PUBLIC RECORD

Dates: 13/05/2024 - 16/05/2024

Medical Practitioner's name:	Mr Prashant SANKAYE
GMC reference number:	6118688
Primary medical qualification:	MB BS 1997 University of Mumbai

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Not Impaired
Review - Misconduct		Not Impaired

Summary of outcome
Suspension revoked

Tribunal:

Legally Qualified Chair	Mrs Emma Gilberthorpe
Lay Tribunal Member:	Mrs Hannah De Merode
Medical Tribunal Member:	Dr Ranjana Rani

Tribunal Clerk:	Mx Nate Caruso-Kelly

Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Matthew McDonagh, Counsel, instructed by Weightmans LLP
GMC Representative:	Mr Christopher Hamlet, 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 - 14/05/2024

Background

1. Dr Sankaye qualified in 1998 at the University of Mumbai. Dr Sankaye became a member of the Royal College of Surgeons, Edinburgh in 2004 and attained membership of the Royal College of Radiologists in London in 2012. At the time of events Dr Sankaye was working as a Consultant Musculoskeletal Radiologist at the Imperial College Healthcare Trust, London, as well as holding various positions in private clinics.

2. The allegation that has led to Dr Sankaye's hearing can be summarised as follows. Between February 2020 and October 2022, Dr Sankaye was contracted to provide clinical advice as an External Adviser for the Parliamentary Health Services Ombudsman ('PHSO'). On 7 September 2020 Dr Sankaye's registration was made subject to conditions by an Interim Orders Tribunal. These conditions were in place until 3 October 2022.

3. It is alleged that Dr Sankaye failed to return a work details form sent to him on 29 January 2021, 2 August 2021 and 1 April 2022. It is further alleged that Dr Sankaye failed to comply with the conditions in that he did not provide the GMC with the contact details for the PHSO as his contracting body, as required by condition 1, did not ensure that the responsible officer or person with overall responsibility for clinical governance at PHSO was notified of the conditions, as required by condition 6, did not ensure that the GMC was notified that the person with overall clinical governance responsibility at PHSO had been informed of the conditions, nor did he allow the GMC to exchange information with the PHSO in respect of the GMC investigation, as required by condition 3.

4. Finally, it is further alleged that Dr Sankaye was aware of these conditions when he was contracted with the PHSO and therefore his failure to comply with the conditions, as set out above, was dishonest.

5. The initial concerns were raised with the GMC on 8 November 2022 by Dr B, Senior Lead Clinician at the PHSO.

The Allegation and the Doctor's Response

6. The Allegation made against Dr Sankaye is as follows:

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

1. Between February 2020 and October 2022, you were contracted to provide clinical advice as an External Adviser for the Parliamentary Health Service Ombudsman ('PHSO').
   Admitted and found proved.

2. On 7 September 2020 an interim order of conditions ('the conditions') was placed upon your registration, as set out in Schedule 1, and was in place until 3 October 2022.
   Admitted and found proved.

3. You failed to comply with the conditions in that you did not:

   a. provide the GMC with the contact details for the PHSO as your contracting body, including details of your direct line manager as required by condition 1;
   Admitted and found proved.

   b. Personally ensure that the responsible officer or person with overall responsibility for clinical governance at the PHSO was notified of your conditions as required by condition 6;
   Admitted and found proved.

   c. personally ensure that the GMC was notified that the person referred to in paragraph 3b above had been notified of your conditions as required by condition 2b;
   Admitted and found proved.

   d. allow the GMC to exchange information with the PHSO in respect of the GMC's investigation as required by condition 3.
   Admitted and found proved.

4. When you were contracted with the PHSO as described at paragraph 1, you knew your GMC registration was subject to the conditions referred to in paragraph 2.

Admitted and found proved.

5. Your actions at paragraph 3, were dishonest by reason of paragraph 4.
To be determined.

6. You failed to complete and return a copy of the work details form sent to you under cover of letter dated 29 January 2021, 2 August 2021 and 1 April 2022.
Admitted and found proved.

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

7. At the outset of these proceedings, through his counsel, Mr McDonagh, Dr Sankaye made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

8. In light of Dr Sankaye's response to the Allegation made against him the Tribunal is required to determine whether Dr Sankaye's actions in not complying with the conditions as set out in paragraph 3 of the Allegation, were dishonest, knowing that he was subject to said conditions.

Witness Evidence

9. The Tribunal 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, Senior Lead Clinician at the PHSO, dated 19 May 2023; and
- Ms C, Investigation Adviser at the GMC, dated 16 April 2023.

