

**PUBLIC RECORD**

Dates: 16/06/2025 - 20/06/2025

**Doctor:** Mr Hirron FERNANDO

**GMC reference number:** 6024933

**Primary medical qualification:** MB BS 2001 University of the West Indies

**Type of case**

Restoration following  
disciplinary erasure

**Summary of outcome**

Restoration application refused. No further applications allowed for 12 months from last application.

**Tribunal:**

Legally Qualified Chair	Miss Gill Batts
Lay Tribunal Member:	Mr David Probert
Registrant Tribunal Member:	Mr Julian Williams

Tribunal Clerk:	Mr John Poole
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**Attendance and Representation:**

Doctor:	Present, represented
Doctor's Representative:	Ms Penny Maudsley, Counsel, instructed by Doctor Defence Service
GMC Representative:	Mr Nigel Grundy, 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 New Matters - 17/06/2025

1. The Tribunal has convened to consider Mr Fernando's application for his name to be restored to the Medical Register following his erasure for disciplinary reasons in March 2018. This is Mr Fernando's first application to be restored to the Medical Register.

## Background

2. Mr Fernando qualified in 2001 from the University of the West Indies. The matters that gave rise to a Fitness to Practise Panel held between 14 August 2017 and 22 August 2017 related to an allegation of impairment by reason of a determination by an overseas body, misconduct and a criminal conviction.

3. In relation to the determination by an overseas body, it was admitted and found proved that on 19 September 2016, the New Zealand Health Practitioners Disciplinary Tribunal determined that he was guilty of professional misconduct and imposed an order against him, which included the cancellation of his registration in New Zealand.

4. The misconduct related to Mr Fernando's behaviour towards Miss A and Miss B. It was admitted and found proved that on one or more occasion on 25 November 2013, Mr Fernando called Miss A and Miss B over the telephone and was verbally abusive and threatening. It was also found that he left voice messages that were verbally abusive. It was found that on 5 December 2013 Mr Fernando was charged with breach of XXX and that on or around November 2014 he was charged with harassment. Mr Fernando admitted that he had been charged and convicted of common assault on 23 February 2015. It was found proved that Mr Fernando failed to report the breach of XXX, the criminal charges and conviction to the GMC. It was also found that during the course of the criminal investigation, Mr Fernando had failed to cooperate with the formal enquiry.

5. The August 2017 Panel determined that Mr Fernando's fitness to practise was impaired by reason of the determination by an overseas body, his misconduct, and his criminal conviction. The August 2017 Panel determined that Mr Fernando had very limited insight into his actions and that he failed to take into account the impact his behaviour had not only on the individuals involved but also the reputation of the profession. The August 2017 Panel found that Mr Fernando's behaviour was fundamentally incompatible with being a doctor and determined to erase his name from the medical register in order to uphold proper standards of conduct and behaviour.

6. Mr Fernando appealed the August 2017 Panel's decision to erase his name from the medical register. However, his appeal was dismissed by the High Court and the erasure came into effect from 23 March 2018.

## The Current Restoration Hearing

### New allegations of impaired fitness to practise

7. Further to the application for restoration the GMC has alleged that since Mr Fernando was erased there have been concerns that call into question his fitness to practise. After hearing representations from the parties and in accordance with the Guidance for Medical Practitioners Tribunals on Restoration Following Disciplinary Erasure, paragraph C2, the Tribunal determined the facts of the new allegations before determining the application for restoration.

8. The new allegations concern Mr Fernando's involvement in providing a medical opinion to a third party who was not his patient. At the time this person was the patient at Dr A's medical practice. In 2016 Mr Fernando worked with the partner of this person. She approached him in September 2023 and asked him to provide a medical opinion in relation to her partner's blood tests. Mr Fernando provided his opinion to her by email and this was forwarded by her to Dr A's practice. In his opinion Mr Fernando suggested that other enquiries and investigations should have been completed and went so far as to suggest the patient may have a tumour of the pancreas. A complaint was made by the patient and his partner about the care that had been provided by Dr A's practice. In response on or around 12th/13th September a meeting was convened by Dr A's practice to discuss the issues that had been raised. Mr Fernando attended this meeting. It is the conduct of Mr Fernando regarding this meeting which forms the basis of the allegations.

