

## PUBLIC RECORD

Dates: 02/12/2020 - 04/12/2020 &amp; 18/12/2020

Medical Practitioner's name: Mr Simon BRAMHALL

GMC reference number: 3358940

Primary medical qualification: MB ChB 1988 University of Birmingham

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

**Summary of outcome**Suspension, 5 months  
Review hearing directed**Tribunal:**

Legally Qualified Chair	Ms Christina Moller
Lay Tribunal Member:	Mr Keith Moore
Medical Tribunal Member:	Dr Harriet Leyland
Tribunal Clerk:	Mr Matthew Rowbotham

**Attendance and Representation:**

Medical Practitioner:	Present and represented – 2 to 4/12/2020 Not Present but represented 18/12/2020
Medical Practitioner's Representative:	Mr Jon Holl-Allen QC, instructed by RadcliffesLeBrasseur LLP
GMC Representative:	Mr Hugh Barton, Counsel

**Attendance of Press / Public**

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

## Overarching Objective

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

## Determination on Facts and Impairment - 03/12/2020

1. This determination will be read in private. However, as this case concerns Mr Bramhall's conviction, a redacted version will be published at the close of the hearing with those matters relating to XXX removed.

## Background

2. Mr Bramhall qualified in 1988 with a MB ChB from the University of Birmingham. Prior to the events which are the subject of the hearing Mr Bramhall had been a Consultant Hepatobiliary Surgeon and Lecturer at University Hospitals Birmingham NHS Foundation Trust ('The Trust'), Queen Elizabeth Hospital ('the Hospital') since 2002. At the time of the events Mr Bramhall had also been the Deputy Director of the Division of Medicine at the Hospital, a post he had held since 2012. Mr Bramhall has been a Fellow of the Royal College of Surgeons since 1992.
3. The Allegation that has led to Mr Bramhall's hearing is based on two convictions for common assault contrary to Section 39 Criminal Justice Act 1988, at Birmingham Crown Court on 13 December 2017. He pleaded guilty to both counts which arose from incidents in February and August 2013, when he used an argon beam coagulator (a surgical device) to place his initials on the transplanted liver of a patient at the conclusion of surgeries he had performed (the incidents). On 12 January 2018 Mr Bramhall was sentenced to community orders with unpaid work and a fine of £10,000.
4. The initial concerns were raised with the GMC by the Trust in 2013.

## The Allegation and the Doctor's Response

5. The Allegation made against Mr Bramhall is as follows:

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

1. On 13 December 2017, at Birmingham Crown Court, you were convicted of two counts of assault by beating.

**Admitted and found proved**

2. On 12 January 2018, at Birmingham Crown Court, you were sentenced to:

- a. a 12 month Community Order, with 120 hours' unpaid work requirement;

- b. a 12 month Community Order, with 80 hours' unpaid work requirement to run concurrently with the order set out at paragraph 2(a) above;

- c. a fine of £10,000.00.

**Admitted and found proved**

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

### The Admitted Facts

6. At the outset of these proceedings, through his counsel, Mr Holl-Allen QC, Mr Bramhall made admissions to all 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.

### Impairment

### Evidence

7. The Tribunal received evidence on behalf of the GMC in the form of a witness statement from a witness whose name was redacted, but was identified as 'the anaesthetist', dated 18 October 2014.

## Documentary Evidence

8. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included, but was not limited to, a summary of Mr Bramhall's police case including a witness statement for the patient involved in the August 2013 incident; a certificate of conviction dated 22 September 2020; the sentencing remarks of the Judge in Mr Bramhall's criminal case; documents from the Trust's investigation; correspondence between the GMC and Mr Bramhall's representatives; expert reports; details of Mr Bramhall's community service; references, testimonials and other documents submitted by Mr Bramhall.