10. Dr Sankaye provided his own witness statement dated 20 April 2024 and gave oral evidence at the hearing.

Documentary Evidence

11. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to Dr Sankaye's 'work details' email to the GMC dated 20 August 2020, further emails between Dr Sankaye and the GMC dated between 26 August 2020 and May 2022, IOT determinations dated 7 September 2020, 24 February 2021, 13 August 2021, 1 February 2022 and 5 May 2022, as well as accompanying Notices of Hearing and Outcome Letters from the MPTS, High Court Extension of the Interim Order dated 18 February 2022, the PHSO External Adviser Agreement's dated February 2020 and February 2022, a letter from the PHSO to Dr Sankaye terminating his contract dated October 2022, chaperone records dated between April and July 2021, Dr Sankaye's emails to various employers informing them of his conditions dated September 2020, emails between Dr Sankaye and Dr B dated 9 November 2022, an extract from Dr Sankaye's CV, and various CPD certificates dated March 2024.

The Tribunal's Approach

12. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Sankaye does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e., whether it is more likely than not that the events occurred.

13. The Tribunal was reminded as to the test for dishonesty as set out by the Supreme Court in the case of *Ivey v Genting Casinos* (2017) UKSC 67. The Court stated that a 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 may evidence 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*'. Once that has been established the Tribunal must determine '*whether* [the individual's] *conduct was dishonest by applying the objective standards of ordinary decent people. It is not necessary for the individual to appreciate that what he has done is, by those standards, dishonest'.*

The Tribunal's Analysis of the Evidence and Findings

14. 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.

Paragraph 5

15. The Tribunal was satisfied that Dr Sankaye had acted in the manner alleged in paragraphs 1-4. The Tribunal noted that Dr Sankaye has admitted that he did not comply with the interim conditions on his registration.

16. The Tribunal then considered the genuine belief or knowledge which Dr Sankaye held at the time.

17. The Tribunal was provided with a series of emails between Dr Sankaye and the GMC dated August 2020. These emails were as a result of a complaint of sexual misconduct made against Dr Sankaye in August 2020. The Tribunal noted that the GMC requested that Dr Sankaye complete a 'Work Details Form' on or around 13 August 2020, although it was not provided with the original request. The Tribunal further noted that Dr Sankaye repeatedly informed the GMC that he was unable to open the form or view the contents. Due to the impending deadline he supplied the list set out below, by email, in an attempt to satisfy the request. The Tribunal was not provided with a copy of the 'Work Details Form'. The Tribunal noted the email which Dr Sankaye sent to the GMC on 20 August 2020:

> *'Thanks a lot.*
> *I am still unable to open it.*
> *But to comply with timing I am writing here and will try to see what can I do with the form in evening.*
>
> *1) Imperial college Healthcare NHS Trust, London-Main NHS Base and RO Connection for appraisals*
> *2) Private HCA hospitals London – I work at there 2 sites mainly*
> *3) Phoenix hospital group, Harley street London*
> *4) Alliance medicals –*
> *10-11 Bulstrode Place LONDONW1U 2HX*
>
> *5) Harley street Hospital, 19 Harley street, London – recent practicing privileges*
>
> *Above are sites where I visit and see patients physically although very few since Feb due to covid.*

Below are remote working sites or where my name is there but I don't visit the places physically.
6) BMI clementine hospital – I haven't visited this place for more than an year but report scans remotely that too very infrequently.
7) Medneo scanning centre London- only remote scan reporting, no patients are seen here – recent practicing privileges

There are sites I report remotely.

8) King Edward VII, London, I had granted privileges there but haven't seen any patients for them.'

18. The Tribunal further noted that in an email dated 26 August 2020, the GMC confirmed to Dr Sankaye, *'Thank you for providing me with your 'Work Details'; I note that you have had some trouble with the form*.' The Tribunal found that this would have indicated to Dr Sankaye that the information provided in his email dated 20 August 2020 satisfied the GMC request. No follow-up enquiries were made by the GMC about different types of work, notably any non-patient facing roles.

19. The Tribunal was mindful that Dr Sankaye was facing an allegation of sexual misconduct, and therefore it found that it was reasonable that his mind was focused on roles which routinely involved, or could involve, patient contact, as he set out in his email. The Tribunal noted that conditions were later placed on Dr Sankaye's registration involving chaperoning all consultations with female patients. The conditions were later varied in February 2021 and a chaperone was only required for 'in person' consultations with female patients. In his oral evidence, Dr Sankaye stated as to why there was no reference to PHSO in the 20 August 2020 email:

'I wrote for each and every hospital where I was working scanning patients and reporting, unfortunately it didn't occur to me because I didn't have any patient contact or reporting, when GMC case happened it was so overwhelming I was scared of opening GMC emails, I used to get scared and did minimum reading, it was soul destroying. I couldn't open [the form], *10, 20 times I asked her to send me what was possible and she didn't send it so I narrated what hospitals I was working.'*

20. The Tribunal further took into account the stressful circumstances that Dr Sankaye faced at the time. Dr Sankaye was subject to a GMC investigation for a very serious allegation of sexual misconduct, he was working 50-60 hours a week during the Covid-19 pandemic and dealing with health issues in his family. The Tribunal noted that in his oral evidence, Dr Sankaye stated that he asked for all communication to be sent via his solicitor as he was struggling to deal with the volume of emails. The Tribunal found that this was evident from the documents provided, as Dr Sankaye's solicitor began to be copied into correspondence in early September 2020.

