Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 18/03/2019 - 22/03/2019
Medical Practitioner’s name: Dr Sivaguru SALAKIANATHAN

GMC reference number: 4338332
Primary medical qualification: MB BS 1975 University of Colombo
Type of case Outcome on impairment
New - Misconduct Impaired

Summary of outcome
Suspension, 4 months.
Review hearing directed
Immediate order imposed

Tribunal:

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<td>Legally Qualified Chair</td>
<td>Mrs Nessa Sharkett</td>
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<td>Lay Tribunal Member:</td>
<td>Mrs Debbie Hill</td>
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<td>Medical Tribunal Member:</td>
<td>Dr Subir Datta</td>
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<td>Tribunal Clerk:</td>
<td>Mr David Salad</td>
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Attendance and Representation:

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<td>Medical Practitioner:</td>
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<td>Medical Practitioner’s Representative:</td>
<td>Mr Marios Lambis, Counsel, instructed by RadcliffesLeBrasseur</td>
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<td>GMC Representative:</td>
<td>Mr Gavin McBride, Counsel</td>
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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.
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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 - 20/03/2019

Background

1. Dr Salakianathan gained his Primary Medical Qualification at the Colombo Medical Faculty of the University of Ceylon in 1975. Dr Salakianathan worked in Sri Lanka, specialising in General Surgery, until 1994, at which point he moved to the UK. Prior to the events which led to the Allegation, Dr Salakianathan worked in posts in Sussex and Kent as a registrar, before commencing work with West Middlesex University Hospital ('the Hospital') part of the Chelsea and Westminster Hospital NHS Foundation Trust ('the Trust') from March 1998. Dr Salakianathan worked at the Hospital as a Staff Grade and an Associate Specialist, before achieving a role as a Locum Consultant General Surgeon in 2005. This was the position he held in 2017 at the time of the events leading to the Allegation.

2. The Allegation that has led to Dr Salakianathan’s hearing is related to concerns raised by Miss A, XXX at the Hospital. On the morning of 12 December 2017, Miss A’s line manager asked her to go and work with Dr Salakianathan on a task related to the doctors’ rota. Miss A and Dr Salakianathan were alone in Dr Salakianathan’s office, sitting together at his desk, jointly working with spreadsheets on his computer. Miss A alleged that, whilst they were working, Dr Salakianathan made a number of comments to her about how soft her skin was, and her perfume whilst touching her hands, and subsequently touched her ear and lips, kissed her hands and neck, and tried to kiss her mouth.

3. Immediately after leaving Dr Salakianathan’s office, Miss A reported her concerns to her line manager and the allegations were then escalated to senior staff the same day. Following discussions with senior Trust staff members, and an admission that he had told Miss A her hands were beautiful and kissed her hands and neck in what he described as ‘a moment of madness’ on his part, Dr Salakianathan was excluded from the Trust on 13 December 2017 pending an investigation. The Trust’s Associate Medical Director informed the GMC of the concerns on 18 December 2017.

4. Miss A was interviewed by a Case Investigator on 22 January 2018 as part of the Trust’s investigation. During the interview, Miss A raised a further allegation that in or around July 2017 Dr Salakianathan had examined her after she had told him that she
was unwell. She stated that during the examination, Dr Salakianathan had inappropriately lifted her leggings and knickers and looked at her pubic area. This allegation was later included in the terms of the Trust's investigation. Further, Miss A alleged that there had also been an instance (later alleged to have taken place in or around November 2017) during which she had passed Dr Salakianathan in a corridor and he had stopped to tell her that she looked beautiful.

5. A disciplinary hearing took place on 12 March 2018 before a disciplinary hearing panel (‘the Trust Panel’). The Trust Panel determined that there was insufficient evidence to prove the allegations relating to Dr Salakianathan’s examination of Miss A in or around July 2017. However, the Trust Panel found that there was clear evidence to support the allegation of a sexual assault on Miss A by Dr Salakianathan on 12 December 2017. The Trust Panel determined to summarily dismiss Dr Salakianathan on the grounds of gross misconduct.

6. The GMC was kept informed of the outcome of the Trust’s investigation and the decision of the Trust Panel, leading to its own investigation and a referral to a Medical Practitioners Tribunal hearing.

The Allegation and the Doctor’s Response

7. The Allegation made against Dr Salakianathan is as follows:

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

1. In or around July 2017 during an examination of your colleague Miss A’s stomach you inappropriately:
   a. lifted her leggings and knickers; To be determined
   b. looked at her pubic area. To be determined

2. In or around November 2017 you told Miss A that she was beautiful. Admitted and found proved

3. On 12 December 2017 when alone in your office with Miss A you:
   a. rubbed your fingers on Miss A’s hand lightly with your fingertips; To be determined
   b. said ‘you have really soft skin’, or words to that effect; To be determined
   c. said she ‘smelt nice’ and ‘had nice perfume’, or words to that effect; To be determined
d. told Miss A her hands were beautiful; **Admitted and found proved**

e. kissed Miss A’s hands; **Admitted and found proved**
f. asked Miss A what she could ‘do for you’, or words to that effect; **Admitted and found proved**
g. asked Miss A ‘can I kiss your neck?’ or words to that effect; **Admitted and found proved**
h. asked if you could kiss Miss A’s hands; **Admitted and found proved**
i. pulled Miss A’s jacket away from her neck/shoulder area; **To be determined**
j. touched Miss A’s neck; **Admitted and found proved**
k. kissed Miss A’s neck; **Admitted and found proved**
l. attempted to kiss Miss A’s lips; **To be determined**
m. smelt Miss A’s hair; **To be determined**
n. touched Miss A’s ear with your thumb; **To be determined**
o. rubbed your index finger over Miss A’s lips. **To be determined**

