

## PUBLIC RECORD

Dates: 07/12/2020 - 09/12/2020

Medical Practitioner's name: Dr Vijay Mahendran

GMC reference number: 5198149

Primary medical qualification: MB BS 1992 Mangalore University

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

## Summary of outcome

Erasure

Immediate order imposed

## Tribunal:

Legally Qualified Chair	Mrs Julia Oakford
Lay Tribunal Member:	Ms Wanda Rossiter
Medical Tribunal Member:	Dr Helen Crabtree

Tribunal Clerk:	Mrs Lorraine Cheetham
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## Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Ms Harriet Tighe, 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 - 07/12/2020

#### Background

1. Dr Mahendran qualified in 1992 from Mangalore University and, prior to the events which are the subject of the hearing, Dr Mahendran worked as an Accident and Emergency doctor in Whiston Hospital, St Helens and Knowsley Teaching Hospitals NHS Trust ('The Trust').
2. Allegations of a sexual nature were reported to the police by Nurse A and Nurse B. Dr Mahendran was then interviewed by Merseyside police on two occasions. He was charged with seven counts and subsequently appeared at Liverpool Crown Court where he entered a plea of not guilty to all charges.
3. The Charges at Liverpool Crown Court were:
  - On a day between 1<sup>st</sup> January 2017 and 30<sup>th</sup> April 2017, intentionally touched Nurse A by putting his hand on her buttocks and squeezing her buttocks, the touching was sexual, Nurse A did not consent to the touching, and the said VIJAY MAHENDRAN did not reasonably believe that Nurse A consented to the touching.
  - On a day between 15<sup>th</sup> day of October 2017 and 14<sup>th</sup> day of November 2017, intentionally touched Nurse A by grabbing and squeezing her buttocks, the touching was sexual, Nurse A did not consent to the touching, and the said VIJAY MAHENDRAN did not reasonably believe that Nurse A consented to the touching.

- On day between the 15<sup>th</sup> day of October 2017 and the 14th day of November 2017, intentionally touched Nurse A by putting his hand on her buttocks, the touching was sexual, Nurse A did not consent to the touching, and the said VIJAY MAHENDRAN did not reasonably believe that Nurse A consented to the touching.
  - On the 12<sup>th</sup> day of November 2017, intentionally touched Nurse A by putting his arm around her hips, touching her back and stroking her arm, the touching was sexual, Nurse A did not consent to the touching, and the said VIJAY MAHENDRAN did not reasonably believe that Nurse A consented to the touching.
  - On the 12th day of November 2017, intentionally touched Nurse A by putting his arm around her shoulder, stroking her neck and touching her body with his body, the touching was sexual, Nurse A did not consent to the touching, and the said VIJAY MAHENDRAN did not reasonably believe that Nurse A consented to the touching.
  - On the 14th day of November 2017, intentionally touched Nurse A by grabbing and squeezing her buttocks, the touching was sexual, Nurse A did not consent to the touching, and the said VIJAY MAHENDRAN did not reasonably believe that Nurse A consented to the touching.
  - On the 24th day of August 2017, intentionally touched Nurse B by slapping her buttocks, the touching was sexual, Nurse B did not consent to the touching, and the said VIJAY MAHENDRAN did not reasonably believe that Nurse B consented to the touching.
4. On 29 November 2019 at Liverpool Crown Court, Dr Mahendran was convicted of the seven counts of sexual assault on two female colleagues ('Nurse A' and 'Nurse B'), contrary to section 3(1) of the Sexual Offences Act 2003.
  5. On 7 January 2020 Dr Mahendran was sentenced to a total of 12 months imprisonment, suspended for 18 months. In addition, he was required to carry out 150 hours of unpaid work and to undertake rehabilitation activity requirements for 60 days. He was also ordered to sign on the sex offenders' register for a period of 10 years and pay a victim surcharge of £140.

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

6. Dr Mahendran was neither present nor legally represented at the hearing. The Tribunal granted the GMC's application, made pursuant to Rules 20 and 40 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that notice of this hearing has been properly served on Dr Mahendran, and granted its application made

pursuant to Rule 31 of the Rules, that this hearing should proceed in his absence. The Tribunal's full decision is included at Annex A.