## The Allegation and the Registrant's Response

9. The allegations made against Mr Fernando are as follows:

1. On 22 August 2017, a Fitness to Practise Panel determined to erase your name from the medical register. Your name was erased from the medical register on 23 March 2018. **Admitted and found proved**
2. In September 2023, you held yourself out as being a registered doctor in that you:
  - a. on or around 12/13 September 2023, attended a meeting with Dr A and a patient to whom you had provided a second opinion ('the Meeting') and you: **Admitted and found proved**
  - i. introduced yourself as a consultant urologist surgeon, or words to that effect; **To be determined**

- ii. provided your GMC number; **Admitted and found proved**
  - iii. provided a medical opinion regarding the patient. **Admitted and found proved**
- b. on 14 September 2023 sent an email following the Meeting confirming you had provided your ‘professional opinion’. **Admitted and found proved**
- c. did not make clear that you were not a registered doctor due to the matters set out at paragraph 1 above. **To be determined**
- 3. You knew that from 23 March 2018, you were no longer a registered doctor as your name had been erased from the GMC medical register. **Admitted and found proved**
- 4. Your actions at paragraph 2:
  - a. lacked integrity, and/or **To be determined**
  - b. were dishonest, by reason of paragraph 3. **To be determined**

### The Admitted Facts

10. Mr Fernando made admissions through his counsel, Ms Penny Maudsley, to some paragraphs and sub-paragraphs of the Allegation, as set out above. The Tribunal announced these paragraphs and sub-paragraphs proved.

### The paragraphs of the allegations to be Determined

11. In light of Mr Fernando’s response to the allegations made against him, the Tribunal is required to determine the remaining paragraphs and sub-paragraphs of the Allegation.

### The Evidence

12. The Tribunal has taken into account all the evidence that it has received, both oral and documentary.

### Witness Evidence

13. The Tribunal received evidence on behalf of the GMC from Dr A, Medical Director at XXX Medical Group Clinics, in person. Dr A had also provided a witness statement dated 29 July 2024.

14. Mr Fernando provided a witness statement dated 7 May 2025 and gave oral evidence at the hearing. In summary, Mr Fernando's evidence was that he had assumed the participants at the meeting knew he was no longer a registered doctor and had been transparent by providing his GMC number for them to check.

### Documentary Evidence

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

- Email correspondence from Mr Fernando and patient to XXX medical group, 11 September 2023
- Emails between patient and XXX medical group with minutes of meeting, 13 September 2023
- Email from Dr Fernando to Dr A, 14 September 2023
- Emails between Dr A and patient, 26 – 27 September 2023
- Email between Mr Fernando and GMC, 3 March 2019
- Correspondence from patient's partner
- Record of Determinations from August 2017 MPT hearing
- Appeal Judgement, 23 March 2018
- MPTS Outcome of Appeal letter to Mr Fernando confirming the erasure had taken following the dismissal of the appeal, dated 26 March 2018
- Mr Fernando's application for Restoration, dated 4 January 2024
- Mr Fernando's reflective statement, dated 2 May 2025
- CPD documents
- Testimonials
- Certificates of appreciation
- Anger Management programme completion certificate, dated 28 May 2025

### The Tribunal's Approach

16. In reaching its decision on the allegation, 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. Mr Fernando does not need to prove anything in respect of the allegation. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, ie whether it is more likely than not that the events occurred.

17. The LQC reminded the Tribunal of the principle contained in the case of *Dutta* [2020] EWHC 1974 (Admin). In considering the evidence before it, the Tribunal should have regard to the whole of the evidence and form its own judgement about the witnesses and which evidence is reliable and which is not. In assessing a witness's credibility, the Tribunal should not assess credibility exclusively on demeanour; the veracity of their evidence should be tested by reference to the objective facts, proved independently in their evidence. The Tribunal should make a rounded assessment of a witness's reliability.

