

PUBLIC RECORD

Dates: 29/08/2023 - 30/08/2023

Medical Practitioner's name: Dr Vibhor GARG

GMC reference number: 7930810

Primary medical qualification: MBBS 2011 Maharaja Sayajirao University of Baroda - Medical College Baroda

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

Summary of outcome

Erasure

Immediate order imposed

Tribunal:

Legally Qualified Chair	Mr Kenneth Hamer
Lay Tribunal Member:	Mr Michael Glickman
Medical Tribunal Member:	Dr Ammar Ghouri

Tribunal Clerk:	Ms Fiona Johnston
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Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	NA
GMC Representative:	Ms Rebecca Vanstone, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts and Impairment - 29/08/2023

Background

1. Dr Garg qualified in 2011 from the University of Baroda - Medical College Baroda. At the time of the events Dr Garg was a training fellow in orthopaedics.
2. The allegation that has led to Dr Garg's hearing arises from an incident that occurred on 20 August 2022 when Dr Garg raped Ms A XXX. XXX.
3. Ms A recalled that on the morning of 20 August 2022, Dr Garg, who had XXX, XXX and tried to bind her hands with tape. He also tried to stop her from being able to scream by taping her mouth, and then raped her.
4. Dr Garg was arrested on 21 August 2022. He was subsequently interviewed by the Police, where he denied the allegation of rape, and was released on bail whilst the Police investigation continued. His bail conditions included that he should not contact or interfere with the witness, namely Ms A. Dr Garg repeatedly contacted Ms A over the following weeks, threatening her that he would make public a video of the rape and that he would commit suicide if she did not withdraw the allegations. Dr Garg was then arrested on 21 September 2022 for perverting the course of justice/witness intimidation. He was charged with the offence of rape and perverting the course of justice on 23 September 2022 when he appeared in Court and was remanded in custody.
5. On 27 February 2023, Dr Garg's was sentenced to eleven years imprisonment at Sheffield Crown Court. This sentence was for ten years concurrent for two counts of rape and one year consecutive for one count of perverting the course of justice.
6. Dr Garg is currently in His Majesty's Prison ('HMP') XXX, with a release date of 23 November 2029.

The Outcome of Applications Made during the Facts Stage

7. The Tribunal granted the GMC's application, made pursuant to Rules 15 and 40 of the General Medical Council (Fitness to Practise) Rules 2004 as amended ('the Rules'), and determined that notice of this hearing had been properly served on Dr Garg. It also granted the GMC's application made pursuant to Rule 31 of the Rules to proceed with the case in Dr Garg's absence. The Tribunal's full decision on both applications is included at Annex A.

8. On Day 1, prior to the case opening, Ms Rebecca Vanstone, Counsel for the GMC, made an application under Rule 34(1) of the Rules to have Dr Garg's and Ms A's police interview, Ms A's statement, pre-prepared police statement by Dr Garg and the police report admitted into evidence.

9. She submitted that the supplementary bundle included evidence relevant to the hearing. She submitted that the material was not new documentation. Dr Garg had already seen it in relation to his criminal trial.

10. The Tribunal found that although the documents were being served late and had not formed part of the original agreed bundle, this did not of itself lead to unfairness. The Tribunal considered that they were relevant to the background of the conviction. As to fairness, Dr Garg had voluntarily chosen not to attend today or be represented. It also noted that all the documents would have been disclosed to him in the criminal proceedings and there is nothing new in them of which he was previously been made unaware. The Tribunal found that the documents in the supplementary bundle were relevant and that it would be fair to admit them in evidence.

The Allegation and the Doctor's Response

11. The Allegation made against Dr Garg is as follows:

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

1. On 2 December 2022, at Sheffield Crown Court, you were convicted of the following offences:
 - a. vaginal rape of Ms A, a woman aged 16 years or over, on 20 August 2022; **To be determined**
 - b. oral rape of Ms A, a woman aged 16 years or over, on 20 August 2022; **To be determined**
 - c. committing an act/series of acts with intent to pervert the course of public justice, between 19 August 2022 and 3 December 2022. **To be determined**

2. On 27 February 2023, following the convictions set out at paragraph 1, you were sentenced to:
 - a. ten years' imprisonment for each of the offences set out at paragraphs 1.a and 1.b, to run concurrently; **To be determined**
 - b. one year's imprisonment for the offence set out at paragraph 1.c, to run consecutively; **To be determined**
 - c. a restraining order made under S.5 of the Protection from Harassment Act 1997 to protect Ms A until further order; **To be determined**
 - d. be subject to the notification requirements of the sex offender's register for an indefinite period. **To be determined**

And that by reason of the matters set out above your fitness to practice is impaired because of your convictions in respect of paragraphs 1 and 2.