21. The Tribunal further noted a series of emails it had been provided with that show Dr Sankaye informed each employer in the list from 20 August 2020 of the conditions imposed on his registration in September 2020. The Tribunal considered that Dr Sankaye did not appear to be concealing his conditions or the allegation of sexual misconduct from his other employers, including those in which he held a patient-facing role and was under strict chaperone conditions.

22. The Tribunal therefore found that Dr Sankaye's focus in his email on 20 August 2020 was reasonable, given the nature of the allegation he faced and the stress he was under to provide information in a timely manner as part of an ongoing investigation. The Tribunal found that he genuinely believed he had provided the necessary information to the GMC about his work and informed his employers where he was engaged in patient-facing roles and reporting on scans where a chaperone may be required. The Tribunal found that it was more likely than not that Dr Sankaye's omission in not telling the GMC about his work with the PHSO or informing the PHSO of his conditions, was an oversight and a genuine mistake given that there was no patient contact and he was offering his professional opinion on scans.

23. The Tribunal considered the submission that Dr Sankaye was sent the 'Work Details Form' on several occasions throughout 2021 and 2022 but failed each time to inform the GMC of his work with the PHSO, and that this showed ongoing deliberate dishonesty. The Tribunal, as set out above, accepted that from September 2020 onwards, Dr Sankaye's solicitors dealt with most of his correspondence with the GMC. The Tribunal further noted that in oral evidence, Dr Sankaye stated that he discussed any '*material change*' in his work with his solicitors each time the form was requested, and he made enquiries with the GMC about taking on new roles, for example, the Covid vaccine clinic. The Tribunal found that while Dr Sankaye's initial omission had not been corrected, this was not due to any deliberate dishonesty on Dr Sankaye's part, as he had taken care to inform the GMC about any changes

in his work after the conditions were imposed and was simply a continuation of his genuine mistake.

24. The Tribunal then considered whether Dr Sankaye's actions would be considered dishonest by the standards of ordinary and honest people. The Tribunal was mindful that there is a higher bar of honesty and integrity for professionals, and that the PHSO is a public body which reviews complaints made against the NHS.

25. The Tribunal found that an ordinary, honest person, fully availed of the facts of the case, would understand that Dr Sankaye was overwhelmed with a complaint of a very serious nature and therefore his responses to the GMC focused on how to address the concerns that had arisen about his work with patients. The Tribunal further noted that Dr Sankaye went to great lengths to comply with the chaperone conditions on his registration and provided volumes of evidence to that effect. The Tribunal found that an ordinary person who knew of the effort Dr Sankaye took to meet the other conditions imposed would find it unreasonable that he would deliberately breach another, less onerous, condition.

26. The Tribunal further found that there was no clear motivation for Dr Sankaye having failed to comply with the conditions. The Tribunal noted that the renumeration for the work was not considerable, and Dr Sankaye in oral evidence described it as '*negligible*'. The Tribunal therefore found that an ordinary, honest member of the public would not be able to conclude that Dr Sankaye had any material benefit from not informing the GMC of his work for PHSO or the PHSO of the conditions on his registration.

27. The Tribunal therefore found that Dr Sankaye's actions would not be viewed as dishonest by the ordinary standards of reasonable, honest people.

28. The Tribunal has found that Dr Sankaye's actions at paragraph 5 were not dishonest. The Tribunal has therefore found paragraph 5 of the Allegation not proved.

The Tribunal's Overall Determination on the Facts

29. The Tribunal has determined the facts as follows:

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

1. Between February 2020 and October 2022, you were contracted to provide clinical advice as an External Adviser for the Parliamentary Health Service Ombudsman

('PHSO').
Admitted and found proved.

2. On 7 September 2020 an interim order of conditions ('the conditions') was placed upon your registration, as set out in Schedule 1, and was in place until 3 October 2022.
Admitted and found proved.

3. You failed to comply with the conditions in that you did not:

   a. provide the GMC with the contact details for the PHSO as your contracting body, including details of your direct line manager as required by condition 1;
   Admitted and found proved.

   b. Personally ensure that the responsible officer or person with overall responsibility for clinical governance at the PHSO was notified of your conditions as required by condition 6;
   Admitted and found proved.

   c. personally ensure that the GMC was notified that the person referred to in paragraph 3b above had been notified of your conditions as required by condition 2b;
   Admitted and found proved.

   d. allow the GMC to exchange information with the PHSO in respect of the GMC's investigation as required by condition 3.
   Admitted and found proved.

4. When you were contracted with the PHSO as described at paragraph 1, you knew your GMC registration was subject to the conditions referred to in paragraph 2.
Admitted and found proved.

5. Your actions at paragraph 3, were dishonest by reason of paragraph 4.
Determined and found not proved.

6. You failed to complete and return a copy of the work details form sent to you under cover of letter dated 29 January 2021, 2 August 2021 and 1 April 2022.
Admitted and found proved.