## Submissions

### On behalf of the GMC

9. Mr Barton said that the patients involved in the incidents were unconscious and vulnerable. He submitted that the patient whose liver was marked in the August 2013 incident had an extreme, enduring emotional response when Mr Bramhall's actions were reported, and then compounded when the Trust confirmed her involvement. Her witness statement said she was *'unable to switch off from the ordeal I have been through'* and had *'constant flashbacks'*.
10. Mr Barton submitted that the incident in August 2013 involved high culpability and harm. In his sentencing remarks, His Honour Judge (HHJ) Farrer said that the physical harm suffered by the patient was *'no more than transient or trifling'* but added that Mr Bramhall's actions had caused a high level of harm, due to the *'emotional or psychological impact'* on the patient. There was no evidence of any emotional impact on the patient who had surgery in February 2013.
11. Mr Barton recognised that Mr Bramhall is a talented surgeon. This is demonstrated by the numerous references and testimonials to this effect. He also stated that to his credit Mr Bramhall had XXX to better understand his actions.
12. However, Mr Barton submitted that Mr Bramhall's actions were a serious departure from good medical practice. In particular, he highlighted paragraphs 17, 47 and 65 of Good Medical Practice (2013 edition) ('GMP'):

17 *You must be satisfied that you have consent or other valid authority before you carry out any examination or investigation, provide treatment or involve patients or volunteers in teaching or research.*

47 *You must treat patients as individuals and respect their dignity and privacy.*

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

13. Mr Barton submitted that Mr Bramhall's actions seriously undermined public trust in the profession. This was partly because reports of Mr Bramhall's actions were widely published in the press and other media.
14. In terms of Mr Bramhall's insight, Mr Barton submitted that Mr Bramhall only responded to the August 2013 incident when confronted with overwhelming evidence, including a photograph of the liver. He said that Mr Bramhall was less quick to take responsibility for the February 2013 incident, initially saying that he could not recollect doing it when questioned by police. Mr Barton submitted that it was strange to remember just one incident. Given that it was a fundamental breach of a key tenet of the medical profession, it would be concerning if he could not remember the other incident. Mr Barton submitted that Mr Bramhall may have limited his responses to what was provable.
15. In addition, Mr Barton submitted that Mr Bramhall, in his Rule 7 response letter, made no admission that what he had done amounted to a criminal offence or that any psychological distress was caused. When asked about what he had done, Mr Bramhall was quoted as saying 'I do this'. HHJ Farrer described this as '*professional arrogance of such magnitude that it strayed into criminal behaviour*'.
16. Mr Barton argued that Mr Bramhall's actions represented a serious departure from proper professional standards and breached the fundamental relationship of trust between doctors and patients. He submitted that it would undermine public trust in the medical profession if a finding of impairment were not made by the Tribunal.

#### On behalf of Mr Bramhall

17. Mr Holl-Allen QC submitted that the harm Mr Bramhall had done was as described by HHJ Farrer: '*no more than transient or trifling*'. An expert report provided to the Crown Court concluded that the liver, the patient received in the August 2013 incident, did not fail

because of Mr Bramhall's actions in marking it; also, that the patient would have suffered no discomfort from this action. Mr Holl-Allen QC submitted that Mr Bramhall's initials were a superficial injury and were not permanent.

18. In terms of any psychological harm to the patient in the August 2013 incident, Mr Holl-Allen QC submitted that there had been a number of acts by others that had contributed. This included the leaking of the information about the incident to the press. In addition, Mr Holl-Allen QC drew the Tribunal's attention to an expert report, which stated *'Psychological and psychiatric diagnoses are common after liver transplantation and may be even more common after emergency transplantation and re-transplantation'*.
19. Mr Holl-Allen QC submitted that Mr Bramhall made prompt and appropriate admissions at all times, including pleading guilty to both charges of common assault as soon as the prosecution indicated they would accept those pleas. Mr Holl-Allen QC submitted that Mr Bramhall had also admitted, in response to earlier GMC allegations, to using the argon beam coagulator *'on one or more occasions to write the letters SB,'* and had recognised that this amounted to serious professional misconduct.
20. Mr Holl-Allen QC submitted that Mr Bramhall has been through repeated processes that have given him opportunities to show insight into his wrongdoing. He had lost his job in a highly regarded institution, as well as his substantial private practice and he has been pilloried in the national press. HHJ Farrer remarked that he had *'read numerous letters and emails speaking of your profound regret'* as well as *'a letter which you have written on your own behalf. It is to your credit that I detect nothing of self-pity in that letter'*.
21. It was to Mr Bramhall's credit that he had recognised, as early as 2014, during a police interview, that he had been arrogant. Mr Bramhall also recognised that he was in a position of trust and did not have permission to act in the way he did. Mr Holl-Allen QC submitted that, in effect, Mr Bramhall admitted facts amounting to common assault as early as 2014.
22. Mr Holl-Allen submitted that Mr Bramhall, in his reflective piece, stated *'The first thing to say is that there will definitely not be a next time'* and *'I believe that my reflection has made me more attuned to the need to protect the dignity of patients in all aspects of the care that I offer.'* Mr Holl-Allen QC submitted that HHJ Farrer had recognised the high degree of insight demonstrated by Mr Bramhall.