4. Your actions as described at paragraphs 1, 2 and 3 were sexually motivated.

**Admitted and found proved with regard to sub paragraphs 3d, e, f, g, h, j and k.**

**To be determined in relation to paragraphs 1, 2 and sub paragraphs 3a, b, c, i, l, m, n and o.**

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**

8. At the outset of these proceedings, through his counsel, Mr Lambis, Dr Salakianathan 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
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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

9. In light of Dr Salakianathan’s response to the Allegation made against him, the Tribunal is required to determine whether, during an examination of Miss A’s stomach in or around July 2017, Dr Salakianathan inappropriately lifted Miss A’s leggings and knickers and looked at her pubic area. Further it must determine whether, on 12 December 2017, when alone in his office with Miss A, Dr Salakianathan acted as alleged in sub paragraphs 3a, b, c, i, l, m, n and o. In addition, the Tribunal must determine whether or not any of Dr Salakianathan’s actions, beyond those to which he has already admitted in paragraph 3, were sexually motivated.

Factual Witness Evidence

10. The Tribunal received evidence on behalf of the GMC from the following witnesses:

- Miss A, at the time of the events XXX at the Hospital, in person;
- Mr B, General Manager for Surgery at the Hospital, in person.

11. The Tribunal also received evidence on behalf of the GMC in the form of written witness statements from the following witnesses:

- Ms C, Service Manager for General Surgery at the Hospital;
- Mr E, Medical Director for the Planned Care Division at the Hospital.

12. The witnesses were not called to give oral evidence as the content of their written statements has been agreed between the parties.

13. Dr Salakianathan provided his own witness statement and also gave oral evidence at the hearing.

Documentary Evidence

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

- documents relating to the Trust’s investigation into the concerns raised by Miss A including:
  - Miss A’s initial written account of the events of 12 December 2017 provided as an attachment to an email dated 12 December 2017;
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- Dr Salakianathan’s initial written account of the events of 12 December 2017 provided as an attachment to an email dated 12 December 2017;
- notes of meetings held on 22 January 2018 by the Trust’s investigating team with Miss A and Dr Salakianathan;
- Trust investigation report dated 20 February 2018;
- documentation relating to the disciplinary hearing of 12 March 2018 and the decision of the Trust Panel;

- correspondence between the Trust and the GMC;
- Dr Salakianathan’s CV.

The Tribunal’s Approach

15. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Salakianathan 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.

The Tribunal’s Analysis of the Evidence and Findings

16. 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 1

17. The Tribunal noted that sub paragraphs 1a and 1b allege that in or around July 2017, during an examination of his colleague Miss A’s stomach Dr Salakianathan inappropriately lifted her leggings and knickers and looked at her pubic area.

18. In her evidence Miss A explained that she had been experiencing sharp pain in her abdomen over the previous month. She had not sought medical advice from her GP as she had moved area and had not yet registered with a new GP. With the encouragement of a colleague she intended to ask Dr D, one of the other consultants at the Hospital, for his opinion and went to the clinic to find him. When she learned that he was not there she explained her problem to Dr Salakianathan and it was agreed between them that he would carry out a physical examination. There is some dispute about whether a chaperone was offered to Miss A, but it is clear that the examination took place in a room in which the door was closed and no one else was in attendance.

19. Miss A said that Dr Salakianathan had felt around the area of her lower abdomen (she described this as being ‘roughly’ in the area of her ovaries) and told her that it felt tender. Miss A set out that she had been wearing leggings and a dress.
and so she had lifted her dress so Dr Salakianathan could see the area of her stomach, but left her leggings in place. Miss A said that it was at this point that Dr Salakianathan lifted her knickers and leggings, pulling them up away from her body, and looked at her pubic area, making her feel uncomfortable. It is her evidence that having done this Dr Salakianathan did not place his hands on the exposed area.

20. The Tribunal noted that Dr Salakianathan’s evidence was that he had examined Miss A’s abdomen from ‘...the xiphisternum to the pubic bone, as is standard practice,’ and had not looked at her pubic area. He stated that he had also asked Miss A to lie prone so that he could check her loins and spine; a matter disputed by Miss A. The Tribunal accepted Dr Salakianathan’s oral evidence that leggings usually come up to a patient’s belly button and in order that an examination can take place, it would be necessary to lower the clothing. The Tribunal accepted this evidence because this is an item of clothing similar to trousers which commonly come up to the waist. In addition Dr Salakianathan is an experienced surgeon who would be familiar with the description of particular items of clothing commonly worn by females at this time. It is Miss A’s evidence that Dr Salakianathan examined her abdomen and the area around her ovaries, therefore the Tribunal found it is more likely than not that Dr Salakianathan did lift Miss A’s leggings and knickers in order to facilitate that examination. It is also more likely than not, given the area of the abdomen referred to by Miss A, that in lifting Miss A’s leggings and knickers at least part of her pubic area would have been exposed and Dr Salakianathan would have had sight of the same.

21. The Tribunal determined that, on the balance of probabilities, in the course of examining Miss A’s abdomen and whilst adjusting her leggings Dr Salakianathan lifted both Miss A’s leggings and knickers away from her body as he pulled them down. As he was doing this to examine Miss A as far as her pubic bone, the Tribunal was satisfied that in carrying out this action, he must have looked at her pubic area.

22. Having taken the decision to conduct an examination of Miss A’s stomach in the circumstances in which it took place i.e. on a colleague in a locked room and in the absence of a chaperone, Dr Salakianathan’s actions in the moving of her clothing as described at sub paragraph 1a and the visualisation of her pubic area as described at sub paragraph 1b, were not inappropriate given the clinical need to expose the area to conduct the examination. It therefore found paragraph 1 not proved in full.