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 - 16/05/2024

30. The Tribunal now has to consider whether Dr Sankaye's fitness to practise is impaired in relation to the findings of fact it has made. However, this Tribunal has to also conduct a review hearing relating to a decision made by a Tribunal which sat between 19 September 2022 and 3 October 2022 ('The 2022 Tribunal'). The 2022 Tribunal imposed a sanction of suspension of Dr Sankaye's registration for 12 months and directed a review.

31. Rule 21A provides in this situation:

> *'(1) If since the previous hearing a new allegation against the practitioner has been referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal, it shall first proceed with that allegation in accordance with rule 17(2)(a) to (j).*
>
> *(2) The Medical Practitioners Tribunal shall thereafter proceed in accordance with rule 22 except when determining whether the fitness to practise of the practitioner is impaired and what direction (if any) to impose under section 35D(5), (6), (8) or (12) of the Act, it shall additionally have regard to its findings in relation to the new allegation.'*

32. The Tribunal has announced its findings of facts pursuant to Rule 17(2) (j) and therefore, in accordance with the above Rule, will consider impairment in relation to all matters before it.

Background

2022 Tribunal

33. Dr Sankaye was subject to a fitness to practise hearing between 19 September 2022 and 3 October 2022. Dr Sankaye admitted, and it was found proved, that on 20 July 2020 he carried out a diagnostic ultrasound on Patient A's back and failed to adequately communicate with Patient A the detail of the examinations he intended to perform, that he unzipped

Patient A's dress, unhooked her bra, used his hands to touch her lower back, flanks, hips, upper back and waist, and fastened her bra and zipped up her dress.

34. The Tribunal further found proved that Dr Sankaye placed his hand inside Patient A's dress and touched the front of her body and her right breast on one or more occasion. The Tribunal found that Dr Sankaye's actions in unzipping Patient A's dress, unhooking her bra, touching her back, hips, flank and waist, as well as touching her front and right breast were done without her consent. The Tribunal further found that Dr Sankaye's actions touching Patient A's front and her right breast were sexually motivated.

35. The 2022 Tribunal found that Dr Sankaye's actions in unhooking Patient A's bra without her consent and his sexually motivated conduct in touching the front of her body and right breast amounted to serious misconduct. It noted that this was an opportunistic action from Dr Sankaye rather than a planned sexual assault. Those actions were not part of the examination and there was no clinical justification for Dr Sankaye to have acted in the manner he did. Therefore, the Tribunal found that Dr Sankaye's actions fell below standards expected of a registered doctor and found that this amounted to misconduct, which was serious.

36. The 2022 Tribunal found that Dr Sankaye's fitness to practise was impaired by reason of misconduct, and that a finding of impairment was necessary to protect, promote and maintain the health, safety and well-being of the public; to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards and conduct for members of the profession.

37. In relation to insight, the 2022 Tribunal noted in particular that:

> *'91. The Tribunal is satisfied that Dr Sankaye has started to address his shortcomings in relation to his communication and failure to obtain consent. Dr Sankaye had made steps to remediate his actions. However, given its findings in relation to the sexual misconduct, the Tribunal does not have evidence of insight and remediation in relation to the sexual misconduct allegation.'*

38. When considering sanction, the 2022 Tribunal noted that Dr Sankaye's sexual misconduct was serious but determined that it falls short of being fundamentally incompatible with continued registration. Therefore, the Tribunal determined that a period of suspension would be sufficient to mark the seriousness of Dr Sankaye's misconduct and

send a signal to the doctor, the profession and the public. It also determined that a period of suspension would maintain public confidence in the profession and uphold proper professional standards of conduct expected of a registered doctor.

39. The 2022 Tribunal determined that a period of 12-month suspension was the appropriate and proportionate sanction in this case. The Tribunal considered that such a period would enable Dr Sankaye the opportunity to develop insight into his sexually motivated conduct. The Tribunal imposed an immediate order of suspension. The Tribunal directed that a review hearing be conducted, and suggested that it may assist the reviewing Tribunal if Dr Sankaye were to provide the following:

- *'A reflective statement to address his sexually motivated conduct towards Patient A;*
- *Evidence of any further remediation;*
- *Evidence that he has kept his clinical knowledge up to date during his period of suspension;*
- *Evidence of Continuing Professional Development courses undertaken; and*
- *Any other information which Dr Sankaye considers would assist the reviewing Tribunal.'*

40. Dr Sankaye appealed the decision of the 2022 Tribunal. The appeal was unsuccessful, and his 12-month suspension began on 22 May 2023. This is the first review of the case.

The Evidence

41. 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 documentary evidence as follows:

- Record of Determination of the 2022 Tribunal;
- Letter from the MPTS to Dr Sankaye acknowledging appeal lodged, dated 4 November 2022;
- Email from MPTS to Dr Sankaye confirming outcome of appeal, dated 25 May 2023;
- Correspondence between Dr Sankaye, the GMC and the MPTS regarding the review hearing, dated between May 2023 and January 2024;
- Dr Sankaye's reflective statement, dated 30 April 2024; and
- Various CPD and course certificates dated between September 2020 and March 2024.