23. Mr Holl-Allen QC submitted that Mr Bramhall was a competent surgeon, reflected in the countless testimonials. He had assisted less experienced colleagues with difficult surgery and taken on emergency operations at short notice.
24. Mr Holl-Allen QC said that the incidents took place over 7 years ago. In January 2014 Mr Bramhall appeared before an Interim Orders Tribunal where no action was taken. He had also attended a disciplinary hearing at his Trust when he was given a written warning but not dismissed.
25. Mr Holl-Allen QC said that there is no possibility Mr Bramhall will repeat this behaviour. He has had time fully to remediate and develop his insight. Mr Holl-Allen QC submitted that, taking all these factors into account, Mr Bramhall's fitness to practise is not impaired by reason of these convictions.
26. Mr Holl-Allen QC invited the Tribunal to take a dispassionate view and submitted that a right thinking, informed member of the public, aware of Mr Bramhall's insight, would be able to weigh up these factors. He submitted that the public's confidence in the profession would not be undermined if a finding of impairment were not made.

### **The Relevant Legal Principles**

27. The Legally Qualified Chair set out the approach to be taken by the Tribunal, referring to relevant principles, in key legal judgments from higher courts. There is no burden or standard of proof – it is a question of judgment for the Tribunal: *Biswas* 2006 EWHC 464. Impaired is an ordinary word in common usage, not defined in the Medical Act.
28. Impairment may be based on historical matters or a continuing state of affairs, but it is to be decided at the time of the hearing. To do this the Tribunal must look forward taking account of any reparation, changes in practice, conduct or attitude since the matters found proved actually occurred. An effort to accept and correct remediable errors should be taken into account.
29. *Meadow v GMC* 2006 EWCA Civ 641 provides that a Tribunal should take account of the need to protect individual patients as well as maintain confidence in the medical profession.

30. Cohen v GMC 2008 EWHC 581 confirms that a Tribunal should consider whether conduct giving rise to convictions is easily remediable, has been remedied and the extent to which such behaviour is unlikely to be repeated.
31. As a general principle it is accepted that everyone sometimes makes a mistake. One off incidents will need to be investigated and any harm put right but, unless very serious or with very serious consequences, they are unlikely in themselves to indicate a fitness to practise problem. Serious or persistent failure to follow good medical practice will put a doctor's registration at risk. This case is neither persistent nor a one-off.
32. CHRE v NMC & Grant 2011 EWHC 927 cites Fifth Shipman report [25.67]  
Questions to be asked in determining impairment:

*Do our findings of fact in respect of Mr Bramhall's convictions for assault indicate that his fitness to practise is impaired in the sense that he:*

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.*

The value of this test is threefold: it identifies the various types of activity which will arise for consideration in any case where fitness to practise is in issue; it requires an examination of both the past and the future; and it distils and reflects, for ease of application, the principles of interpretation which appear in the authorities.

33. Yeong v GMC 2009 EWHC 1923 provides that the need to maintain public confidence in the medical profession and declaring/upholding standards of behaviour may mean that a doctor's fitness to practise is impaired by reason of certain acts of misconduct of themselves. This is because the public simply would not have confidence in him, or in the profession's standards, if the Tribunal regarded that sort of conduct as leaving fitness unimpaired. A finding may be necessary to reaffirm to the public and doctors the standard of conduct expected of them.

34. Chaudhury 2017 EWHC 2561 reminds us of the importance of the overarching objective, the tripartite public interest and the need for Tribunals to conduct a proper balancing exercise of all three elements of the public interest test, rather than to focus on just one aspect of the test.
35. Good Medical Practice is not exhaustive but should be taken into account. The Tribunal will decide this case on its merits. Neither representative had any comments on the Chair's legal advice.