Paragraph 3

23. The Tribunal noted that paragraph 3 alleges that Dr Salakianathan acted in a number of ways towards Miss A whilst he was alone in his office with her on 12 December 2017. It is agreed that Miss A and Dr Salakianathan were sitting side by side and closely together at his desk, working with spreadsheets on his computer.
24. Miss A stated that whilst she was controlling the computer mouse with her hand to make changes to a spreadsheet, Dr Salakianathan rubbed his fingers on her hand lightly with his fingertips and then said she had ‘really soft skin’ that she smelt nice and that she ‘had nice perfume’. The Tribunal placed weight on the consistency of Miss A’s evidence on this point. The touching of her hand was present from her first brief written account produced on 12 December 2017, whilst the allegation that Dr Salakianathan had made the comments about her skin and how she smelt were present from the more detailed account she gave to the Trust investigators on 22 January 2018, six weeks after the incident. By contrast Dr Salakianathan’s initial statement was brief and contained little detail.

25. Further, the Tribunal was of the view that Dr Salakianathan’s admitted actions that he had told her that her hands were beautiful and that he kissed her hands supported the evidence that he rubbed his fingers on her hand lightly with his fingertips and then said she had ‘really soft skin’. The Tribunal found that on the balance of probabilities it was more likely than not that he had carried out those actions and made those comments.

26. In addition, the Tribunal noted that, in his statement to the Trust Panel, Dr Salakianathan set out that he ‘…went on to kiss [Miss A’s] neck with [his] nose.’ The Tribunal considered that this action demonstrated that Dr Salakianathan was focussed on Miss A’s smell, specifically her perfume, providing additional weight to her evidence that he made comments about her smelling nice and about her perfume, and undermining his own denials that he made these remarks.

27. Having considered all the evidence in the round, and having had regard to the fact that some of his actions during that incident were sexually motivated, the Tribunal considered that Dr Salakianathan may be unable to fully recollect everything that happened that day. In the circumstances, the Tribunal preferred Miss A’s evidence over that of Dr Salakianathan and found sub paragraphs 3a, b and c proved on the balance of probabilities.

28. Miss A stated that, after asking if he could kiss her neck, Dr Salakianathan then moved her jacket away from her neck/shoulder area to expose her neck. In her initial statement, she set out that Dr Salakianathan had acted ‘forcefully’ in doing this to gain access to her neck. In her oral evidence, Miss A stated that she remembered that she was wearing a jacket as it had been a cold winter morning and she had still been wearing a jacket when she had gone to meet Dr Salakianathan as she had been sent to complete the task involving the rota by her manager as soon as she had arrived at work. However, there is inconsistency in the timing of when the meeting in Dr Salakianathan’s office actually occurred.
29. Although Miss A stated that the meeting occurred immediately after she arrived at work and lasted approximately 10-15 minutes, there was inconsistency in her statements on this matter. Her initial written statement of 12 December 2017 sets out that she called Dr Salakianathan at 11:22 and, after he had asked her to come and see him in 10 minutes, arriving in his office at 11:30. However Miss A’s GMC statement, completed in June 2018, set out that her line manager approached her immediately as she entered work to go and speak to Dr Salakianathan, which was why she was still wearing her jacket. Dr Salakianathan stated that the meeting occurred at approximately 10:30am and that Miss A was not wearing a jacket, so he could not have moved it away from her neck/shoulder area.

30. In light of the fact that there is inconsistency in Miss A’s evidence as to when this meeting took place, the Tribunal was not satisfied that Miss A’s reasons as to why she was sure she was still wearing her jacket could be relied on. The Tribunal considered that the GMC had not discharged the burden of proving that it was more likely than not that Dr Salakianathan acted as alleged in pulling Miss A’s jacket away from her neck/shoulder area. It therefore found sub paragraph 3i not proved.

Sub paragraph 3l

31. Miss A set out that, after Dr Salakianathan touched and kissed her neck, actions to which he has admitted, he attempted to kiss her lips. Dr Salakianathan denies that he tried to do this. The Tribunal gave weight to the fact that there was inconsistency between Miss A’s initial written statement in which she wrote that Dr Salakianathan attempted to kiss her lips, and the evidence of Mr B, General Manager for Surgery at the Hospital, setting out Miss A told him almost immediately after the incident, which was that Dr Salakianathan had tried to kiss her cheek. Further, the Tribunal found that as Miss A and Dr Salakianathan were sitting side by side at the desk, Miss A would have to have turned her face towards Dr Salakianathan for him to have attempted to kiss her on the lips. The only time that Miss A described turning to face Dr Salakianathan in this way was in her oral evidence was when she said that she had ‘tapped’ or gently pushed Dr Salakianathan’s shoulder to move him away from her, and the Tribunal considered that this action would have happened quickly, meaning that it was improbable that Dr Salakianathan would have been able to attempt to kiss her on the lips whilst it was happening.

32. Taking into the account the inconsistency between the accounts of Miss A and Mr B, and the seated positions of Miss A and Dr Salakianathan in the office, the Tribunal considered that the GMC had not discharged the burden of proving that it was more likely than not that Dr Salakianathan had attempted to kiss Miss A on the lips. It therefore found sub paragraph 3l not proved.

Sub paragraph 3m
33. Miss A set out that Dr Salakianathan had smelt her hair. As set out above, in his statement to the Trust Panel, Dr Salakianathan set out that he ‘...went on to kiss [Miss A’s] neck with [his] nose.’ The Tribunal was satisfied, taking into account this description and the attention Dr Salakianathan had paid to the perfume and smell of Miss A, that it was more likely than not that whilst kissing her neck, he also smelt her hair. It therefore found this sub paragraph proved.