Submissions

42. On behalf of the GMC, Mr Hamlet submitted that the 'New' matters admitted by Dr Sankaye do not amount to serious misconduct. Mr Hamlet submitted that the dishonesty, which has been found not proved, was the most serious aspect of the Allegation, and the remaining facts are that Dr Sankaye failed to comply with interim conditions which he knew were in place. Mr Hamlet submitted that these failures amount to a breach of Dr Sankaye's professional obligations, however given the Tribunal's findings that this was an oversight borne of a genuine mistake of a continuing nature, fellow practitioners would be unlikely to consider it deplorable behaviour. Mr Hamlet further submitted that members of the public may not consider a mistake or oversight of that nature to be serious enough to have warranted a referral to an MPT at all, absent the allegation of dishonesty.

43. Mr Hamlet submitted that the conditions imposed on Dr Sankaye were devised to protect patients from the risk arising from the allegations of sexually motivated conduct and the breach which related to work where there was no possibility of patient contact was therefore akin to an administrative error rather than a breach of conditions designed to protect the public. Mr Hamlet therefore submitted that the matters do not amount to misconduct, and he did not address the Tribunal on impairment in respect of those matters.

44. Turning to the review matter, Mr Hamlet submitted that Dr Sankaye's fitness to practise remains impaired by reason of misconduct. Mr Hamlet submitted that the conduct found proved by the 2022 Tribunal is not easily remediable. He submitted that the sexually motivated touching in particular is not something which can be easily remedied in the same way as a clinical failing. Mr Hamlet submitted that while Dr Sankaye has acknowledged his role in aspects of the original incident, he has focused on communication failures and touching parts of the patient's body without consent. Mr Hamlet submitted that this showed a confusion between the lack of communication and chaperoning and the most serious aspect of the case which was sexually motivated touching of the patient's breast. Mr Hamlet submitted that Dr Sankaye denied and continues to deny this allegation, and while this denial should not be treated in isolation as determinative of insight, it is relevant to the assessment of insight and is relevant now at the review stage when considering the extent to which those findings have been acknowledged.

45. Mr Hamlet submitted that in relation to the insight shown by Dr Sankaye, not only does he not accept the findings of sexually motivated touching, he does not acknowledge the findings of the 2022 Tribunal on that point and has made no attempt to show remorse for his

role on that specific point. Mr Hamlet submitted that Dr Sankaye has attributed the finding of sexually motivated touching to poor communication and lack of consent leading to the patient becoming confused, and has not attempted to acknowledge, even in principle, the impact of sexually motivated touching on patients or the impact on the public. Mr Hamlet submitted that Dr Sankaye's apology and expression of remorse tend to ring hollow as regards the sexually motivated aspect of the misconduct. Mr Hamlet submitted that; therefore, the Tribunal may be entitled to conclude that Dr Sankaye has not fully recognised his role in the sexually motivated touching of Patient A and there remains a risk of repeating it.

46. Mr Hamlet referred the Tribunal to the case of *Khetyar v GMC* [2018] EWHC 813 Admin ('*Khetyar*'), and submitted that Dr Sankaye's remediation in regard to communication, consent and chaperones, as well as his continued failure to acknowledge the findings made by the 2022 Tribunal and his role in those findings is not indicative of good or perhaps any insight into those findings.

47. Mr Hamlet further submitted that the nature of the conduct, taken in the context of inadequate insight, necessitates a finding of impairment in order to restore public trust and uphold proper professional standards. Mr Hamlet submitted that notwithstanding the Tribunal's view on risk of repetition, there is a danger that public confidence and proper professional standards would be undermined in light of an inadequate expression of insight in relation to the issue of sexually motivated conduct, were the Tribunal to find that Dr Sankaye's fitness to practise was no longer impaired.

48. On behalf of Dr Sankaye, Mr McDonagh submitted that the 'New' matter does not amount to serious misconduct. Mr McDonagh endorse the submissions of the GMC.

49. Turning to the review matter, Mr McDonagh submitted that Dr Sankaye's fitness to practise is no longer impaired. Mr McDonagh submitted that the impact on Dr Sankaye was dramatic, and in the early stages of the case he went through great personal shock, and his thoughts were concentrated on his own position. However, he is now aware of not just his own position, but also the view of the patient and complainant in this case, all patients, the impact on the profession, and the public perception of the profession.

50. Mr McDonagh submitted that Dr Sankaye is in a difficult position in that he maintains his denial that there was no sexual motivation to his actions, and whilst this cannot be determinative on the question of impairment, as the maintenance of innocence cannot

equate to lack of insight, it is difficult to demonstrate insight sufficiently to obtain a finding of no present impairment. Mr McDonagh submitted that the Tribunal should bear in mind that Dr Sankaye is entitled to say that the actions found proved against him were not sexually motivated and consider what more he can do to demonstrate he is no longer impaired. Mr McDonagh submitted that Dr Sankaye has done everything asked of him and has used his suspension to show that the risk of repetition is allayed.