### Tribunal's Determination

36. The Tribunal bore in mind that it must determine whether Mr Bramhall's fitness to practise is currently impaired by reason of his conviction, taking into account his conduct at the time of the events and any other relevant factors such as any development of insight, whether the matters are remediable or have been remedied and the likelihood of repetition.
37. The Tribunal analysed the evidence provided by both parties in the context of submissions by both counsel and principles in relevant legal authorities. It concluded that Mr Bramhall's actions in February and August 2013 had put two patients at unwarranted risk of harm. This is because he did not have consent from either to mark their livers with his initials, there was no clinical purpose to do so and yet he had used the argon beam coagulator to mark each person when in a vulnerable state of unconsciousness in the operating theatre as HHJ Farrer said in his sentencing remarks in 2018:

*'In approaching sentence, I need to consider both your culpability and the harm that you caused. So far as culpability is concerned, this was conduct borne of professional arrogance of such magnitude that it strayed into criminal behaviour. It was not isolated conduct, it involved assaulting two of your patients in the space of just over six months. Those patients were unconscious and as such were vulnerable, and you targeted them in that knowledge. You conduct surgical procedures within the limits of your patients' consent and you were well aware that these two patients had not consented to you burning your initials onto their livers. What you did was an abuse of power and a betrayal of the trust that these patients had invested in you.'*

38. Although the unsuccessful first transplant in August 2013 did not fail due to Mr Bramhall's actions in marking the liver, a transient physical injury was caused for no clinical purpose. It was on this basis that Mr Bramhall pleaded guilty to common assault.

39. The Tribunal accepted uncontested expert evidence:

*'Unfortunately, this liver transplant was unsuccessful due to totally unrelated reasons, and a further liver transplant was necessary on the 29th August 2013. This further transplant was performed by another surgeon who noticed the initials on the liver capsule and took a photograph (which I understand is a photograph that has been shown to me) of these initials.'*

40. The Tribunal also took account of submissions as to any psychological impact of Mr Bramhall's actions on his patients. There was no evidence of any such harm to the February 2013 patient. However, the Crown Court received an impact statement from the August 2013 patient which led HHJ Farrer to say as follows:

*'for the purposes of sentence, this court is entitled to consider the wider impact of your offending upon you victim, including such emotional or psychological harm as your caused. Regrettably, the emotional impact of your offending upon Patient A has been extreme.'*

41. Although there was no evidence of any formal psychiatric diagnosis, the Tribunal had sufficient evidence to adopt the formulation of HHJ Farrer and conclude that the emotional impact of Mr Bramhall's actions on Patient A was indeed extreme. The distress may have been compounded by sensationalist media reports, successive investigations by Trust, police and GMC but the Tribunal concluded that Mr Bramhall's actions had a significant impact on Patient A, at a time when she would already have been distressed by life-threatening liver disease and the need for two transplants.

42. The Tribunal had regard to GMP and considered that the following paragraphs 17, 47 and 65 were engaged in this case, as outlined in Mr Barton's submissions. Mr Bramhall did not have consent to mark either patient's liver, so breached paragraph 17 of GMP. He did not respect the dignity of either patient, so breached paragraph 47 of GMP. He did not ensure that his conduct justified these patient's trust in him as their surgeon and his actions had potential to undermine the public's trust in the medical profession.

43. Doctors occupy a position of privilege and trust, but Mr Bramhall had breached that trust and caused injury to two patients for no clinical purpose. In 2013, Mr Bramhall seriously breached GMP and key tenets of the medical profession.

44. It was unclear what recollection Mr Bramhall had of the February 2013 incident. However, the Tribunal is aware that memory can be impacted by stress and that he had completed this type of surgery over 300 times.
45. The Tribunal determined that it is unlikely that Mr Bramhall would place patients at unwarranted risk of harm, breach a fundamental tenet of GMP or bring the medical profession into disrepute in the future.
46. In making this finding the Tribunal took account of Mr Bramhall’s testimonials, his reflective statements, his engagement with XXX and conduct since 2013. Testimonials refer to him as a good doctor who is very well regarded.
47. In reaching this conclusion about the future, the Tribunal took account of HHJ Farrer’s sentencing remarks:

*‘When questioned about these matters, you made immediate admissions. I have read numerous letters and emails speaking of your profound regret. You have voluntarily XXX in order to better understand how and why you acted in a way so alien to your normal character. These matters enable me to accept that you are genuinely remorseful for the way in which you behaved. There can be little doubt that you genuinely remorseful for the way in which you behaved. There can be little doubt that you will never behave in a similar way in the future.’*

48. The Tribunal was satisfied that Mr Bramhall understands the seriousness of the matters which led to his conviction and his remorse is clear in his written reflections, the most recent of which was in January 2018. He genuinely regrets and has apologised for his actions.
49. The Tribunal considered that a reasonable and well-informed member of the public would expect a finding of impairment to be made in this case. The public would not have confidence in Mr Bramhall, or in the profession’s standards, if this Tribunal were to regard his actions as leaving fitness unimpaired. A finding of impairment is required in this case to reaffirm to the public and doctors the standard of conduct expected of them.
50. Mr Bramhall’s convictions were so serious that public confidence in the profession would be undermined if a finding of impaired fitness to practise were not made.