### GMC submissions

7. Ms Tighe, Counsel, on behalf of the GMC outlined the background to the charges set out above. She contended that the Tribunal was entitled to take into account the Certificate of Conviction signed by the Officer of the Court as conclusive evidence of the offences committed by virtue of Rule 34(3) of the Rules.

### The Allegation and the Doctor's Response

8. The Allegation made against Dr Mahendran is as follows:
  1. On 29 November 2019, at Liverpool Crown Court you were convicted of seven counts of Sexual Assault on a woman 16 or over – no penetration. **To be determined**
  2. On 7 January 2020, at Liverpool Crown Court you were sentenced to:
    - a. a 12 month custodial sentence suspended for 18 months with requirements to undertake a 150 hours of unpaid work and 60 days rehabilitation activity; **To be determined**
    - b. inclusion on the Sex Offenders Register for ten years. **To be determined**

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

### Documentary Evidence

9. The Tribunal had regard to the documentary evidence provided by the GMC. This evidence included but was not limited to:
  - Postal requisition from Merseyside Police to Dr Mahendran dated 8 February 2019;
  - Indictment dated 29 November 2019;
  - Email from Liverpool Crown Court dated 19 November 2020;
  - Certificate of Conviction from Liverpool Crown Court dated 17 January 2020;
  - Judges sentencing remarks dated 7 January 2020;
  - Transcripts of police interviews with Nurse A and Nurse B;

- Police interviews with Dr Mahendran.

### The Tribunal's Approach

10. 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 Mahendran does not need to prove anything. The Tribunal relied upon Rule 34(3) that the Certificate of Conviction signed by an Officer of the Court was conclusive evidence that the offences had been committed.

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

11. The Tribunal has considered the entirety of the Allegation and has evaluated the evidence in order to make its findings on the facts.

12. The Tribunal had regard to the evidence before it and the documents referred to by Ms Tighe. This included the police interviews with Dr Mahendran, Nurse A and Nurse B, the Transcripts of sentencing remarks and the Certificate of Conviction presented to it. As a result of the Certificate of Conviction, the Tribunal concluded that it had clear and conclusive proof before it that Dr Mahendran had been sentenced and convicted of an offence contrary to Section 3 of the Sexual Offences Act 2003. It was mindful that Dr Mahendran was sentenced to a total of 12 months imprisonment, suspended for 18 months. In addition, he was required to carry out 150 hours of unpaid work and to undertake rehabilitation activity requirements for 60 days. He was also ordered to sign on the sex offenders' register for a period of 10 years and pay a victim surcharge of £140.

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

13. The Tribunal has therefore determined the facts as follows:

1. On 29 November 2019, at Liverpool Crown Court you were convicted of seven counts of Sexual Assault on a woman 16 or over – no penetration. **Determined and found proved**
2. On 7 January 2020, at Liverpool Crown Court you were sentenced to:
  - a. a 12 month custodial sentence suspended for 18 months with requirements to undertake a 150 hours of unpaid work and 60 days rehabilitation activity; **Determined and found proved**

- b. inclusion on the Sex Offenders Register for ten years. **Determined and found proved**

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

#### Determination on Impairment - 08/12/2020

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

#### The Evidence

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing. In addition, the Tribunal received an additional bundle of evidence from Dr Mahendran containing, but not limited to, testimonial letters and evidence of his participation in continuing professional development (CPD).