The Facts to be Determined

12. In light of Dr Garg's absence, the Tribunal is required to determine the Allegation in its entirety.

Documentary Evidence

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

- Sentencing Remarks, dated 27/02/2023;
- Certificate of Conviction, dated 17/03/2023;
- Record of police interview of Ms A, dated 20/08/2022 and 22/09/2022;
- Witness statement of Ms A, dated 21/08/2022;
- Pre-prepared statement by Dr Garg, dated 22/09/2022;
- Record of police interview of Dr Garg, dated 22/09/2022;
- Police report, dated 21/12/2022.

14. Dr Garg declined to attend his hearing and did not provide any statement or additional evidence in his defence.

The Tribunal's Approach

15. 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 Garg 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.

16. The Tribunal was also mindful of Rule 34 of the Rules in particular:

'34...

'(3) Production of a certificate purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas that a person has been convicted of a criminal offence or, in Scotland, an extract conviction, shall be conclusive evidence of the offence committed.

(4) Production of a certificate signed by an officer of a regulatory body that has made a determination about the fitness to practice of a person shall be conclusive evidence of the facts found proved in relation to that determination.

(5) The only evidence which may be adduced by the practitioner in rebuttal of a conviction or determination certified in the manner specified in paragraph (3) or (4) is evidence for the purposes of proving that he is not the person referred to in the certificate or extract.'

The Tribunal's Analysis of the Evidence and Findings

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

18. The Tribunal had regard to the Certificate of Conviction issued by an officer of the Crown Court at Sheffield on 2 December 2022. In accordance with Rule 34(3) it therefore found all the paragraphs and sub-paragraphs set out within the Allegation to be proved.

The Tribunal's Overall Determination on the Facts

19. The Tribunal has determined the facts as follows:

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

1. On 2 December 2022, at Sheffield Crown Court, you were convicted of the following offences:
 - a. vaginal rape of Ms A, a woman aged 16 years or over, on 20 August 2022;
Determined and found proved
 - b. oral rape of Ms A, a woman aged 16 years or over, on 20 August 2022;
Determined and found proved

- c. committing an act/series of acts with intent to pervert the course of public justice, between 19 August 2022 and 3 December 2022. **Determined and found proved**
2. On 27 February 2023, following the convictions set out at paragraph 1, you were sentenced to:
 - a. ten years' imprisonment for each of the offences set out at paragraphs 1.a and 1.b, to run concurrently; **Determined and found proved**
 - b. one year's imprisonment for the offence set out at paragraph 1.c, to run consecutively; **Determined and found proved**
 - c. a restraining order made under S.5 of the Protection from Harassment Act 1997 to protect Ms A until further order; **Determined and found proved**
 - d. be subject to the notification requirements of the sex offender's register for an indefinite period. **Determined and found proved**

Impairment

20. 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 Garg's fitness to practise is impaired by reason of his conviction.

The Evidence

21. The Tribunal has taken into account all the evidence received during the facts stage of the hearing.

Submissions

22. On behalf of the GMC, Ms Vanstone submitted that Dr Garg's fitness to practise is currently impaired by reason of his conviction. She submitted that the Tribunal should exercise its professional judgement in considering impairment in respect of its findings.

23. Ms Vanstone submitted that Dr Garg has been convicted of a serious offence, which involved the planned sexual assault and rape of a female who trusted him XXX. She stated that Dr Garg displayed an extremely serious and very clear breach of the fundamental tenets of the profession.

24. She submitted that the complainant no longer feels safe in her own home, had to take time off work, is medicated for depression and is unable to continue with some parts of her training because she fears going into the homes of strangers. Further, Ms Vanstone submitted that the complainant is restricted in her ability to discuss what happened because of XXX.