51. The Tribunal 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. Therefore, the Tribunal concluded that in the present day, Mr Bramhall's fitness to practise is impaired by reason of his conviction for assaults.

#### Determination on Sanction - 18/12/2020

1. Having determined that Mr Bramhall's fitness to practise is impaired by reason of 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.

#### Submissions

##### On behalf of the GMC

3. Mr Barton submitted that the main reason for imposing sanctions is to protect the public. He reminded the Tribunal of the statutory overarching objective, which includes to:

- a. protect and promote the health, safety and well-being of the public*
- b. promote and maintain public confidence in the medical profession*
- c. promote and maintain proper professional standards and conduct for members of the profession*

4. Mr Barton referred to relevant paragraphs of the Sanctions Guidance, including paragraph 17.

*17. Patients must be able to trust doctors with their lives and health, so doctors must make sure that their conduct justifies their patients' trust in them and the public's trust in the profession.*

5. Mr Barton accepted, on behalf of the GMC, that several mitigating factors were relevant, including Mr Bramhall's unblemished record and his many years of contribution to the

medical profession prior to these incidents, as described in numerous references and testimonials submitted on the doctor's behalf. Mr Barton also accepted that in relation to remediation and insight, the Tribunal found that Mr Bramhall does understand the seriousness of his actions and is unlikely to repeat this type of behaviour.

6. Mr Barton identified aggravating factors, including an element of repetition, with two offences six months apart. He submitted that Mr Bramhall's criminal offences involved violence against patients in a clinical setting. They were in an unconscious state and thus at their most vulnerable. His actions thus involved a grave breach of trust and an abuse of Mr Bramhall's professional position. Mr Barton described his actions as deliberate rather than reckless. One patient described a significant emotional impact.
7. Mr Barton said that, in exercising its judgment on the appropriate sanction, the Tribunal must have regard to the principle of proportionality. It should start by considering the least restrictive sanction and move upwards to avoid the risk of imposing a disproportionate sanction. Mr Barton added that the reputation of the profession as a whole is more important than the interests of any individual doctor.
8. Mr Barton submitted that, in the circumstances of this case, it is inappropriate to take no action, as it would not adequately mark the departures from GMP and the aggravating features. He also submitted that conditions would not be appropriate, given the serious, deliberate and criminal nature of Mr Bramhall's conduct.
9. Mr Barton submitted that an order of suspension would only be appropriate in a case where a doctor's conduct is serious but falls short of being fundamentally incompatible with continued registration. Such an order may be appropriate where there is an acknowledgement of fault, the doctor has insight into his behaviour and the Tribunal is satisfied that there is no risk of repetition. However, Mr Barton submitted that the conduct in Mr Bramhall's case was so serious that a suspension would not be sufficient to uphold standards and maintain public confidence in the profession.
10. Mr Barton submitted that erasure is the only appropriate sanction in this case. In support of that submission, Mr Barton referred the Tribunal to the Sanctions guidance, and in particular paragraphs 108 and 109, which identifies factors indicating why erasure is appropriate:

- 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...*
- g Offences involving violence.*

**11.** While Mr Bramhall’s actions did not cause physical safety concerns, they did have a profound emotional impact on one patient. Doctors occupy a position of privilege and trust, and patients must be able to entrust their care completely into the hands of their clinician. As Mr Bramhall breached that trust and abused his professional position, a more serious sanction than suspension is required. Mr Bramhall’s actions have undoubtedly had a detrimental effect on public trust in the medical profession.

**12.** In conclusion Mr Barton submitted that Mr Bramhall’s past conduct was a serious departure from the principles set out in GMP and that the only appropriate sanction in this case is erasure. Mr Bramhall’s conduct was borne out of professional arrogance, was not an isolated incident and his actions had had a corrosive effect on the profession. Erasure would be an adequate and proportionate sanction to reflect the seriousness of Mr Bramhall’s conduct.

On behalf of Mr Bramhall

**13.** Mr Holl-Allen QC submitted that, in response to the GMC’s position, it is wholly disproportionate and unrealistic to argue that the only appropriate sanction is one of erasure.