Sub paragraphs 3n and o

34. Miss A stated that, after Dr Salakianathan had touched and kissed her neck and smelt her hair, he had touched her left ear with his thumb going down the back of her earlobe and rubbed his index finger on her lips. Dr Salakianathan’s account was that he had not done either of these things, although he had moved Miss A’s hair away from her neck. The Tribunal considered that both of these actions suggested deliberate, prolonged contact for sexual gratification. Taking into account the side by side seating arrangements confirmed by both parties and the description of the events given by Miss A, for the same reasons as set out in its consideration sub paragraph 3l, the Tribunal was not satisfied that Dr Salakianathan would have had time to rub his index finger over Miss A’s lips as the only time she faced him was when she ‘tapped’ his shoulder to move him away from her. Further, the Tribunal noted that Miss A’s initial written account was inconsistent with her GMC witness statement as it set out that Dr Salakianathan touched and rubbed both of her ears rather than just one and made no mention of such a touch being made with his thumb.

35. Whilst the Tribunal accepts that in moving Miss A’s hair, Dr Salakianathan’s hand may have made contact with her ear, it considered that the GMC had not discharged the burden of proving that it was more likely than not that Dr Salakianathan had touched Miss A’s ear with his thumb as described, or rubbed his index finger over her lips. It therefore found sub paragraphs 3n and o not proved.

Paragraph 4

36. The Tribunal noted that paragraph 4 alleges that Dr Salakianathan’s actions towards Miss A as set out at paragraphs 1-3 were sexually motivated.

Sexual motivation - paragraph 1

37. In the light of the Tribunal’s determination that paragraph 1 was not proved in full, it follows that paragraph 4 when taken in relation to paragraph 1 is also not proved.

Sexual motivation – paragraph 2

38. The Tribunal did not accept Mr Lambis’s submission that, as Miss A had stated that she did not think the comment was sexual as she was ‘the same age as his
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children...’ that it should not find this paragraph 4 proved in relation to paragraph 2. Its judgment is to Dr Salakianathan’s motivation for making the comment rather than the way in which it was received by Miss A. His motivation may not have been evident to Miss A, but it does not necessarily follow that his actions were not sexually motivated – the Tribunal considered that the context in which the comment was made was also important to its deliberations on this paragraph.

39. Mr Salakianathan has admitted that, in or around November 2017, he told Miss A that she was beautiful. Miss A alleged that this occurred when she had passed Dr Salakianathan in a corridor and he had stopped to tell her that she looked beautiful, making her feel uncomfortable. Dr Salakianathan’s evidence was that this comment was part of ‘banter’ that occurred not just between he and Miss A, but amongst other staff too. He told the Tribunal that he made comments like this to other female staff members as part of this ‘banter,’ admitting that whilst such comments may have been unwise, they were not sexually motivated. However, the Tribunal noted the agreed evidence of Ms C, Miss A’s line manager that she had never experienced such comments in all the years she had worked with Dr Salakianathan. Further, Miss A’s evidence was that her previous line manager had teased her about the specific attention and comments about her looks and being single that she had received from Dr Salakianathan, suggesting that Dr Salakianathan had developed a liking for her. The Tribunal considered that this was evidence that Dr Salakianathan had singled out Miss A for such comments. Indeed, Miss A stated that, by this point, Dr Salakianathan appeared to have ‘taken a bit of a liking’ to her. In this context, the Tribunal considered that it was more likely than not that this comment about Miss A’s attractiveness was sexually motivated and were made as Dr Salakianathan wished to encourage the development of a relationship between he and Miss A based on his sexual attraction for her.

40. The Tribunal therefore found paragraph 4 proved in relation to paragraph 2.

Sexual motivation – paragraph 3

41. The Tribunal noted that Dr Salakianathan has accepted that those actions to which he had admitted in this paragraph from the outset of the hearing were sexually motivated. The Tribunal considered that all of the actions within paragraph 3 that were found proved constituted a course of conduct all occurring during the same incident and which was sexually motivated on the part of Dr Salakianathan. It was of the view that Dr Salakianathan was sexually attracted to Miss A and his comments to her on 12 December 2017 about her skin, smell and perfume as well as his rubbing of her fingers and smelling of her hair were all motivated by this attraction.

42. In these circumstances, the Tribunal found paragraph 4 proved in relation to sub paragraphs 3a, b, c and m.
43. In the light of the Tribunal’s determination that sub paragraphs 3i, l, n and o were not proved, it follows that paragraph 4 when seen in relation to these sub paragraphs is also not proved.

The Tribunal’s Overall Determination on the Facts

44. The Tribunal has determined the facts as follows:

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

1. In or around July 2017 during an examination of your colleague Miss A’s stomach you inappropriately:
   a. lifted her leggings and knickers; **Found not proved**
   b. looked at her pubic area. **Found not proved**