18. The LQC reminded the Tribunal of the principle contained in the case of *Khan* [2021] EWHC 374 (Admin). The Tribunal should consider all of the evidence before coming to a conclusion about a witness's credibility.

19. The Tribunal was reminded that it was entitled to draw proper inferences from the evidence, but it must not speculate. It should only draw an inference if it can safely exclude other possibilities as confirmed in *Soni v GMC* (2015) EWAC 0364 Admin.

20. The LQC advised that there is a distinction between honesty and integrity and referred the Tribunal to the case of *Wingate Evans and Malins v SRA* (2018) CA 1WLR 3969:

*‘... Honesty is a basic moral quality which is expected of all members of society. It involves being truthful about important matters and respecting the property rights of others. Telling lies about things that matter or committing fraud or stealing are generally regarded as dishonest conduct. These observations are self-evident and they fit with the authorities cited above. The legal concept of dishonesty is grounded upon the shared values of our multi-cultural society. Because dishonesty is grounded upon basic shared values, there is no undue difficulty in identifying what is or is not dishonest...’*

*Integrity is a more nebulous concept than honesty. Hence it is less easy to define, as a number of judges have noted. In professional codes of conduct, the term “integrity” is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members...The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards...’*

21. In regard to the allegation of dishonesty, the LQC reminded the Tribunal of the test for dishonesty set out in *Ivey v Genting Casinos (UK) Limited (t/a Crockfords Club)* [2017] UKSC 67 (‘Ivey’):

*‘...the fact-finding Tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.’*

22. The LQC also advised that the Tribunal is not required to decide every point which had been raised during the hearing, only such matters as will enable it to say whether the matters alleged have been proved, as per the principle from *Tariquez-Zaman v GMC* [2019] EWHC 2927 (Admin).

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

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

24. Mr Fernando gave evidence that he told the patient's partner that he had been erased following his unsuccessful appeal in 2018. He stated that because he had told the partner that he had been erased he assumed that she had informed the XXX Practice of his status in advance of the meeting on or around 12th or 13th September 2023. This assertion formed a central part of his case in relation to the new allegations, specifically paragraph 2 (c).

25. The Tribunal found Mr Fernando's evidence on this issue not credible for the following reasons:

i) He did not set out in his witness statement, which stood as his evidence in chief, that he had told the partner that he had been erased. It was mentioned for the first time in cross examination.

ii) Mr Fernando stated in evidence that he met the partner in 2016 when he worked at Pinderfields hospital and described her as a good friend. The partner was XXX and visited the hospital approximately once a month. In 2017 Mr Fernando left and started to work elsewhere. He did not see the partner at work from that point onwards. He did not have her phone number, and she did not have his at that stage. He stated he emailed her in 2018 to inform her of his erasure. Thereafter, they remained in contact by LinkedIn. The Tribunal did not find it credible that he would have contacted her by email to inform her about the erasure given that they were no longer working together and contact between them was limited.

iii) The Tribunal has been provided with a document from the partner dated April 2025. In it she confirms that she reached out to Mr Fernando on LinkedIn in 2023. There is no reference at all in this document that she knew Mr Fernando had been erased. She has not been called as a witness.

## Paragraph 2ai

26. The Tribunal considered whether in September 2023, Mr Fernando held himself out as a registered doctor in that on or around 12/13 September 2023, he attended a meeting with Dr A and a patient to whom he had provided a second opinion and introduced himself as a 'consultant urologist surgeon' or words that that effect.

27. In Dr A's witness statement, in relation to the meeting, he stated that:

*‘The call started by each of us introducing ourselves. Dr Fernando introduced himself as ‘Consultant Urologist Surgeon’ and provided his GMC number... Dr Fernando did not provide or mention any further information relating to his status as a doctor or his status on the medical register. He did not mention at all that he was not a registered doctor...’*

28. In his oral evidence to the Tribunal Dr A was very clear that Mr Fernando had used the word ‘urologist’ although he could not remember whether the word ‘consultant’ was used. The minutes of the meeting do not assist on this issue.