**14.** Mr Holl-Allen’s primary submission is that there is no need for the Tribunal to take any further action after making a finding of impairment. In support of that submission, he referred the Tribunal to the revised Sanctions Guidance (November 2020) (SG), and in particular paragraphs 68, 69 and specifically 70:

*70 Exceptional circumstances are unusual, special or uncommon, so such cases are likely to be very rare. The tribunal’s determination must fully and clearly explain:*

- a what the exceptional circumstances are*
- b why the circumstances are exceptional*
- c how the exceptional circumstances justify taking no further action.*

15. Mr Holl-Allen submitted that this case is truly exceptional on five grounds:
- i. Mr Bramhall has received a prior formal response from the GMC in the form of a Warning on the same underlying facts.
  - ii. Informed members of the public should be aware of this earlier formal response as a Warning against his name was on the GMC website for 18 months.
  - iii. Prior to his guilty pleas to common assault, GMC case examiners considered that there was no prospect of a finding of Impairment in connection with his actions in 2013 and did not refer Mr Bramhall to a Medical Practitioners Tribunal.
  - iv. Three years have elapsed since convictions for actions seven years ago.
  - v. At all times Mr Bramhall has admitted facts amounting to assault and he then pleaded guilty once the CPS formulated charges of common assault.
16. Mr Holl-Allen argued on behalf of Mr Bramhall that this case was so exceptional that no further action was required.
17. Mr Holl-Allen invited the Tribunal to consider several mitigating factors. In particular he referred to a wealth of evidence as to Mr Bramhall's character and previous history. Numerous positive testimonials attested to his dedication to patients and the contribution and value he has brought to the NHS over many years. Mr Holl-Allen submitted that Mr Bramhall had made significant efforts to address and remediate his behaviour and has demonstrated clear insight and remorse. Mr Bramhall has apologised for his behaviour and has not sought anything other than to take full responsibility for his actions, without any trace of self-pity and has expressed a willingness at all times to apologise to the patient.
18. Mr Holl-Allen referred to the Crown Court Judge's sentencing remarks. HH Judge Farrer said of Mr Bramhall that it was "beyond argument that you were and are a talented surgeon" and had "undoubtedly saved numerous lives and improved the quality of life for many individuals".
19. Furthermore Mr Holl-Allen invited the Tribunal to consider paragraph 25(e) of the SG that a lapse of time since the incident occurred can be a mitigating factor for the purposes of sanction. Seven years have elapsed since the offences in 2013 without any repetition, a factor to which the Tribunal should attach significant weight.
20. Mr Holl-Allen's secondary submission was that, if the Tribunal deems a

suspension to be necessary, then it would be sufficient for the Tribunal to respond with a short period of suspension without the need for a review.

### Relevant Legal Principles

21. The LQC outlined the approach to be taken by the Tribunal. At the Sanction stage of proceedings there is no burden or standard of proof and the decision on sanction is a matter for the Tribunal's judgment alone.
22. Good Medical Practice February 2018 sets out the principles and values on which good practice is founded and the standards which society and the medical profession expects of its registrants throughout their careers, irrespective of their area of practice. Where a conviction is based on grave facts or there has been a serious departure from professional standards, erasure from the register may be the only means of protecting patients and of maintaining public confidence in the profession. If possible, a balance should be struck between the individual interest and the public interest, but this cannot always be achieved.
23. *Rachid and Fatnani v GMC* 2007 1 WLR 1915 states that the Tribunal is centrally concerned with the reputation or standing of the profession, rather than the punishment of the doctor, despite the fact that sanctions may have a punitive effect. *Bijl v GMC* 2001 UKPC 42 stated that a tribunal should not be obliged to erase an otherwise competent and useful doctor who presents no danger to the public in order to satisfy public demand for blame and punishment.
24. The aim of sanctions guidance is to promote consistency and transparency of decisions, as was confirmed in *CRHP v GMC* and *Leeper* 2004 EWHC 319. It helps to achieve a consistent approach to the imposition of penalties where serious professional misconduct is established. The Tribunal must have regard to this, although each case will depend on its own facts and guidance must not be regarded as laying down a rigid tariff.
25. Departure from the guidance must be explained: *PSA v HCPC* and *Doree* 2017 EWHC 319. Relevant jurisprudence does not support the contention that a tribunal must adhere to the guidance. It should have proper regard to and apply it, but if the Tribunal has sound reasons for departing from SG it must state those reasons clearly in its decision. The SG is intended to be flexible and is not comprehensive or specific in describing all circumstances where a particular

order is a suitable sanction.

