarajan's case. A review hearing will convene shortly before the end of the period of suspension. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Mathuram Thiyagarajan to demonstrate how he has developed insight, taken remedial steps and reflected on his actions. It therefore may assist the reviewing Tribunal if Dr Mathuram Thiyagarajan provides:

- Evidence of any courses and other activities he has undertaken in order to demonstrate his remediation;
- Evidence that he has gained genuine insight, such as reflections and discussions with colleagues on the nature of his misconduct;
- Evidence that he has kept his knowledge and skills up to date, including any CPD;
- Any other information that he considers will assist.

Determination on Immediate Order - 08/12/2023

121. Having determined that Dr Mathuram Thiyagarajan's registration should be subject to an order of suspension for a period of six months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order.

Submissions

122. On behalf of the GMC, Mr Rigby submitted that, with the Tribunal having suspended Dr Mathuram Thiyagarajan's registration as a result of the serious misconduct found, it would be in the public interest to impose an immediate order in this case. He submitted that public confidence would be '*dented*' if Dr Mathuram Thiyagarajan was to practice without restriction until the substantive order took effect.

123. On behalf of Dr Mathuram Thiyagarajan, Mr Ivill submitted that an immediate order was not necessary in this case. He submitted that Dr Mathuram Thiyagarajan does not currently pose a significant risk to patient safety, and he has practised without incident since the events in 2021. He submitted that the public interest in this case is met by the

substantive order of six months suspension, and that to impose an immediate order would be punitive rather than necessary.

The Tribunal's Determination

124. In reaching its decision, the Tribunal considered the relevant paragraphs of the SG. In particular, it took account of paragraphs 172, 173 and 178, which state:

'172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.

173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.

...

178 Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.'

125. The Tribunal took into consideration that there were no clinical concerns in this case, nor an immediate risk to patient safety. It was of the view that public confidence would be not impacted if it did not impose an immediate order. It therefore determined that an immediate order was not necessary in this case.

126. This means that Dr Mathuram Thiyagarajan’s registration will be suspended 28 days from the date on which written notification of this decision is deemed to have been served, unless he lodges an appeal. If Dr Mathuram Thiyagarajan does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.

127. There was no interim order to revoke.

128. That concludes this case.

ANNEX A – 30/11/2023

Application under Rule 41

129. On day two of the hearing, the Tribunal invited submissions from parties, pursuant to Rule 41 of the General Medical Council (Fitness to Practise) Rules, as amended ('the Rules'), for the parts of the hearing to be held in private as it concerned matters relating to XXX.

Submissions

130. Mr Rigby, on behalf of the GMC, submitted that the GMC were neutral on the application.

131. Mr Ivill, on behalf of Dr Mathuram Thiyagarajan, submitted that that it may be safer to sit in private in relation to the matters identified by the Tribunal, XXX.

The Tribunal's Decision

132. In making its decision, the Tribunal first had regard to Rule 41 of the Rules, which provides:

'(1) ...hearings before ... a Medical Practitioners Tribunal shall be held in public.

(2) The ...Medical Practitioners Tribunal may determine that the public shall be excluded from the proceedings or any part of the proceedings, where they consider that the particular circumstances of the case outweigh the public interest in holding the hearing in public.'

133. The Tribunal noted that Dr Mathuram Thiyagarajan's positive COVID-19 status is a fundamental element of the case. The Tribunal regarded this as a status, notifiable by mandate of government rules imposed at the time. Therefore, the fact that Dr Mathuram Thiyagarajan and/or members of his household had tested positive could be heard in public.

134. However, the Tribunal was mindful that XXX specifics should be heard in private. Further, this case in part involves XXX.

135. The Tribunal therefore determined that the default position should be that it shall sit in public in accordance with the above Rule, but will go into private for any mention of XXX.

ANNEX B – 30/11/2023

Application for no case to answer under Rule 17(2)(g)

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

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

Submissions

On behalf of Dr Mathuram Thiyagarajan

137. Mr Ivill submitted that insufficient evidence has been adduced for there to be a case to answer in relation to paragraphs 5(a) and 6 where it relates to paragraph 5(a).

138. Mr Ivill submitted that the evidence before the Tribunal is that XXX became symptomatic at around the same time as he did. He submitted that XXX being symptomatic at that time would not, therefore, have prevented Dr Mathuram Thiyagarajan from undertaking shifts on 25 and 28 December 2020.

139. Further, Mr Ivill submitted that regardless of when XXX became symptomatic, he would still have been able to undertake the shifts as the COVID-19 guidance dated August 2020, states that the self-isolation period does not need to be extended as a result of another householder either developing symptoms or testing positive during his self-isolation period. This was replicated in a further government COVID-19: Stay at Home Guidance for Households, dated November 2020, submitted by Mr Ivill.