25. She submitted that there is no evidence from Dr Garg that he has taken any time to reflect about the guilty finding, the conviction or any harm caused to the victim or the profession. There is no evidence of his having accepted responsibility, or of any reflection, remediation or any insight. She submitted that his only attempt at mitigation is to have said that the incident has no relation to his professional life, and that he has been totally professional at his workplace.

26. She submitted that due to the severity and the nature of the offences that he committed, there is a clear risk to the public. The offending behaviour was planned, and it was sustained, and it follows that there must be a risk of repetition.

27. Ms Vanstone reminded the Tribunal of the overarching objective set out in the Medical Act 1983, as amended, and submitted that an ordinary well-informed member of the public would be shocked if the Tribunal did not find impairment. She submitted that if no such finding were made, public confidence in the profession and potentially in the regulator could be undermined. She submitted that as the conduct that was the subject of conviction was so egregious and abhorrent, Dr Garg's fitness to practise should be found impaired on both a personal level, given the absence of any remediation and insight, and in the wider public interest, given the potential damage to the reputation of the profession and the need to uphold and maintain standards of conduct in the profession.

The Relevant Legal Principles

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

29. 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 & Grant (2011) EWHC 927 (Admin)* ('Grant'). In particular, the Tribunal considered whether its findings of fact showed that Dr Garg's fitness to practise is impaired in the sense that he:

' 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;'

30. The Tribunal must determine whether Dr Garg's fitness to practise is impaired today, taking into account Dr Garg's conduct at the time of the events and any relevant factors since

then such as whether Dr Garg has insight, whether the matters are remediable, have been remedied and any likelihood of repetition.

31. The Tribunal also took into account the statutory overarching objective, namely to:

- 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.

The Tribunal's Determination on Impairment

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

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

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

33. The Tribunal also had regard to the sentencing remarks by His Honour Judge Dixon, dated 27 February 2023:

'On the morning of 20 August last year, you had decided you were going to pay no regard to what Ms [A] had said. In my view, you'd set about a planned offence. Bearing in mind XXX, you first of all went to the trouble of finding some tape. You then went to the trouble of finding a way of getting it into XXX, , ready for you to use. You'd also managed to make sure that there was something nearby that you could put across her eyes as a blindfold, and all of that was set in place, alongside having a condom ready so that you could carry out the offence that, in my view, you had carefully planned. This was not a random, spur-of-the-moment incident. This was not you just looking at her and deciding, "I'm having my way." This was far, far more than that.

You grabbed hold of her. You then tried to bind her. You tried to stop her from being able to scream by taping her mouth. You tried to blindfold her, and then you raped her, forcing open her legs for your own sordid pleasure. It's difficult to see, from any point of view, how when a woman is crying and pleading for her mum, as Ms [A] has graphically described in her statement to the court, how anyone can get pleasure under those circumstances but, you did, because you continued. And not just that, you then subjected her to an oral rape as well, and even though she was gagging as a

result of you inflicting your penis into her throat, that didn't stop you either. For whatever reason, you decided you were going to use her as nothing but an object.

I read the references about you that describe you as a lovely, caring, compassionate man who wanted to help the poor, that you could XXX. You obviously knew what you had done, because almost straight away you set about a process of trying to intimidate Ms [A] into not pursuing the complaint to the police, which she understandably and incredibly bravely made almost straight away. You sought to suggest that you had videoed part of what had gone on, and you must know XXX of revealing the video of sexual activity would have had on her. Even now she doesn't know whether it was videoed or not but, the fear of that is terrifying to her, as again she graphically described during her account given to the court orally this morning.

But you continued and continued and continued, indicating you would take your own life if she didn't withdraw. You'd reveal the video if she didn't withdraw. Again, only one person was being considered there, but it wasn't her. You subjected her to horrible violence and sexual invasion, and yet the only thing you were concerned about was you. The selfish nature of all of those activities is utterly deplorable.'

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

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

...

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

35. The Tribunal deliberated carefully on all of the evidence and the circumstances of Dr Garg's conviction. The Tribunal finds that the matters that gave rise to Dr Garg's convictions would undoubtedly be of serious concern to the public. The Tribunal reminded itself that Dr Garg had been sentenced to a total of 11 years imprisonment and that he has still not completed this sentence.