51. Mr McDonagh submitted that the Tribunal must understand the facts of the previous case fully as this is a relevant feature of the consideration of the review. Mr McDonagh submitted that an underlying fact in the 2022 Tribunal was Dr Sankaye's failure to communicate with Patient A, and that this failure was fundamental to what went wrong. Mr McDonagh submitted that the facts of this case can be distinguished from those in Khetyar, and the case should be applied in these circumstances. Mr McDonagh set out the facts of Khetyar, that it involved a newly qualified doctor who touched the breasts of two patients under the guise of legitimate medical examinations, the second whilst he was under police investigation for the first, and as a result of that patient reporting a headache. Mr McDonagh submitted that these facts are far removed from the circumstances of this case, which relate to a legitimate medical examination which was carried out on a colleague by a doctor of considerable experience and expertise.

52. Mr McDonagh then turned to Dr Sankaye's reflective statement. Mr McDonagh submitted that Dr Sankaye has been on a journey of reflection which commenced in October 2022 and continues. Mr McDonagh submitted that Dr Sankaye has embraced the resources available to him, and despite not working for 19 months has kept up to date clinically with courses, reading, and understanding of the ethical and personal issues relevant to what went wrong with this patient and the sexual assault, however difficult it was for him to deal with that grave conclusion.

53. Mr McDonagh submitted that Dr Sankaye has utilised the courses he has attended to deepen his understanding of the wider patient relationship and addressed the root cause of the problem in this case, which he submitted was poor communication. Mr McDonagh further submitted that Dr Sankaye has applied the learning from those courses by reading GMP, guidance on maintaining professional boundaries, and MPTS outcomes, which has entrenched his learning in his practise.

54. Mr McDonagh submitted that Dr Sankaye has reflected on the incident and now understands that it was his duty to keep Patient A informed at all times about what he was

doing, and that he now accepts that it is highly likely that he touched her chest area, and this would have taken her by surprise as a result of his poor communication. Mr McDonagh submitted that notwithstanding the 2022 Tribunal did not criticise the lack of a chaperone, Dr Sankaye has reflected on how this led to further misunderstandings and would have made it harder for the patient to speak up when she felt uncomfortable. Mr McDonagh submitted that Dr Sankaye's reflections have moved away from the impact on himself, and he has developed an understanding of how the patient must have felt. Mr McDonagh submitted that in relation to the issue of treating colleagues, Dr Sankaye has reflected on the standards which apply in those circumstances and that they are no different from when treating any other patient; he cannot take shortcuts.

55. Mr McDonagh submitted that Dr Sankaye is a high functioning and highly regarded doctor who wants to go back to caring for patients and the public following an isolated incident in decades of successful practise, bearing in mind his positive attitude to changing his practice, for example using chaperones. Mr McDonagh submitted that the risk of repetition is negligible and is no more than any other doctor carrying out scans of this nature, arguably it is even lower than other practitioners given what Dr Sankaye has been through.

56. Mr McDonagh submitted in regard to the residual concern about the wider public interest, that Dr Sankaye has been suspended now for 19 months and the punitive element of the case has ended, meaning the sole issue is remediation for public interest. Mr McDonagh reiterated that while it is more difficult for Dr Sankaye to remediate his actions whilst he denies the sexual motivation, he has shown real movement in his position and understanding that contact took place. Mr McDonagh submitted that the public would want a good doctor to return to practise, recognising the efforts he had made, and his heartfelt and genuine remediation. Mr McDonagh submitted that there is no residual concern which would allow a finding of impairment as of today, and the Tribunal can be confident that Dr Sankaye has done all that he can do demonstrate that he is fit to return to unrestricted practise.

The Relevant Legal Principles

57. 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.

58. 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, and then whether the finding of that misconduct which was serious, could lead to a finding of impairment.

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

The Tribunal's Determination on Impairment

Misconduct

60. The 2022 Tribunal found that Dr Sankaye's conduct amounted to serious misconduct. In having regard to the new allegations admitted by Dr Sankaye the Tribunal considered whether these matters amounted to serious misconduct. The Tribunal noted that the GMC had conceded the matter of serious misconduct.

61. The Tribunal bore in mind that it had found the dishonesty element of the Allegation not proved and concluded that Dr Sankaye's failure to comply with the interim conditions on his registration was due to an oversight and a genuine mistake. The Tribunal was mindful that any failure to comply with professional obligations is concerning, however it found that Dr Sankaye had gone to great lengths to comply with other more onerous conditions and had immediately admitted his mistake in failing to comply with some conditions.

62. The Tribunal therefore found that Dr Sankaye's actions would not be viewed as deplorable by fellow members of the profession, and members of the public would not consider the matter serious enough to warrant a finding of misconduct.