26. Mitigation can affect the type of sanction, as well as the length of a relevant order. In *Wisniewska v NMC* 2016 EWHC 2672 it was said that, where there are only two options for sanction such as striking off or suspension, it is critical that the available mitigation is applied when evaluating the proportionality of a suspension as well as when considering erasure. Although mitigation can reduce the length of suspension, it could also pull a case back from the brink of erasure and mean that a suspension is proportionate, but while there might be a public interest in enabling a doctor's return to safe practice, the wider public interest remains a primary concern.

### The Tribunal's Determination on Sanction

27. The Tribunal has already concluded that a finding of impairment is 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. The Tribunal considered the mitigating and aggravating factors in this case.

#### Aggravating

28. Several aggravating factors were identified by the Tribunal. Mr Bramhall's behaviour amounted to criminal offences. Each assault was committed against a patient who was unconscious in the operating theatre. On each occasion the context was clinical. Mr Bramhall's actions each constituted a significant breach of trust and were significant departures from Good Medical Practice, breaching key tenets of the medical profession.
29. Although his behaviour was not persistent, it was repeated on one occasion, there being two offences in total. The Tribunal gave particular weight to the impact on public confidence in the medical profession of such grave breaches of professional conduct and abuse of trust.

#### Mitigation

30. Factors in mitigation were also taken into account. The Tribunal had numerous testimonials to Mr Bramhall's dedication to patients and exceptional clinical skills. He had an unblemished professional record for many years before these actions.

31. His actions were seen by colleagues as out of character at a time of work-related stress. Mr Bramhall has taken responsibility for his actions, pleaded guilty to common assault at the earliest opportunity, demonstrated genuine remorse and sought to apologise.
32. Mr Bramhall had developed significant insight into the reasons for his offences and completed remediation. Seven years have elapsed, during which time he has not reoffended. He has provided numerous testimonials indicating that he treated patients in an exemplary manner. The Tribunal took account of his contribution to public health and well-being as a highly skilled surgeon. His full acceptance of wrong-doing is also to his credit.
33. Having identified aggravating and mitigating factors the Tribunal considered options, including taking no action. Sanctions were considered, starting with the least restrictive, taking account of the current SG.
34. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own judgement.
35. In reaching its decision, the Tribunal has taken account of the SG and of the overarching objective.
36. Throughout its deliberations, the Tribunal has taken account of the principle of proportionality, balancing Mr Bramhall's interests with the wider 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 a sanction may have a punitive effect.
37. The Tribunal took account of Mr Bramhall's reflections on his actions in 2013 as well as testimonials from colleagues as to his contribution to medicine.

Mr Bramhall wrote:

'The act of marking the liver with my initials was a grave error of judgement from somebody who should know better. The consequences for me have been profound, professionally and personally.

This action has seen everything I have worked for crumble away; I resigned my job, I have been investigated by my governing body, been vilified in the national

press and reported to the police but most of all I have let the patient, my family, the profession and myself down. I have nobody to blame but myself.’

38. Testimonials from a range of more recent colleagues paint a consistent picture of a highly skilled surgeon who cares for his patients conscientiously and provides excellent support to his colleagues.

39. An anaesthetic colleague Dr C provided a testimonial which said:

‘He is undoubtedly one of the most competent surgeons I have worked with .... He has a polite and caring manner with both staff and patients in the pre-operative period, is good-humoured at team briefings and respectful if anaesthesia takes longer than predicted. In theatre he clearly demonstrates his technical ability when required, but equally as often stands back and allows his trainees to develop. In more challenging situations he is calm and levelheaded, and maintains communication with his anaesthetist at all times.’

40. In coming to its decision as to the appropriate sanction, if any, to impose, the Tribunal took account of all evidence provided by both parties, including Mr Bramhall’s statements, references provided on his behalf, and the sentencing remarks of HHJ Farrer referred to above. The Tribunal first considered whether to conclude the case by taking no action.

#### **No action**

41. No action can be appropriate in exceptional circumstances, but such instances are rare following a finding of impairment. Mr Bramhall was convicted of deliberate criminal acts against two patients who were unconscious.

42. The Tribunal took account of the fact that the GMC imposed a Warning in February 2017 arising from the same actions, but before Mr Bramhall was charged with and convicted of these assaults. This was in the public domain for 18 months as it was visible on the GMC website until August 2018.