36. The Tribunal was of the view that Dr Garg had departed from a number of principles of GMP. In particular, he had breached paragraphs 1 and 65 as set out above. Dr Garg had committed an offence that would be viewed as extremely serious by members of the public. The Tribunal considered the details of the case, which involved the planned rape of a young woman who had trusted Dr Garg and considered XXX. The sexual assault was not limited to a single act of penetration; it included other sexual acts, none of which were consensual. It noted there was evidence that she was distressed and in pain during the assault. Further the Tribunal noted that Dr Garg engaged in an offence of intimidating the victim to withdraw the complaint.

37. The Tribunal concluded that behaviour such as this breached a fundamental tenet of the profession, namely that doctors should be trustworthy and act openly, honestly and with integrity. The Tribunal further concluded that by his actions and subsequent conviction, Dr Garg will have brought the profession into disrepute.

38. The Tribunal next considered whether Dr Garg's conduct was capable of being remedied, has been remedied, and whether it was unlikely to be repeated. In so doing, the Tribunal looked for evidence of remorse, remediation and insight.

39. The Tribunal did not consider that the conduct that was the subject of the conviction was easily capable of remediation. In any event, it did note that Dr Garg has not provided any evidence of remorse, reflection or remediation such as to demonstrate that he has developed some insight into his behaviour. In the absence of that evidence, and given the fact that the behaviour was sexually motivated, the Tribunal concluded that there is a risk of repetition of some, if not all, the aspects of his behaviour.

40. The Tribunal had regard to the statutory overarching objective. It was satisfied that Dr Garg's conduct and conviction engaged all three limbs of Section 1(1B) of the Medical Act 1983. It considered that a member of the public in full knowledge of the facts of the case would be appalled by a doctor acting in that way. He was convicted of a serious crime and was sentenced to a total of 11 years imprisonment. The Tribunal was also of the view that given the serious nature of Dr Garg's conviction, public confidence in the profession, the regulator and the MPTS would be seriously undermined if a finding of impaired fitness to practise were not made. The Tribunal also considered that a finding of impaired fitness to practise was required to declare and uphold proper standards of behaviour and to maintain public confidence in the profession.

41. The Tribunal has therefore determined that Dr Garg's fitness to practise is impaired by reason of his conviction.

Determination on Sanction - 30/08/2023

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

Submissions

2. On behalf of the GMC, Ms Vanstone submitted that the appropriate sanction in this case is one of erasure.

3. Ms Vanstone also referred the Tribunal to the Sanctions Guidance (2020) ('the SG') and went on to identify aggravating and mitigating features of the case.

4. Ms Vanstone referred the Tribunal to the principles set out in *Council for the Regulation of Health Care Professionals v General Dental Council, Fleischmann* [2005] EWHC 87 (Admin) which provides:

.... 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

5. Ms Vanstone submitted that this is not a case where there are any exceptional circumstances warranting the Tribunal taking no action against Dr Garg. Further, the imposition of conditions would not be appropriate because they would not address the gravity of the offence for which Dr Garg was convicted. She submitted that a well-informed member of the public would be extremely shocked if they were to learn that Dr Garg was not removed from the medical register; that would inevitably lead to damage to public confidence in the medical profession and the regulator. She submitted that Dr Garg's conviction was so serious that action is needed to maintain public confidence in the profession and that the only appropriate sanction in this case was one of erasure.

The Relevant Legal Principles

6. 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. 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.

7. 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 Garg's interests against the public interest.

The Tribunal's Determination on Sanction

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

Mitigating factors

9. The Tribunal did not identify any mitigating factors. The Tribunal noted that Dr Garg pled guilty at the crown court and that his guilty plea saved Ms A from having to give oral evidence. However, the Tribunal does not consider this to be a mitigating factor as far as the Tribunal's task on sanction.

Aggravating factors

10. The Tribunal considered that a significant aggravating factor was that this was a conviction for a serious sexual offence and for perverting the course of justice for which Dr Garg is serving a custodial sentence of 11 years in total.

11. The Tribunal noted that there were elements of deception in Dr Garg's behaviour. He took advantage of the XXX of Ms A and betrayed her trust.

12. The Tribunal went on to consider each sanction in order of ascending severity, starting with the least restrictive.

No action

13. 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.

14. The Tribunal was satisfied that there were no exceptional circumstances in Dr Garg'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 and would not mark the seriousness of Dr Garg's underlying conduct or convictions.