#### Submissions

3. On behalf of the GMC, Ms Tighe submitted that Dr Mahendran's fitness to practise is impaired by reason of his conviction. She submitted that in terms of professional standards, Dr Mahendran has demonstrated a serious and significant departure from Good Medical Practice 2013 ('GMP') including paragraphs 1 and 65 which states:

*"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."*

4. Ms Tighe submitted that Dr Mahendran's actions demonstrated a campaign of sexual behaviour over a period of 11 months, some of which took place in the presence of other members of staff and on one occasion in front of a patient's family.
5. Ms Tighe drew the Tribunal's attention to the sentencing remarks made by Judge Watson including his comment that:

*“So far as culpability is concerned, one of the factors of culpability Category A is an abuse of trust. You were not in a position of trust vis-a-vis the nurses who were working under you, but you were in a position of authority, which authority you completely betrayed and abused”.*

6. Ms Tighe stated that Dr Mahendran’s offences were considered so serious that he was subject to a suspended imprisonment sentence. She further stated that well-informed members of the public would consider Dr Mahendran’s actions to be abhorrent and undermine the profession.
7. Ms Tighe submitted that even after a year, Dr Mahendran continues to deny his conviction, she set out some of the comments made by the doctor in an email to the MPTS dated 18 November 2020, where he states that:

*“I can with clear conscience state that I have not squeezed / slapped any of the alleged nurses bottom’s nor have I touched either of them in any sexual, derogatory, offensive, devious manner or any intentionally violatory manner, that for which I have been convicted for”.*

8. Ms Tighe submitted that Dr Mahendran lacks insight into the offences and considers the conviction to be a miscarriage of justice and is unwilling to accept that a jury found him guilty of all the offences. She submitted that Dr Mahendran has shown no remorse for his actions. Ms Tighe told the Tribunal that Dr Mahendran claimed that he acknowledges the distress felt by the complainant but stated: “however misplaced or misconstrued it may be”. Ms Tighe told the Tribunal that Dr Mahendran has focused on the impact it has had on him and not the complainants. In terms of remediation Ms Tighe submitted that Dr Mahendran has not apologised directly to Nurse A or Nurse B. She referred to the CPD bundle, submitted by the doctor, and stated that the vast majority of the bundle relates to Dr Mahendran’s clinical skills. She further stated that he has undertaken some courses which are relevant, however remediation is not possible whilst he still denies the offences and considers his actions “inadvertent behaviour however benign”. Ms Tighe further submitted that there is a risk of repetition in this case.
9. Ms Tighe referred the Tribunal to the testimonial bundle where Dr Mahendran’s representative at the time stated:

*“The GMC are investigating information regarding two allegations that Dr Mahendran has behaved inappropriately towards a colleague. Dr Mehandran denies the allegations entirely”.*

10. Ms Tighe outlined the circumstances in which these testimonials were mostly obtained, namely that the testimonials were obtained prior to Dr Mahendran receiving a suspended custodial sentence. Ms Tighe further stated that these testimonials have not been verified for the purpose of this hearing and the authors may not have the same opinion today. Ms Tighe submitted that these testimonials are outdated and do not reflect the authors current relationship with Dr Mahendran. She detailed comments made in some of the testimonials and submitted that it is demonstrative of his lack of insight and remorse. She submitted that little weight should be given to the testimonial bundle.
11. Ms Tighe reminded the Tribunal of the overarching objective and submitted that a finding of no impairment would seriously undermine these objectives.

### **The Relevant Legal Principles**

12. 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.
13. The Tribunal having found that the facts found proved amounted to conviction as set out 35C (2) (c) of the Medical Act, went on to consider whether, Dr Mahendran’s fitness to practise was currently impaired as a result. In reaching its decision, the Tribunal has taken account of all of the evidence placed before it, as well as the submissions made by Ms Tighe, on behalf of the GMC, and the documents provided by Dr Mahendran.
14. The Tribunal must determine whether Dr Mahendran’s fitness to practise is impaired today, taking into account all relevant factors such as insight, whether the matters are remediable, have been remedied and any likelihood of repetition.
15. The Tribunal was reminded of the overarching objective by the Legally Qualified Chair and to the guiding set of questions as formulated by Dame Janet Smith in the Fifth Shipman Report, and set out at paragraph 76 of *CHRE v NMC & Grant [2011] EWHC 927 (Admin)*:

*“Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:*

*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...”*

### The Tribunal’s Determination on Impairment

16. The Tribunal had regard to the nature and seriousness of Dr Mahendran’s conviction. The Tribunal recalled its findings that Dr Mahendran was convicted of seven counts of sexual assault on two female colleagues, contrary to section 3(1) of the Sexual Offences Act 2003. He was sentenced to 12 months imprisonment, suspended for 18 months. He was also required to carry out 150 hours of unpaid work and undertake rehabilitation activity requirements for 60 days. He was also included on the sex offenders register for 10 years. The Tribunal was presented with no evidence as to whether the unpaid work and rehabilitation activity has yet occurred.
17. The Tribunal received no evidence that there had been any allegations made of untoward conduct to patients whilst Dr Mahendran worked at the Trust and that there were no clinical concerns with regards to Dr Mahendran’s practice. However, the Tribunal were mindful that Dr Mahendran has breached multiple paragraphs of GMP, particularly paragraphs 1 and 65, as set out by Ms Tighe.
18. The Tribunal has been provided with little evidence that Dr Mahendran has taken any steps to develop his insight or to remediate his behaviour. The only evidence of such matters was some evidence that he has undertaken some relevant CPD courses. It has placed little or no weight to the testimonial evidence before it as it considers that many testimonials are outdated and related to matters concerning the Interim Orders Tribunal and the Court hearing, therefore not greatly significant to these proceedings. The Tribunal reminded itself of the sentencing remarks of Judge Watson QC, who stated:

*“That is not to say of course that the personal testimony in written form of the many people who know you is ignored. They speak well of you and show a different side to the side that was on display to the jury but that side is a side that brings you here – it is that side of you which is arrogant; which says that rules which you regard as inconvenient or unnecessary do not apply to you and that you are someone who can be dismissive of the views of others when they do not coincide with your own. There is a real split in your personality. There are those who you respect, you can be kind and*

*considerate; for those for whom you have no respect, you are utterly dismissive and treat them as worthless”.*

19. It considered that Dr Mahendran has not demonstrated any meaningful remediation and there has been no evidence of any insight in relation to his conviction or his actions and the impact they would have on Nurse A and Nurse B. The Tribunal considered that without evidence of remorse, remediation or significant reflection of his actions, there may be a risk of repetition, albeit the impact on XXX and circumstances appears to have been such that he may not offend again. However, the Tribunal could not fully judge this on the evidence before it.
20. The Tribunal determined that the nature and circumstances of the convictions for sexual misconduct, together with his lack of insight, lack of remediation and remorse were so serious that public confidence in the profession would be undermined if a finding of impaired fitness to practise were not made. It concluded that a finding of impairment was necessary in this case to maintain public confidence in the medical profession and to uphold proper professional standards and conduct for members of the medical profession.
21. The Tribunal has therefore determined that Dr Mahendran’s fitness to practise is impaired by reason of his conviction.

#### **Determination on Sanction - 09/12/2020**

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

#### **The Evidence**

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction. The Tribunal received no further evidence at this stage from the GMC or Dr Mahendran.

#### **Submissions**

3. Ms Tighe provided an outline of relevant Fitness to Practice history where Dr Mahendran received a formal warning from the GMC in 2008 in relation to common assault, which expired in 2013. She stated that following a further incident, involving a minor, he was

convicted of assault by beating and fined £2000. Ms Tighe stated that this resulted in a further warning being imposed by the GMC in 2014, which expired in 2019. Ms Tighe took the Tribunal through Dr Mahendran's IOT history and stated that Dr Mahendran currently has an interim order of suspension on his registration which has been extended by the High Court until September 2021. She further stated that there is no evidence to suggest that Dr Mahendran has not complied with this order.