2. In or around November 2017 you told Miss A that she was beautiful. **Admitted and found proved**

3. On 12 December 2017 when alone in your office with Miss A you:
   a. rubbed your fingers on Miss A's hand lightly with your fingertips; **Found proved**
   b. said ‘you have really soft skin’, or words to that effect; **Found proved**
   c. said she ‘smelt nice’ and ‘had nice perfume’, or words to that effect; **Found proved**
   d. told Miss A her hands were beautiful; **Admitted and found proved**
   e. kissed Miss A’s hands; **Admitted and found proved**
   f. asked Miss A what she could ‘do for you’, or words to that effect; **Admitted and found proved**
   g. asked Miss A ‘can I kiss your neck?’ or words to that effect; **Admitted and found proved**
   h. asked if you could kiss Miss A’s hands; **Admitted and found proved**
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i. pulled Miss A’s jacket away from her neck/ shoulder area;  
**Found not proved**

j. touched Miss A’s neck; **Admitted and found proved**

k. kissed Miss A’s neck; **Admitted and found proved**

l. attempted to kiss Miss A’s lips; **Found not proved**

m. smelt Miss A’s hair; **Found proved**

n. touched Miss A’s ear with your thumb; **Found not proved**

o. rubbed your index finger over Miss A’s lips. **Found not proved**

4. Your actions as described at paragraphs 1, 2 and 3 were sexually motivated.

**Admitted and found proved with regard to sub paragraphs 3d, e, f, g, h, j and k.**

**Found proved with regard to paragraph 2 and sub paragraphs 3a, b, c and m**

**Found not proved with regard to sub paragraphs 1a and b, and 3i, l, n and o.**

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 - 21/03/2019**

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

**The Evidence**

2. 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 and has read further evidence adduced on behalf of Dr Salakianathan as follows:

- a reflective note written by Dr Salakianathan;
- Dr Salakianathan’s insight, reflection and development plan;
- Continuing Professional Development (‘CPD’) certificates;
- appraisal forms;
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- 360 degree feedback report;
- testimonials from colleagues.

Submissions

3. On behalf of the GMC, Mr McBride, Counsel, submitted that Dr Salakianathan’s fitness to practise is impaired by reason of misconduct. He stated that Dr Salakianathan as a senior consultant within the Hospital, had taken advantage of Miss A, a junior female administration colleague, doing so with sexual motivation and without explicit or implicit consent from Miss A. He said that Dr Salakianathan had treated Miss A unfairly and without respect. He submitted that Dr Salakianathan’s behaviour was a breach of professional boundaries which was unacceptable in any context, an abuse of authority and a serious matter. He reminded the Tribunal that the Trust made a finding of gross misconduct against Dr Salakianathan, and although this was not determinative for the purposes of the Tribunal, submitted that it should find that Dr Salakianathan’s actions constituted misconduct.

4. With regard to impairment, Mr McBride submitted that it was right for him to acknowledge that no clinical issues were present and that, considering the material adduced on Dr Salakianathan’s behalf, it was evident that he had reflected and undertaken remediation via various CPD courses. He said that it would appear that the risk of repetition was negligible if not nil. He drew the Tribunal’s attention to Dr Salakianathan’s oral evidence, in particular his answering a question as to whether Miss A had given her consent for him to act with ‘not really’ and had then been unable to explain his answer adequately thereafter. He said it would be right for the Tribunal to conclude that Dr Salakianathan’s insight is not full or adequate with regard to his accountability for the incident. He invited the Tribunal to take into account the public interest and public confidence in the profession, submitting that that this was a serious matter and it would be contrary to the public interest for there to be a finding other than that Dr Salakianathan’s fitness to practise is currently impaired.

5. On behalf of Dr Salakianathan, Mr Lambis, Counsel, stated that he did not wish to address the Tribunal on the matter of misconduct, accepting that Dr Salakianathan made a very serious error of judgment. He told the Tribunal that he did not mount a submission that Dr Salakianathan’s fitness to practise is not impaired.

6. He referred the Tribunal to two authorities which he submitted were relevant to this case whilst acknowledging that one was of persuasive authority only being a decision of the Court of Session in Scotland: Professional Standards Authority for Health and Social Care v Conduct and Competence Committee of the Nursing and Midwifery Council [2017] CSIH 29 (‘the Scottish case’). The other authority referred to was Zygmunt v General Medical Council [2008] EWHC 2643 (Admin) (‘Zygmunt’).
7. Mr Lambis reminded the Tribunal that Mr McBride had acknowledged that the risk of repetition in Dr Salakianathan’s case was negligible if not nil, and referred the Tribunal to the volume of material attesting to Dr Salakianathan’s good character and clinical skills, marking out his action as an isolated occurrence in an otherwise unblemished career. He submitted that the Scottish case and Zygmunt support the principle that a finding of current impaired fitness to practise does not necessarily follow in every case where there has been a finding of serious misconduct.

8. He submitted that Dr Salakianathan had reflected and completed remediation activities and had shown humility both before the Trust and his regulator. He drew the Tribunal’s attention to testimonials written by colleagues adduced on Dr Salakianathan’s behalf, submitting that the sheer breadth and scope of these documents should speak for themselves. Mr Lambis said that this incident should not be the ‘snapshot’ by which Dr Salakianathan should be remembered when seen in the context of an otherwise very good and well respected career spent committed to the National Health Service.

The Relevant Legal Principles

9. 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.

10. 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.

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

The Tribunal’s Determination on Impairment

Misconduct

12. The Tribunal first considered whether Dr Salakianathan’s actions amount to misconduct. Misconduct can be found in circumstances where there have been serious departures from expected standards of conduct and behaviour, which can be identified by reference to Good Medical Practice (2013 Edition) (‘GMP’).
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13. With regard to Dr Salakianathan’s conduct, the Tribunal identified that the following paragraphs of GMP are relevant:

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

35 You must work collaboratively with colleagues, respecting their skills and contributions.

36 You must treat colleagues fairly and with respect.

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

14. The Tribunal considered that, in his actions towards Miss A, Dr Salakianathan used his position of power as a senior consultant to take advantage of a junior member of staff. This is a clear and serious departure from the paragraphs of GMP referred to above. There is no doubt that there was a clear imbalance of power between the roles of Dr Salakianathan and Miss A and in taking the actions he did he failed to recognise that imbalance or afford her the respect that any colleague of any status had a right to expect. He not only abused his position by making inappropriate personal comments about her physical appearance, but then went on to make entirely unsolicited physical and sexual contact without any implicit or explicit consent given by Miss A. He was driven by a sexual motivation.