Conditions

15. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Garg'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, where a doctor is likely to comply with conditions, and where a doctor is likely to respond positively to remediation or retraining. The Tribunal considered that none of these apply in Dr Garg's case.

16. The Tribunal further considered that no workable or measurable conditions could be formulated which would address the seriousness of Dr Garg's conviction and the conduct which lay behind it. It concluded that conditions would be insufficient to protect the public, maintain public confidence in the profession or to promote and maintain standards for members of the profession.

Suspension

17. In considering whether to impose a period of suspension on Dr Garg's registration, the Tribunal had regard to paragraphs 92, 93, and 97(a), (f) and (g) of the SG which provide:

'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 (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).'*

The Tribunal recognised that the most significant issue for it in this case will be whether Dr Garg's conduct is fundamentally incompatible with continued registration. However, it considered the further paragraphs of the SG insofar as they are relevant to an order of suspension.

'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.*

...

g *The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.'*

18. The Tribunal had regard to its findings that Dr Garg had breached a number of paragraphs of GMP including paragraphs 1 and 65 and its finding that his underlying conduct and conviction breached a fundamental tenet of the profession. The Tribunal was satisfied that the identified breaches represented a significant departure from GMP.

19. The Tribunal also had regard to its findings on a lack of insight and remediation. There was no evidence upon which the Tribunal could place reliance that Dr Garg would be prepared to engage in remediation or that any such engagement would be successful.

20. The Tribunal was of the view that, given the seriousness of Dr Garg's conduct which led to his conviction, and the fact that his custodial sentence does not come to an end until November 2029, suspension was not an appropriate sanction. It would not protect the public nor meet the statutory overarching objective. The Tribunal also agreed with Ms Vanstone's submissions that based on the *Fleischmann* case suspension was not an appropriate sanction.

21. In considering whether Dr Garg's conduct was fundamentally incompatible with continued registration, the Tribunal took into account the very serious nature of the crime of which Dr Garg has been found guilty, and the custodial sentence that he is currently serving. The Tribunal finds it inconceivable that whilst serving a custodial service of such length and seriousness he can still describe himself as a doctor.

22. The Tribunal was satisfied that the circumstances of Dr Garg's case were such that his underlying conduct and conviction for rape is fundamentally incompatible with continued registration.

Erasure

23. Having concluded that Dr Garg's conduct and conviction would be fundamentally incompatible with continued registration, the Tribunal nonetheless went on to consider whether the sanction of erasure was appropriate and proportionate.

24. The Tribunal had regard to paragraphs 107 and 109 (a), (b), (f) and (j) of the SG and considered they were particularly relevant in Dr Garg's case:

'107 The tribunal may erase a doctor from the medical register in any case – except one that relates solely to the doctor's health and/or knowledge of English – where this is the only means of protecting the public

...

109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).

a A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.

b A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.

...

f Offences of a sexual nature, including involvement in child sex abuse materials (see further guidance below at paragraphs 151 - 159).

...

j Persistent lack of insight into the seriousness of their actions or the consequences.'

25. For the reasons previously set out in this determination, the Tribunal was satisfied that Dr Garg's underlying conduct engaged each of the above paragraphs. Dr Garg's offending behaviour seriously undermines patients' and the public's trust and confidence in the medical profession and is fundamentally incompatible with continued registration as a medical practitioner.

26. The Tribunal considered that a sanction of erasure is the only sanction that would protect patients, mark the seriousness of the conviction, maintain public confidence in the profession, the regulator and the regulatory process and meet each of the three limbs of the statutory overarching objective.

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

Determination on Immediate Order - 30/08/2023

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

Submissions

2. On behalf of the GMC, Ms Vanstone submitted that it was necessary for an immediate order to be imposed to reflect the seriousness of Dr Garg's conduct. She submitted that an immediate order ought to be put in place to protect public confidence in the profession.

The Tribunal's Determination

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

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

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

...

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

4. The Tribunal determined that, for all the reasons it has already set out in making its determination on sanction, it is necessary for the protection of members of the public, and otherwise in the public interest for an immediate order of suspension to be made on Dr Garg’s registration. It is in the public interest for an immediate order to be made to protect public confidence in the profession.