63. The Tribunal has concluded that Dr Sankaye's conduct did not fall so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.

64. The Tribunal, having found that the facts found proved did not amount to misconduct, went on to consider whether, as a result of the review matter only, Dr Sankaye's fitness to practise is currently impaired.

Impairment

65. The Tribunal first considered whether this is conduct which is remediable. The Tribunal noted the findings of the 2022 Tribunal that although sexual misconduct is difficult to remediate, it can be remediated.

66. The Tribunal then considered whether Dr Sankaye has remediated the misconduct found proved. The Tribunal noted that Dr Sankaye has provided evidence of his attendance on a number of relevant courses, including professional boundaries, communication and consent. The Tribunal was mindful that Dr Sankaye had not provided specific reflections on the learning he has undertaken on each course, and although it may have been assisted by such reflections, it found that Dr Sankaye's reflective statement adequately addressed these issues and was a genuine expression of his journey of reflection. The Tribunal noted that Dr Sankaye expressed his remorse and apologised once again to Patient A. The Tribunal noted in particular the following passages which showed he has a better understanding of the issues which led to the finding of the 2022 Tribunal:

> *'After attending multiple Professional Boundary courses, multiple communication courses, discussions at my appraisal, discussions with senior colleagues, and reading various MPTS outcomes, GMC cases and investigations, I recognise that my communication with the patient during the consultation could have been better. I should have told the colleague who came as a patient every step of the way what I was planning to do, especially during the back examination and the ultrasound scan. It was not appropriate to assume that a colleague working in the same clinic would know the process thoroughly. It was erroneous on my part to be presumptive. After thorough reflection over the last many months, I now understand very well how assumptions in clinical practice can be detrimental to patients and staff; they have no place in clinical practice and certainly not in my practice.'*

67. The Tribunal therefore found that Dr Sankaye's remediation has led to a greater understanding of the impact on Patient A, the wider profession, and how he can prevent such incidents in the future. The Tribunal was mindful that remediation is difficult in relation to the sexual motivation found proved, and it concluded that Dr Sankaye has developed a good understanding of such issues, notwithstanding his denial.

68. Before considering insight, the Tribunal considered the case of *Khetyar*. The Tribunal found that the facts of this case were distinct from those found proved against Dr Sankaye. The Tribunal noted in particular that Dr Khetyar had touched two young female patients under the guise of medical exams. The Tribunal found that the facts differed greatly from

this case, where the touching occurred as part of a legitimate medical examination. The Tribunal further noted that Dr Khetyar was a newly qualified doctor who committed two offences close in time, and Dr Sankaye had been practising for several decades with no prior incidents, and no complaints since this incident. The Tribunal further found that Dr Sankaye has an understanding of the gravity of the misconduct and has considered at length how to prevent such an occurrence in the future. The Tribunal therefore determined that *Khetyar* was not directly relevant to its considerations, although it has borne in mind the findings in that case when making its decision on insight.

69. Turning to insight, the Tribunal found that Dr Sankaye has evidently thought about events a great deal and he has considered that it is '*highly likely*' he touched Patient A's chest area. The Tribunal found that although this is a qualified statement which does not address the touching of the breast in particular, it does show movement from Dr Sankaye's position at the 2022 Tribunal when he denied the allegation entirely. The Tribunal further found that Dr Sankaye has reflected on Patient A's perception of the touching and what led her to make the complaint:

> *'It is highly likely that while checking for rib tenderness, I touched the patient's chest area. Due to a lack of appropriate communication on my part, this would have taken the patient by surprise and made her uncomfortable. Again, I wish to make clear, however, that there was no intentional inappropriate touching of the patient at any point; it was a grave human error of communication on my part, for which I offer my unreserved apology. There was never an intention to disrespect the patient, and will never be in my entire professional life. …*
> *I knew her quite well XXX, and she had previous scans with me. With this background, I thought we shared a professional rapport and did not treat her quite the same as I would have treated an ordinary, unknown patient; this was a human error in hindsight. I understand my poor conduct and substandard communication led to making the patient so uncomfortable, scarred her experience and caused deep emotional trauma to her. I let the patient down, for which I cannot apologise enough.'*

70. The Tribunal found that Dr Sankaye has considered at length why Patient A felt the way she did following the examination and, despite his denial that he touched her breast, he has considered how that would have made her feel had it occurred. The Tribunal found that Dr Sankaye has developed a better understanding of why the situation arose and why Patient A felt she had been touched inappropriately. The Tribunal determined that Dr Sankaye has engaged in remediation and developed insight into how and why the complaint was made

against him. The Tribunal noted that the reflections were Dr Sankaye's own writing and found that this showed genuine reflection and insight.