4. Ms Tighe submitted that Dr Mahendran's conviction is fundamentally incompatible with continued registration, and that the only appropriate sanction is erasure. She drew the Tribunal's attention to a number of paragraphs of the *Sanctions Guidance* ('SG') (November 2020). She also highlighted to the Tribunal the mitigating and aggravating factors in Dr Mahendran's case.
5. Ms Tighe submitted that there were no exceptional circumstances in Dr Mahendran's case and that taking no action would be wholly inappropriate and would not mark the seriousness of the case. She further stated that conditions would not be appropriate given the gravity of the misconduct.
6. In relation to suspension, Ms Tighe submitted that suspension is not appropriate or proportionate given Dr Mahendran's repeated and sustained sexual assault over a period of 11 months. She referred the Tribunal to paragraphs 92, 93 and 97 of the SG which she stated demonstrate why suspension is not appropriate in this case.
7. Ms Tighe submitted that due to the nature of Dr Mahendran's offence, the risk to members of the public and the wider public interest, the only appropriate sanction in this case is one of erasure. She submitted that Dr Mahendran is subject to a suspended custodial sentence and is on the sex offenders register. Ms Tighe submitted that Dr Mahendran's actions and subsequent conduct was a significant departure from, and disregard of GMP. She stated that Dr Mahendran's actions breached the fundamental tenets of GMP and had brought the reputation of the profession into disrepute. Ms Tighe referred the Tribunal to various paragraphs of the SG which may indicate that a sanction of erasure is appropriate. She reminded the Tribunal of the comments made by Judge Watson QC and the Tribunal's decision on Impairment.

### The Tribunal's Determination on Sanction

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

9. In reaching its decision, the Tribunal has taken account of the SG and of the overarching objective. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Mahendran's interests with the public interest. It has borne in mind that the purpose of sanctions is not to be punitive, but to protect patients and the wider public interest, although the sanction may have a punitive effect.

### **Aggravating and Mitigating Factors**

#### Aggravating Factors

10. The Tribunal identified the following aggravating factors:

- Dr Mahendran has not directly apologised to Nurse A and Nurse B;
- Dr Mahendran has made little or no attempt to remediate or reflect on his actions;
- Dr Mahendran's lack of insight;
- The sexual misconduct was serious;
- Dr Mahendran is subject to a suspended prison sentence and is on the sex offenders register;
- Dr Mahendran has taken advantage of his position as a doctor;
- Dr Mahendran has breached multiple aspects of GMP;
- Dr Mahendran's previous Fitness to Practise history;
- The sentencing remarks made by Judge Watson QC.

#### Mitigating Factors

11. The Tribunal next identified the following mitigating factors:

- Dr Mahendran has made some attempt by CPD to remediate;
- There are no clinical concerns and Dr Mahendran has kept his clinical knowledge up to date;
- No evidence of repetition.

12. Balancing the aggravating and mitigating factors, the Tribunal considered the multiple sexual assaults against Nurse A and Nurse B and Dr Mahendran's lack of remediation, remorse and insight. In addition, the Tribunal reminded itself of the sentencing remarks of Judge Watson QC, which stated:

*“So far as the General Medical Council are concerned, they will be best placed to assess whether you are someone who should continue to practice. All I will say is that from the evidence that I heard you are someone who is unsuitable to work in any position where you are in charge of or in a supervisory role over any of the female members of staff that are likely to be in any way people who you could regard as being as insignificant...”*

13. The Tribunal acknowledged that Dr Mahendran expressed some remorse for his actions in his email stating that:

*“I offer my wholehearted 'Sincere Apology' for any distress / upset that this has caused”*

14. However, this apology was not offered to either Nurse A or Nurse B directly and the other comments provided in the email demonstrate that he has very limited level of insight and has not fully understood the seriousness of his actions.

*“I find this horrific ordeal from the time it first began as an initial investigation with the NHS trust and later police (with utmost and due respect to all) as one with Bias, Prejudice and Deceit. There has been a gross distortion of the Truth and complete miscarriage of justice (again with respect to the judgement of the court). I find the version of events portrayed to be completely one sided & misguided, severely misleading, exaggerated and even constructed as the investigation has unfolded. I refute the summary as written in extract MG5 and disagree with that which has been portrayed.*

*Ultimately it has unfairly tortured, victimised and eventually destroyed a sincere doctor with an unblemished service record and left him deeply scarred in life”.*

15. It considered that Dr Mahendran’s behaviour has severely undermined the public’s confidence and trust in the profession.

### **No action**

16. In coming to its decision as to the appropriate sanction, if any to impose in Dr Mahendran’s case, the Tribunal first considered whether to conclude the case by taking no action.