15. The Tribunal was satisfied that this was behaviour that fell seriously below the standard expected of doctors. It considered that Dr Salakianathan’s actions would be considered deplorable by fellow practitioners, concluding that his conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.

Impairment

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

17. The Tribunal acknowledged that Dr Salakianathan accepted responsibility and apologised to all involved for many of his actions from a very early stage. It has taken into account that he has properly taken time to reflect on his behaviour and taken proactive steps to remediate through undertaking appropriate courses on maintaining boundaries. He has also acknowledged the impact of his actions on Miss A, his family, and the reputation of the profession. The Tribunal accepted that the
impact this incident has had on Dr Salakianathan himself is such that the likelihood of him repeating such behaviour is negligible.

18. However, the Tribunal was not satisfied that, even now, he properly understands the gravity of his actions. From 12 December 2017 onwards, Dr Salakianathan has demonstrated a reluctance to accept that Miss A did not explicitly or implicitly consent at all to his touching her or making inappropriate comments. Indeed, in his oral evidence at this hearing, he responded to a question on whether he thought it was correct that Miss A had at no time explicitly consented to his actions on 12 December 2017 with the answer ‘not really.’ The Tribunal considered that this answer, and his subsequent difficulties in explaining what he meant by it, indicated that he remains uncertain about this point and remains averse to fully conceding that Miss A did not consent to his actions in any way.

19. The Tribunal was also concerned that although Dr Salakianathan accepts that his behaviour was unacceptable the focus for his explanation for his behaviour was that he had ‘misread the signs’ from Miss A. The Tribunal found that this does not demonstrate insight into the fact that behaviour of that nature is unacceptable in the workplace and that a senior clinician such as he should never put themselves in a position with a junior colleague or indeed any colleague where they may be ‘reading the signs’ in circumstances such as these.

20. The Tribunal was of the view that this demonstrated a continuing lack of full insight on Dr Salakianathan’s part. This is of concern in the light of the fact that Dr Salakianathan is a senior clinician and has been responsible for mentoring and teaching junior members of the profession.

21. The Tribunal took into account Mr Lambis’s submissions with regard to the Scottish case and Zygmunt, and acknowledged that Dr Salakianathan’s colleagues have provided a significant number of testimonial letters on his behalf. However, the Tribunal found that this was not the case of a single isolated incident in an otherwise unblemished career. The Tribunal found as a fact that the comment made to Miss A in or around November 2017 was made with the intention of encouraging the development of a relationship between him and Miss A. Whilst the Tribunal accepts that Dr Salakianathan’s misconduct relates only to his behaviour towards Miss A, it cannot be said it was an isolated incident resulting from ‘a moment of madness.’

22. Whilst the Tribunal acknowledge Dr Salakianathan has demonstrated considerable remorse from the outset and has attempted to remediate his actions by attending relevant courses and reflecting upon the same, the Tribunal notes that notwithstanding the fact that he had attended the maintaining professionalism course on 14 March 2018, he continued to maintain that there had not been a lack of consent to his actions of 12 December 2017 when he submitted his letter to appeal the decision of the Trust’s Disciplinary Panel on 27 March 2018. The Tribunal accepts that he did subsequently withdraw that appeal which is suggestive of
developing insight. When questioned at length about his motivation and the lead up to these events, he still, despite having undertaken a number of courses and having had time for honest reflection, could not give a full or active account of why it had occurred. For these reasons the Tribunal is not satisfied that Dr Salakianathan has been able to demonstrate that he has acquired full insight.

23. Further the Tribunal find that inappropriate comments and non-consensual touching of colleagues with a sexual motivation are unacceptable in the workplace, particularly when an imbalance of power is present as in this case. Given this, the Tribunal was satisfied that, due to the seriousness of such actions and their impact on public confidence in the profession and the standards and conduct required of members the profession, a finding of impaired fitness to practise would be required even had Dr Salakianathan shown full insight into his actions. Such a finding is only confirmed by the fact that he has not.

24. In all the circumstances, the Tribunal considered that a finding of impairment was necessary 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.

25. The Tribunal has therefore determined that Dr Salakianathan’s fitness to practice is impaired by reason of misconduct.

**Determination on Sanction** - 22/03/2019

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

**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. No further evidence was adduced at this stage.

**Submissions**

3. On behalf of the GMC, Mr McBride, Counsel, submitted that the appropriate sanction in Dr Salakianathan’s case was one of suspension. He reminded the Tribunal that Dr Salakianathan’s misconduct was characterised by sexual motivation which was a serious matter, although he conceded that Dr Salakianathan’s actions were at the lower end of the spectrum of such acts. He told the Tribunal that there had been no previous findings of impaired fitness to practise made against Dr Salakianathan and reminded it that it had found that there was negligible if not nil chance of him repeating such behaviour. He reminded the Tribunal that, although it had accepted that Dr
Salakianathan had made attempts to remediate, it had found a lack of full insight on his part.

4. He submitted that, even taking into account mitigating circumstances, it would be inappropriate for no action to be taken in this matter given the seriousness of the Tribunal’s findings. With regard to conditions he acknowledged that Dr Salakianathan had displayed a degree of insight and shown potential to remediate, but submitted that, given Dr Salakianathan’s conduct was of a sexually motivated type, it was not possible for appropriate conditions to be formulated and that such a sanction would be contrary to the public interest in any case. He told the Tribunal that suspension was the appropriate sanction in light of the seriousness of Dr Salakianathan’s departures from Good Medical Practice (2013 Edition) (‘GMP’), and his breaching of professional boundaries in relation to Miss A.