71. The Tribunal then considered the risk of repetition. The Tribunal was mindful that it must assess the ongoing risk of repetition and bore in mind Dr Sankaye's current understanding of and attitude towards the misconduct. The Tribunal found that Dr Sankaye has undertaken significant reflections on the misconduct found proved and as a result has dissected how the allegation came to be. Dr Sankaye now acknowledges that it is highly likely he touched Patient A's chest area and he has used the learning from courses he has taken to consider how to prevent this happening in the future, by the use of chaperones, communication at all stages, proper consent, and maintaining boundaries. The Tribunal further noted that Dr Sankaye intends to use his experience to help others prevent similar incidents.

72. The Tribunal found that Dr Sankaye has shown deep remorse for his actions, an understanding of the gravity of what was found against him and has shown that this process has had a marked effect upon him. The Tribunal noted that Dr Sankaye has been open with his family and colleagues about events. The Tribunal also bore in mind that Dr Sankaye had an unblemished career of many decades before this incident, and had conducted thousands of similar scans, as well as continuing to work for two years under stringent conditions.

73. The Tribunal therefore determined that the risk of repetition in this case was low. The Tribunal found that Dr Sankaye is now open to the fact that the touching may have occurred and will be alert to preventing similar situations in the future. The Tribunal was impressed by Dr Sankaye's attitude as a lifelong learner and his continued efforts to improve his practice.

74. The Tribunal finally considered the public interest in a finding of impairment. The Tribunal bore in mind that no clinical concerns have been raised in relation to Dr Sankaye's practise, and he has kept his clinical knowledge up to date during his suspension. The Tribunal found that given the minimal risk of repetition, an ordinary person who looked at the case and the Tribunal's finding on remediation and insight would conclude that it is better to return an experienced and skilled doctor to work. The Tribunal further bore in mind that Dr Sankaye has now been suspended for 19 months and therefore has served the sanction of 12 months suspension imposed by the 2022 Tribunal, satisfying the public interest. The Tribunal found that there is a public interest in returning Dr Sankaye to

unrestricted practise, given the minimal risk of repetition and his developed understanding of preventing such incidents in the future.

75. The Tribunal has therefore determined that Dr Sankaye's fitness to practise is not impaired.

76. Given the Tribunal's findings in relation to misconduct and impairment, the Tribunal determined that consideration of a warning was not necessary.

77. The Tribunal then went on to consider whether it should revoke the suspension immediately, pursuant to Section 35D(5)(d) of the Medical Act 1983.

78. Mr McDonagh, on behalf of Dr Sankaye, submitted that the current suspension should be revoked today. Mr Hamlet, on behalf of the GMC, did not oppose the application. The Tribunal bore in mind that Dr Sankaye's suspension was due to expire on 21 May 2024.

79. The Tribunal determined to revoke the suspension with immediate effect.

80. That concludes the case.

SCHEDULE 1

1. He must personally ensure that the GMC is notified of the following information within seven calendar days of the date these conditions become effective:

    a. of the details of his current post, including:

        i. his job title

        ii. his job location

        iii. his responsible officer (or their nominated deputy)

    b. the contact details for his employer and any contracting body, including his direct line manager

    c. of any organisation where he has practising privileges and/or admitting rights

    d. of any training programmes he is in

    e. of the contact details of any locum agency or out-of-hours service he is registered with.

2. He must personally ensure the GMC is notified:

    a. of any post he accepts, before starting it

    b. that all relevant people have been notified of his conditions, in accordance with condition 6

    c. if any formal disciplinary proceedings against him are started by his employer and/or contracting body, within seven calendar days of being formally notified of such proceedings

    d. if any of his posts, practising privileges or admitting rights have been suspended or terminated by his employer before the agreed date

within seven calendar days of being notified of the termination

e. if he applies for a post outside the UK.

3. He must allow the GMC to exchange information with his employer and/or any contracting body for which he provides medical services.

4. He must get the approval of the GMC before starting work in a non-NHS post or setting.

5. a. Except in life-threatening emergencies, he must not carry out consultations/examinations/investigations or treatments on females without a chaperone present.

b. He must keep a log detailing every case where he has carried out consultations/examinations/investigations or treatments on females, which must be signed by the chaperone.

c. He must keep a log detailing every case where he has carried out consultations/examinations/investigations or treatments on females in a life-threatening emergency, without a chaperone present.

d. He must give a copy of these logs to the IOT at his next review hearing.

6. He must personally ensure that the following persons are notified of the conditions listed at 1 to 5:

a. his responsible officer (or their nominated deputy)

b. the responsible officer of the following organisations:

i. his place(s) of work and any prospective place of work (at the time of application)

ii. all his contracting bodies and any prospective contracting body (prior to entering a contract)

iii. any organisation where he has, or has applied for, practising privileges and/or admitting rights (at the time of application)

iv. any locum agency or out-of-hours service he is registered with

v. If any organisation listed at (i to iv) does not have a responsible officer, he must notify the person with responsibility for overall clinical governance within the organisation. If he is unable to identify this person, he must contact the GMC for advice before working for that organisation.

c. his immediate line manager and senior clinician (where there is one) at his place of work, at least 24 hours before starting work (for current and new posts, including locum posts).