17. The Tribunal considered that there were clear and profound concerns regarding Dr Mahendran’s behaviour that could not be addressed by taking no action.

18. The Tribunal determined that there were no exceptional circumstances to justify taking no action against Dr Mahendran’s registration. It considered that it would be neither

sufficient, proportionate nor in the public interest to conclude this case by taking no action.

### Conditions

19. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Mahendran's registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.
20. The Tribunal determined that Dr Mahendran's behaviour was so serious that conditions would not send out an appropriate message to members of the public. Furthermore, due to the nature of Dr Mahendran's conviction, it would not be possible to formulate conditions, which would be workable. In view of this, the Tribunal determined that the imposition of conditions could not adequately address the seriousness of Dr Mahendran's offending behaviour.

### Suspension

21. The Tribunal then went on to consider paragraph 93 of the SG:

*'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 (see paragraphs 24–49).'*

22. The Tribunal reminded itself that Dr Mahendran has not provided the Tribunal with any meaningful evidence of remediation or insight. It reminded itself that Dr Mahendran pleaded not guilty to all the charges and continues to fail to accept responsibility for his behaviour. It was also mindful of the sentencing remarks made by Judge Watson QC. It considered that a period of suspension would not adequately address the serious concerns in Dr Mahendran's case.
23. The Tribunal was satisfied that Dr Mahendran's conduct was fundamentally incompatible with continued registration given the seriousness of the offence, the aggravating factors and the sentence he received. As such, the Tribunal concluded that suspension was not the appropriate or proportionate sanction in this case as it would not adequately address Dr Mahendran's conduct.

### Erasure

24. Having concluded that suspension was not the appropriate or proportionate sanction, the Tribunal carefully considered the various sections of the SG dealing with erasure and found the following paragraphs to be engaged in this case:

*'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.*

...

*d Abuse of position/trust (see Good medical practice, paragraph 65: 'You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession').*

...

*f Offences of a sexual nature, including involvement in child sex abuse materials.*

...

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

25. Tribunal next considered paragraphs 148, 149 and 150 of the SG:

*'148 More serious action, such as erasure, is likely to be appropriate where a doctor has abused their professional position and their conduct involves predatory behaviour or a vulnerable patient or constitutes a criminal offence.*

*149 This encompasses a wide range of conduct from criminal convictions for sexual assault and sexual abuse of children (including child sex abuse materials) to sexual misconduct with patients, colleagues, patients' relatives or others. See further guidance on sex offenders and child sex abuse materials at paragraphs 151–159.*

*150 Sexual misconduct seriously undermines public trust in the profession. The misconduct is particularly serious where there is an abuse of the special position of trust a doctor occupies, or where a doctor has been required to register as a sex*

*offender. More serious action, such as erasure, is likely to be appropriate in such cases.'*

26. The Tribunal found that the following factors all pointed to a sanction of erasure -Dr Mahendran's abuse of his position as a doctor; that the offences were of a sexual nature; Dr Mahendran's persistent lack of insight; and his failure to express any notable remorse or remediation on the events.
27. The Tribunal reminded itself that Dr Mahendran was convicted of seven counts of sexual assault on two female colleagues for which he was sentenced to 12 months imprisonment, suspended for 18 months. He was also required to carry out 150 hours of unpaid work and undertake rehabilitation activity requirements for 60 days. He was also included on the sex offenders register for 10 years.
28. The Tribunal found the seriousness of Dr Mahendran's actions undermined the following limbs of the statutory overarching objective:

*"b promote and maintain public confidence in the medical profession*

*c promote and maintain proper professional standards and conduct for the members of the profession."*

29. The Tribunal found that Dr Mahendran's conduct was fundamentally incompatible with continued registration given the seriousness of the offence, the sentence he received including 10 years on the sex offenders register and his lack of insight and remediation. The Tribunal determined that Dr Mahendran's conduct was so serious that no other sanction would sufficiently address its concerns. Therefore, the Tribunal determined to erase Dr Mahendran's name from the medical register.