43. Mr Bramhall has never sought to deny his behaviour and made admissions to common assault as soon as the Crown Prosecution Service preferred this charge.

44. Although seven years have elapsed since the offences with no evidence of repetition, the Tribunal must take account of the need to uphold standards and maintain public confidence in the medical profession. The Tribunal did not consider that there were exceptional circumstances in this case to justify taking no action. Public confidence in the medical profession requires a formal sanction to be imposed.

### Conditions

45. Conditions are most appropriate in cases involving a doctor's health, language skills, performance, or where there is evidence of shortcomings in a specific area or areas of practice. Conditions would not be appropriate or feasible in this case.

### Suspension

46. The Tribunal considered factors in the SG relevant to Suspension including the need in this case to mark the seriousness of his offences to Mr Bramhall, other doctors and the public. Mr Bramhall has acknowledged fault and the Tribunal is satisfied that his behaviour is unlikely to be repeated. There is no evidence of repetition since 2013 and the level of insight and remorse demonstrated indicates a low risk of future breaches of GMP.
47. Mr Holl-Allen QC submitted that Mr Bramhall's actions have led to a finding of impairment on a declaratory basis, but not for public protection. It was said that Mr Bramhall needs no more time to reflect or remediate.
48. However, his offences represent a serious breach of GMP and any sanction lower than suspension would be insufficient to maintain public confidence in the medical profession. The Tribunal focused on the need to maintain public confidence in the profession and to uphold standards. It has determined to impose a five month Suspension Order, with a Review shortly before expiry.
49. The Tribunal determined that Mr Bramhall's assault convictions in 2013 are not fundamentally incompatible with continued registration, taking account of all the circumstances, guidance and relevant principles. It thus did not consider erasure to be an appropriate or proportionate response.

### Review

50. Mr Bramhall is invited to consider providing a statement to the reviewing Tribunal to confirm that he is fit to resume unrestricted practice at that time.

#### Determination on Immediate Order - 18/12/2020

1. Having determined that Mr Bramhall should be suspended from the medical register for a period of 5 months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Mr Bramhall's registration should be subject to an immediate order.

#### Submissions

##### On behalf of the GMC

2. Mr Barton drew the Tribunal's attention to paragraphs 172 and 173 of the Sanctions Guidance ('SG'):

*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.*

3. Mr Barton submitted that Mr Bramhall does not currently hold a license to practise medicine, and so there is no pressing need for an immediate order to be imposed in relation to paragraph 172 of SG. However, given the nature of this case, paragraph 173 of SG was engaged. On this basis, an immediate order should be imposed.
4. XXX

##### On behalf of Mr Bramhall

5. Mr Holl-Allen QC submitted that this is not a case where it is necessary or appropriate for an immediate order to be made. He said that the Tribunal had been clear in its determinations that issues considered in this case do not give rise to concerns about patient safety. He submitted that the Tribunal has based its decision on the need to uphold professional conduct and maintain confidence in the medical profession.
6. Mr Holl-Allen QC submitted that paragraph 172 and 173 of SG, as outlined in Mr Barton submissions, reflect a broad proposition that immediate orders are most appropriate to deal with concerns about patient safety. He said that this Tribunal had concluded that Mr Bramhall does not pose a risk to patients, submitting that this is a strong reason not to impose an immediate order. Mr Holl-Allen QC also said that Mr Bramhall had ceased employment and relinquished his license to practise. Thus there was no prospect of him practising medicine within the 28 day appeal period an immediate order would cover.
7. XXX.

#### **The Tribunal's Determination**

8. The Tribunal considered paragraphs 172 and 173 of the SG, in the context of submissions by both counsel. Neither conviction for assault recorded against Mr Bramhall raised any current issues in relation to patient safety.
9. In relation to paragraph 173 of SG, the Tribunal considered that Mr Bramhall had abused his position of trust, but this was seven years ago. Since that time, Mr Bramhall has taken steps to remediate and developed considerable insight into his actions. The Tribunal did not consider that the public interest required an immediate order to be made.
10. This means that Mr Bramhall's registration will be suspended 28 days from when notice of this decision is deemed to have been served upon him, unless he lodges an appeal.
11. The interim order currently imposed on Mr Bramhall's registration will remain in place.

**Confirmed**

**Date** 18 December 2020

Ms Christina Moller, Chair