5. On behalf of Dr Salakianathan, Mr Lambis, Counsel, submitted that, in the circumstances of Dr Salakianathan’s case, the Tribunal could decide to take no action. He said that the findings of misconduct and impairment should not be underplayed as these were significant findings in themselves, but it did not follow that a sanction was necessary. He stated that it would be disproportionate and punitive for the Tribunal to suspend Dr Salakianathan, setting out that such a sanction would serve no purpose. He reminded the Tribunal of Dr Salakianathan’s personal circumstances at the time of his misconduct, submitting that the fact that his actions towards Miss A occurred during the time of these circumstances was not a coincidence.

6. He told the Tribunal that Dr Salakianathan has fully and actively participated in, and engaged with, the regulatory process and had made admissions in the case from the outset, which must count in his favour. He submitted that Dr Salakianathan understands the issues in the case, has acknowledged fault, and demonstrated both remorse and insight. He told the Tribunal that Dr Salakianathan had taken steps to remediate ‘from day one.’ He reminded the Tribunal that even the GMC accepted that the chance of repetition was negligible to nil. He set out that over 33 witnesses had provided testimonial letters supporting the fact that Dr Salakianathan has always adhered to the principles of GMP. He asked the Tribunal to bear in mind cross-cultural issues when analysing Dr Salakianathan’s understanding of the situation with Miss A. He stated that if the Tribunal were to decide that a suspension was necessary, then it should impose a short suspension which would show that the regulator was properly performing its function whilst not depriving the public of a good and caring medical professional.

The Tribunal’s Determination on Sanction

7. The decision as to the appropriate sanction, if any, is a matter for this Tribunal exercising its own judgment. In reaching its decision, the Tribunal has taken account of the Sanctions Guidance (February 2018) (‘the SG’).
statutory overarching objective. The Tribunal recognises that the purpose of a sanction is not to be punitive, although it may have a punitive effect.

8. Throughout its deliberations the Tribunal has applied the principle of proportionality, balancing Dr Salakianathan’s interests with the public interest. It reminded itself that it should only impose the minimum sanction necessary to achieve the overarching objective. In deciding what sanction, if any, to impose the Tribunal considered each of the sanctions available, starting with the least restrictive. It also considered and balanced the mitigating and aggravating factors in this case.

Aggravating and mitigating factors

Aggravating factors

9. The Tribunal was satisfied that Dr Salakianathan’s actions towards Miss A were major departures from GMP, being entirely at odds with the need to respect colleagues and proper professional boundaries and involving sexual harassment.

10. Dr Salakianathan’s misconduct occurred in the context of an imbalance of power, with him abusing his professional position as a senior clinician making an improper approach to a junior member of staff.

11. Although the inappropriate conduct was not sustained over a long period of time, it did occur across two different dates, first with the comment made in or around November 2017, and then with Dr Salakianathan’s actions in his office on 12 December 2017. As such, the conduct was not simply an isolated ‘moment of madness.’

Mitigating factors

12. The Tribunal noted that Dr Salakianathan has cooperated and engaged throughout with investigations by both the Trust and the GMC. He has also taken an active part in these proceedings and made admissions from the outset of the hearing, including admitting some of his actions were sexually motivated.

13. Dr Salakianathan has taken significant steps in order to reflect upon and remediate his actions, including attendance on relevant courses. He has demonstrated genuine remorse and, as soon as it was brought to his attention that Miss A had been affected by his actions, sought to apologise to her, but was unable to do so due to the Trust’s (entirely appropriate) policies. In addition to the impact his actions had upon Miss A and his family and colleagues, the Tribunal also has regard to the personal impact his actions have brought upon himself, but do not consider that this to be mitigating factor by and of itself.
14. Dr Salakianathan’s colleagues have provided numerous testimonial letters attesting to his character and clinical skills, and his commitment to the profession.

15. There is no evidence that Dr Salakianathan has acted in such a manner either before or since the events of late 2017, and there have been no previous findings of impaired fitness to practise made against him.

No action

16. The Tribunal first considered whether to conclude Dr Salakianathan’s case by taking no action with regard to his registration. It took into account Mr Lambis’s submission in relation to a link between significant issues arising in Dr Salakianathan’s personal life, including the unexpected and tragic death of a close family member, and his actions towards Miss A. However it considered that, although these circumstances would clearly have had a distressing and emotional impact on Dr Salakianathan, the Tribunal has received no evidence that such an impact could be the catalyst for sexually motivated behaviour on his part. It therefore considered that these circumstances were not of the ‘exceptional’ kind required to make a finding of no action. The Tribunal has already determined that Dr Salakianathan’s fitness to practise is impaired by reason of his misconduct. It determined that given the serious departures from GMP it found, and in the absence of any exceptional circumstances, it would be wholly inappropriate to conclude this case by taking no action.

Conditions

17. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Salakianathan’s registration. Any conditions imposed would need to be appropriate, proportionate, workable and measurable.

18. The Tribunal was of the view that it could not formulate appropriate or workable conditions to address the issues raised by Dr Salakianathan’s sexually motivated conduct. It was of the view that any conditions it imposed at this stage would serve no useful purpose. In addition, given the seriousness with which it views Dr Salakianathan’s misconduct, the Tribunal determined that a period of conditional registration would not adequately protect public confidence in the profession nor uphold proper standards of conduct for members of the profession.

Suspension

19. The Tribunal moved on to consider whether it would be sufficient to impose a period of suspension on Dr Salakianathan’s registration. The Tribunal has borne in mind the SG in relation to suspension, including paragraphs 91, 92 and in which it states:
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91 Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.