140. Mr Ivill submitted that the evidence of Dr A was initially based on guidance which post-dated the events by more than a year. He submitted that the version provided to the Tribunal dated August 2020 was accepted by Dr A as correct and he agreed that that there did not appear to be any requirement for others in the household to extend their isolation period and had no reason to think that the position as indicated in those documents from August and November 2020 had not remained the same in relation to the December 2020.

On behalf of the GMC

141. Mr Rigby, on behalf of the GMC, submitted that the application should be rejected.

142. Mr Rigby accepted that Dr Mathuram Thiyagarajan provided information about XXX positive test in his NHS Counter Fraud Authority statement, but he did not disclose when XXX tested positive, nor when XXX symptoms started in his original email statement. He submitted that it was unlikely that XXX had had symptoms for several days prior to XXX positive test, when XXX and Dr Mathuram Thiyagarajan had himself obtained a test within two days of having symptoms. Therefore, Mr Ivill's submissions on this evidence cannot be made out.

143. Mr Rigby submitted that the requirements set out in the COVID-19 guidance is a matter of interpretation. He submitted that the guidance does not refer directly to a person who has had symptoms and/or tested positive for COVID-19, but rather to the others in the household whom he has come into contact with causing them to isolate. He submitted that it does not exclude him having to self-isolate when he became one of the household required to self-isolate when XXX tested positive.

The Tribunal's Approach

144. The Tribunal carefully considered the submissions of both parties. In reaching its decision, it had full regard to all the evidence presented to date, both oral and documentary.

145. The Tribunal reminded itself that at this stage of the proceedings it was not considering whether it would or would not find each paragraph in question proved but whether sufficient evidence had been adduced for there to be a case for Dr Mathuram Thiyagarajan to answer. In considering whether or not sufficient evidence has been adduced to find some or all of the facts proved, the test to be applied by the Tribunal is as set out in *R v Galbraith* [1981] 2 All ER 1060 which provides:

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

(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.

(2) The difficulty arises where there is some evidence but it is of a tenuous character,

for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence.

(a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.

(b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness' reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.

It follows that we think the second of the two schools of thought is to be preferred. There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge.'

The Tribunal's decision

146. The Tribunal kept foremost in its mind that, at this stage, it was required to determine the sufficiency of the evidence taken at its highest and not to make any findings of fact. It then went on to consider each paragraph of the Allegation and the evidence it has been provided with so far.

Paragraph 5(a)

147. The Tribunal first considered whether there was sufficient evidence that a reasonable Tribunal could, on one view of the evidence when taken at its highest, properly find proved paragraph 5(a) of the Allegation.

148. The Tribunal noted that in order for there to be a case to answer for Paragraph 5(a) the GMC has to establish that Dr Mathuram Thiyagarajan attended work on 25 and 28 December 2020, when XXX had tested positive for COVID-19, and that he should not have, based on the guidelines in place at the time.

149. The Tribunal took into account that this Allegation arose from Dr Mathuram Thiyagarajan's response to an NHS Counter Fraud Authority investigation, when asked to

account for his working at Medway on dates that had been classified as sick leave by the Trust. He stated:

‘[XXX] tested positive for Covid on 18 December. At this time I was isolating due to my positive test on 14 December. I understood that this did not change my position and I could return to work ten days after my symptoms started.’

150. The Tribunal also noted Dr Mathuram Thiyagarajan made a similar assertion in an email to Dr B, Responsible Officer at the Trust, on 22 August 2021:

‘Sadly, [XXX] on 12/12/20 night, informed the rota manager ([Mr H]) and had my COVID test on 14/12/2020. Still remember clearly as [XXX], and I asked [XXX] to drive the car. The test result was reported on 15/15/21 as positive (See the test result 2).

Unfortunately, [XXX] also turned positive subsequently and [XXX] was also self-isolating [XXX].’

151. The Tribunal noted first of all that there was no dispute between the parties that Dr Mathuram Thiyagarajan had attended work at Medway on 25 and 28 December 2020.

152. The Tribunal next considered the evidence adduced by the GMC on whether, in the circumstances, Dr Mathuram Thiyagarajan had a duty to isolate on the dates he attended work. It noted in particular Mr Rigby’s clarification in his opening address that Dr Mathuram Thiyagarajan’s period of isolation should have started again when XXX had tested positive for COVID-19.

153. The Tribunal took into account the oral and written evidence of Dr A, who was Chief Medical Officer at Medway at the time of events. It noted in his witness statement to the GMC dated 28 July 2023, he stated:

‘In this email, Dr Mathuram Thiyagarajan stated that his symptoms started on 12 December 2020, took a test on 14 December 2020, and the results were returned as positive on 15 December 2020. COVID-19 regulations required him to isolate for 10 days from when the symptoms started, meaning up to 22 December 2020. He further said in his email that his close contacts tested positive after he had, though he did not state which

contacts these were, when they tested positive, nor when their symptoms started.