#### **Determination on Immediate Order - 09/12/2020**

1. Having determined to erase Dr Mahendran's name 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.

#### **Submissions**

2. On behalf of the GMC, Ms Tighe referred the Tribunal to paragraphs 172 and 173 of the SG, 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 ...*

*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.’*

3. Ms Tighe submitted that given the Tribunal’s decision to erase Dr Mahendran’s name from the medical register an immediate order of suspension is necessary in the public interest and to maintain standards in the medical profession. Ms Tighe invited the Tribunal to revoke the current interim order of suspension on Dr Mahendran’s registration.

### **The Tribunal’s Determination**

4. In reaching its decision, the Tribunal had regard to its previous determinations and the submissions made by Ms Tighe.
5. The Tribunal determined that given the serious nature of its findings, an immediate order of suspension was necessary in this case to maintain public confidence in the medical profession and to uphold proper professional standards and conduct for members of the medical profession.
6. This means that Dr Mahendran’s registration will be suspended from when notification is deemed to have been served on him. The substantive direction, as already announced, will take effect 28 days from when written notice of this determination has been served upon Dr Mahendran, 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.
7. The interim order currently imposed on Dr Mahendran’s registration will be revoked with immediate effect.
8. That concludes this case.

**Confirmed**  
**Date 09 December 2020**

Mrs Julia Oakford, Chair

ANNEX A – 07/12/2020

**Service and Application to Proceed in Absence**

1. Dr Mahendran is neither present nor legally represented at this hearing. The Tribunal therefore first considered whether notice of this hearing had been properly served on him in accordance with Rules 20 and 40 of the General Medical Council (GMC) Fitness to Practise Rules 2004, as amended ('the Rules').

Service

2. On behalf of the GMC, Ms Tighe made submissions in relation to service. She referred the Tribunal to the service bundle, which included a screen shot of Dr Mahendran's confirmed registered address and contact details as recorded on Siebel. On 27 October 2020, following a telephone call from with Dr Mahendran the GMC emailed the Notice of Allegation to the doctor and he responded to this via email on 29 October 2020 stating that he had received this.
3. Ms Tighe referred the Tribunal to the Notice of Hearing dated 3 November 2020, which was emailed to Dr Mahendran's registered email address. Ms Tighe drew the Tribunal's attention to the completed Medical Practitioners Tribunal ('MPT') attendance form which sets out that Dr Mahendran received the notice of hearing and he has ticked the box stating that he is "not attending the hearing".
4. The Tribunal had regard to the service bundle as well as Ms Tighe's submissions. Having considered all of the evidence before it, the Tribunal was satisfied that Dr Mahendran knows the time and date of today's proceedings and that notice of the hearing had been served in accordance with Rules 20 and 40 of the Rules and paragraph 8 of Schedule 4 to the Medical Act 1983 (as amended).

Proceeding in Absence

5. Having been satisfied that the Notice of Hearing has been properly served, the Tribunal went on to consider whether to exercise its discretion under Rule 31 of the Rules to proceed with the hearing in Dr Mahendran's absence.

6. The Tribunal acknowledged that the discretion to proceed in the absence of a doctor should be exercised with appropriate care and caution, balancing the interests of the doctor with the wider public interest.
7. Ms Tighe invited the Tribunal to proceed in Dr Mahendran's absence. She referred to the documents which have been received and submitted that Dr Mahendran has been informed about the hearing and has chosen not to attend and has chosen not to have anyone represent him. She further submitted that Dr Mahendran has therefore voluntarily absented himself.
8. XXX. Ms Tighe told the Tribunal that Dr Mahendran was aware that he could apply for a postponement of the hearing but he has not done this. She further submitted that it is in the interest of justice to proceed with Dr Mahendran's case today.
9. The Tribunal accepted Ms Tighe's submissions. It was satisfied that Dr Mahendran was aware of today's proceedings. It concluded that there was no evidence before it that an adjournment would serve any useful purpose. XXX. Considering the public interest in the fair and expeditious conduct in these matters, the Tribunal accepted that it was in both the public interest and also in Dr Mahendran's interest to proceed with this hearing today.
10. Therefore, in accordance with Rule 31, the Tribunal has determined to proceed in Dr Mahendran's absence.