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

20. The Tribunal was of the view that, although Dr Salakianathan’s misconduct was serious, it was not fundamentally incompatible with registration. His actions were entirely inappropriate, and constituted a breach of boundaries between colleagues aggravated by an imbalance of power. Any such act is unacceptable for a member of the profession. However, the Tribunal acknowledged that, although undoubtedly serious and occurring over more than one occasion, Dr Salakianathan’s behaviour could not be characterised as predatory or sustained as is the case with the most serious examples of sexually motivated misconduct.

21. The Tribunal took into account Mr Lambis’s submission that cultural differences may have played a part in Dr Salakianathan’s behaviour. It considered that this was not raised as a point in evidence with witnesses and that, although touching may be more socially acceptable in some cultures than others, when it is carried out in the workplace as a result of sexual motivation, it can never be proper. Further the Tribunal did not accept the suggestion that English is Dr Salakianathan’s second language and he may not have fully understood the questions asked of him relating to his current insight in the context of consent and his responses to the same. The Tribunal noted that Dr Salakianathan has lived and worked in the UK since 1994. Further, in the 360 degree feedback provided to the Tribunal on his behalf, his communication skills are scored highly by both patients and colleagues. He was invited by the Tribunal to indicate if he did not understand any question put to him and did not express any indication of struggling to understand questions which were put to him in a number of ways not just in in cross examination, but also by the Tribunal when seeking further clarification as to reasons for his actions. The Tribunal noted that the question of consent is an integral part of a medical practitioner’s daily work and there can be no doubt that someone with the experience of Dr Salakianathan will be fully aware of the concept of the same
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22. Balancing the aggravating and mitigating factors apparent in the case, the Tribunal found it to be significant that Dr Salakianathan has shown a willingness to apologise, reflect and remediate from early in the process. This demonstrates a good degree of insight on his part. Further, it is clear from the testimonials provided that he is highly regarded by colleagues in terms of both his character and clinical skills. The Tribunal is also satisfied that Dr Salakianathan is unlikely to repeat his behaviour. However, as set out in its determination on impairment, the Tribunal found that Dr Salakianathan’s oral evidence at this hearing demonstrated that he remains averse to fully conceding that Miss A did not consent to his actions in any way, and that he does not fully understand that he should not have put himself in a position within the workplace where he was ‘reading the signs’ from a colleague and acting upon a misconceived belief that consent had been given for his actions.

23. In all the circumstances, the Tribunal has determined to suspend Dr Salakianathan’s registration for a period of four months. The Tribunal was mindful that it did not wish to deprive the public of an otherwise highly regarded consultant for longer than necessary, however it decided that such a period was required taking into account the seriousness of his actions and the need to demonstrate clearly to Dr Salakianathan, the profession and the public that such behaviour towards colleagues is unacceptable. The Tribunal determined that imposing this period of suspension would promote and maintain public confidence in the profession, and standards and conduct for members of the profession. Further, it was satisfied that this period will provide Dr Salakianathan with sufficient time and opportunity to properly reflect on, and gain full insight into the findings of this Tribunal, particularly those made apparent in his oral evidence at this hearing.

Review hearing

24. The Tribunal determined to direct a review of Dr Salakianathan’s case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Salakianathan to demonstrate how he has developed further insight into his actions towards Miss A following the findings made at this hearing. Whilst the Tribunal acknowledge that it is for the doctor to choose whether or not to give oral evidence at any future hearing the Tribunal consider that this may assist any future Tribunal in determining the issue of insight. A future reviewing Tribunal may also be assisted if Dr Salakianathan attends the review hearing and provides the following:

- a reflective statement demonstrating how he has developed further insight following the findings made at this hearing and recording any steps he has taken in order to reflect on them;
- evidence that he has kept his medical knowledge and skills up to date;
- any other information that Dr Salakianathan considers will assist.
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Determination on Immediate Order - 22/03/2019

1. Having determined to suspend Dr Salakianathan’s registration for a period of four months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Mr McBride, Counsel submitted that an immediate order was necessary in this case. He told the Tribunal that due to the serious matters it has found, such an order was required in the public interest, principally on the grounds of upholding and maintaining standards for members of the profession.

3. On behalf of Dr Salakianathan, Mr Lambis, Counsel, referred the Tribunal to the Sanctions Guidance (February 2018) (‘the SG’). He told the Tribunal that there was no requirement to protect the public in this case and that an immediate order was not in Dr Salakianathan’s own interests. He submitted that an immediate order was not necessary in the public interest.

The Tribunal’s Determination

4. In deliberating on the matter, the Tribunal took into account the paragraphs of the Sanctions Guidance (February 2018) which deal with the matter of immediate orders, in particular paragraph 172 which states:

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.

5. The Tribunal had regard to the principle of proportionality and balanced Dr Salakianathan’s interests with the public interest. It has already noted the seriousness with which it regards his misconduct. Although it notes that there are no patient safety concerns present in this case and that the risk of repetition is low, it has expressed its concerns at Dr Salakianathan’s lack of full insight into his misconduct and has directed a review hearing. It is therefore of the view that it would be inappropriate for Dr Salakianathan to resume unrestricted practice before these matters were properly addressed. In these circumstances, it is therefore satisfied that an immediate order is necessary in the public interest.
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6. This means that Dr Salakianathan’s registration will be suspended from today. The substantive direction, as already announced, will take effect 28 days from when written notice of this determination has been served upon Dr Salakianathan, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

7. The interim order currently imposed on Dr Salakianathan’s registration will be revoked when the immediate order takes effect.

Confirmed
Date 22 March 2019

Mrs Nessa Sharkett, Chair