Dr Mathuram Thiyagarajan further states in his email that, on 3 January 2021, [XXX] tested positive for COVID-19. If they were symptomatic, he should have self-isolated and not worked.'

154. The Tribunal noted firstly that Dr A did not assert in his statement that Dr Mathuram Thiyagarajan was obliged to isolate again in December following a close contact testing positive. It would appear he made the observations set out above before seeing the later more comprehensive statement made by Dr Mathuram Thiyagarajan. In his oral evidence at the hearing, the Tribunal observed that Dr A conceded that his opinion was based on guidance that was not in effect at the time of events. When Dr A was provided a copy of contemporaneous COVID-19 guidelines by Dr Mathuram Thiyagarajan's legal representatives, which dated to August 2020, he accepted these were in place at the time of events. The Tribunal also noted that Mr Rigby had confirmed that the GMC was no longer relying on the guidance on which Dr A had based his original statement.

155. The Tribunal took into account Dr Mathuram Thiyagarajan's email to Dr B, in which he stated:

'In line with NHS advice, my self-isolation period ended on 23/15/20, and I was desperate to go out as this is safe now. Hence with my understanding, as I am on annual leave now, I went to Medway Hospital on 25 and 28th December 2020. The shift was not busy, other registrars could handle the take, and I managed to advise as necessary.'

156. The Tribunal also had regard to a text message to Dr Mathuram Thiyagarajan received on 17 December 2020, from the COVID-19 Test and Trace service, which stated:

'Text Message from 17 December 2020

Umasankar Thiyagarajan (Account ID: ...)

You have tested positive for COVID-19 so you must stay at home and self-isolate until 23rd of December (including this date)

If you still have fever after 23rd of December, you should continue to self-isolate until you feel better.

Members of your household must stay at home and isolate for 10 days from when your symptoms started (or from when your test was taken if you have not had symptoms).

For more guidance visit:

<https://contact-tracing.phe.gov.uk/links/guidance-for-cases>

It is a legal duty to self-isolate if you are notified by Test and Trace. You could be fined if you do not do this. Parents / guardians are responsible for ensuring their children (under 18) follow these rules.'

157. The Tribunal considered the COVID-19 guidance placed before it, dated August 2020, which states:

'Should someone develop COVID-19 symptoms late in the 14-day household isolation period (for example, on day 10 or later) the isolation period for the rest of the household does not need to be extended. Only the person with new COVID-19 symptoms has to stay at home for at least a further 10 days and should arrange to have a test to see if they have COVID-19 - go to testing (...) to arrange.

At the end of the 14-day period, anyone in the household who has not become unwell can return to their normal routine.'

158. The Tribunal accepted that there was no requirement within this guidance, or within the NHS Test and Trace text message, for Dr Mathuram Thiyagarajan to restart his isolation period once a member of his household tested positive. Although not advanced by the GMC as an expert witness, given Dr A had been produced as the sole GMC witness on COVID-19 guidelines in place at the relevant time, it considered his similar conclusion under cross examination from Mr Ivill was nevertheless significant. It concluded that this undermined the main foundation of the GMC case advanced by Mr Rigby in his opening statement that Dr Mathuram Thiyagarajan's isolation period should have started afresh.

159. The Tribunal accepted that the COVID-19 guidance dated August 2020 was correct, although it noted that the guidance was updated around the time to reduce the household isolation period to 10 days, which is reflected in the text message Dr Mathuram Thiyagarajan received confirming the end of his isolation period as 23 December 2020.

160. The Tribunal concluded therefore that there was insufficient evidence on which the GMC could establish that Dr Mathuram Thiyagarajan had to isolate for a further 10-day period after XXX tested positive on 18 December 2020.

161. As such, the Tribunal was satisfied there was no case to answer in respect of this paragraph of the Allegation.

Paragraph 6

162. The Tribunal was satisfied that, as it determined no case to answer in respect of paragraph 5(a), there was also no case to answer for paragraph 6 as it relates to paragraph 5(a).

Summary

163. The Tribunal was satisfied there was no case to answer in respect of paragraphs 5(a) and 6 (where it relates to paragraph 5(a)) of the Allegation and granted Mr Ivill's application in full.

SCHEDULE 1

'Hope this email finds you well.

I am making a slow recovery from Covid. [XXX]

Looks like I am on a slow recovery from Covid, unfortunately, [XXX] turned positive too last week.

I won't be coming back to work this week as I not fit to come back.

I am day on-call on Wednesday which will need cover...

I will keep you posted in the due course. I will come back as soon as I can, make sure all of you get a jab soon. The illness is something anyone will ever forget in their life..

Kind regards

Uma'