5. This means that Dr Garg’s registration will be suspended from the date on which notification of this decision is deemed to have been served upon him. The substantive direction, as already announced, will take effect 28 days from that date, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

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

7. That concludes this case.

ANNEX A – 29/08/2023

Determination on service and proceeding in absence – 29 August 2023

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

Service

2. The Tribunal was provided with a service bundle, which contained:

- Letter to prison governor at HMP XXX, dated 26/7/23;
- NOH addressed to Dr Garg, dated 26/7/23;
- POD NOH Dr Garg ;
- Letter from Dr Garg asking for no correspondence to be sent;
- Confirmation from police Dr Garg remains at HMP XXX;
- R34(9) Letter;
- Notice of Allegation;
- POD NOA and rule 34(9) Dr Garg;
- Further proof Dr Garg is at HMP XXX and was handed the letter addressed to him on 19/07/2023;
- Signed Letter to Dr Garg, dated 16/08/2023 with hearing bundle;
- POD letter and hearing bundle;
- Letter to Dr Garg, dated 25/04/2023.

3. In light of the evidence of letters containing the Notice of Allegation and the Notice of Hearing being sent by special delivery post to HMP XXX, the Tribunal was satisfied that Notice of this Hearing had been served on Dr Garg in accordance with Rules 15 and Rule 40 of the GMC (Fitness to Practise) Rules 2004 (the Rules), and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended.

4. The Tribunal then went on to consider whether it would be appropriate to proceed with the hearing in Dr Garg's absence pursuant to Rule 31 of the Rules.

5. Ms Vanstone submitted that as service has been properly affected and notice has been properly given it is appropriate for proceedings to continue. Ms Vanstone submitted that Dr Garg has not responded to the GMC about the allegations, nor has he obtained representation. She referred the Tribunal that Dr Garg has written to the GMC to request for all correspondence to stop and that he would not be attending the hearing.

The Tribunal's decision

6. In making its determination the Tribunal noted that the decision as to whether or not the hearing should proceed in Dr Garg's absence was a matter for its discretion and that such discretion was to be exercised with great care and caution. It also took into account that Dr Garg is currently serving a custodial prison sentence.

7. The Tribunal had regard to the legal authority of *R v Hayward, Jones & Purvis* [2001] QB 862 CA, which states that a defendant has a right to be present at a trial and a right to be legally represented but that those rights can be waived where a defendant voluntarily absents themselves from a trial and/or withdraws instructions from those representing them. The Tribunal also had regard to the case of *General Medical Council v Adeogba* [2016] EWCA Civ 162.

8. The Tribunal noted that Dr Garg had written to MPTS. In a letter received 19 May 2023 he stated:

'I am not interested in outcome of the case as I will be deported out the country at the end of my sentence. I no longer wish to stay and practice medicine in the UK, even if given the opportunity, due to stressful personal events....I do not wish to attend hearing'

9. The Tribunal also noted that this was a virtual hearing and therefore any concerns regarding Dr Garg's ability to attend the hearing and the cost thereof have been mitigated. In light of the information before it, the Tribunal was satisfied that all reasonable efforts had been made to serve the NOH but that Dr Garg had decided to absent himself from this hearing.

10. The Tribunal considered whether an adjournment would result in Dr Garg attending the hearing. Setting aside that there had been no application for an adjournment, there was no evidence before the Tribunal that an adjournment would result in Dr Garg attending. The Tribunal formed that view that Dr Garg had made it clear in his correspondence with the GMC and MPTS that he did not intend to attend.

11. The Tribunal noted that any decision to proceed in Dr Garg's absence would inevitably result in prejudice to him including that it may not necessarily have all of the information which Dr Garg would wish to present. However, the Tribunal considered that any such prejudice must be balanced against other factors including the statutory overarching objective and the public interest in the fair, economic, expeditious and efficient disposal of the proceedings.

12. The Tribunal considered that, while Dr Garg's input would be of importance for it when considering the case, the fact that the Tribunal would not have this to hand did not outweigh all of the identified factors in proceeding in his absence. Having considered each of

the relevant factors, the Tribunal determined that the balance of all of the relevant factors fell in favour of proceeding with the hearing in Dr Garg's absence.

13. Since making this decision the Tribunal has received from Dr Garg an attendance form, date stamped by GMC 29 August 2023. In the form Dr Garg confirms he has received notice from the MPTS of the hearing and is not attending the hearing.