29. In Mr Fernando’s witness statement he stated that prior to the meeting he was asked by the nurse for his name and GMC number which he said he provided in attempt to be open and transparent. He stated that:

*‘During the meeting I was asked nothing further about my status or employment details. I did not refer to myself as a Consultant Urologist as it never came up in conversation. Neither did I suggest I was registered with a licence to practise. I was merely giving my opinion as a doctor...’*

30. The Tribunal considered that whilst it was likely that Mr Fernando would have said something during the introductions at the meeting, it could not be satisfied on the balance of probabilities that Mr Fernando introduced himself as a ‘consultant urologist surgeon’.

31. The Tribunal therefore found paragraph 2ai not proved.

## Paragraph 2c

32. The Tribunal considered whether in September 2023, Mr Fernando held himself out as a registered doctor in that on or around 12/13 September 2023, he attended a meeting with Dr A and a patient to whom he had provided a second opinion and did not make clear that he was not a registered doctor because his name had been erased from the medical register.

33. In Dr A’s evidence, he was clear that Mr Fernando did not mention anything relating to his status as a doctor or his status on the medical register. Dr A stated that at that stage he had no reason to suspect that Mr Fernando was not registered.

34. Mr Fernando accepted in evidence that when the partner made contact with him in September 2023, he did not tell her that “*I was not back on the register*”. Mr Fernando stated that he provided his GMC number prior to and at the meeting. He accepted that those present at the meeting could have had a false impression about his status. Further, he accepted that “*I didn’t make it clear I wasn’t entitled to practice*”. In evidence he said that it was his “naïve belief” that his status had been explained to those present at the meeting in advance.

35. The Tribunal concluded on the basis of Dr A's and Mr Fernando's evidence that he did not make it clear at any stage during the meeting that he was not registered as a doctor.

36. The Tribunal therefore found paragraph 2c proved.

#### Paragraph 4a

37. The Tribunal considered whether Mr Fernando's actions as found paragraph 2aii-2aiii of the Allegation, lacked integrity by reason of him knowing that he was no longer a registered doctor as his name had been erased from the medical register.

38. The Tribunal considered the guidance in relation to integrity as set out in Wingate: *Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members*. The Tribunal determined that in the context of a professional meeting, Mr Fernando was under a professional obligation to make it clear to all those present, including other medical professionals, that he was not registered.

39. The Tribunal did not accept the submission that because Mr Fernando provided his GMC number that it was open to Dr A's Practice to make enquiries about his registration. Further, the suggestion that the onus was on the practice to make the enquiries was rejected.

40. It was admitted by Mr Fernando that he sent an email on 14th September 2023 confirming that he had provided his "professional opinion". The Tribunal concluded that this was a further act which lacked integrity because he emphasised that he was giving a professional opinion but did not take the opportunity to set out his status.

41. The Tribunal determined that giving his GMC registration number and not being transparent about his status lacked integrity.

#### Paragraph 4b

42. The Tribunal considered whether Mr Fernando's actions as found paragraph 2ai-iii of the Allegation, were dishonest by reason of him knowing that he was no longer a registered doctor as his name had been erased from the medical register.

43. The Tribunal applied the two-stage test in *Ivey v Genting* and firstly considered Mr Fernando's actual knowledge or belief as to the facts. In making this determination the Tribunal took into account that in 2019 he had contacted the GMC for advice as to whether he was permitted to give medical advice in a different scenario and was given guidance in writing. It was accepted that Mr Fernando was or may have been under the impression that this extended to the involvement with the patient and subsequent meeting with Dr A.

44. Having established Mr Fernando's state of mind at the time, the Tribunal then went on to consider whether ordinary decent people would consider his actions dishonest. The Tribunal determined that ordinary decent people would not think his actions dishonest because he had sought advice from the GMC and believed he was allowed to give his medical opinion, he gained nothing from his actions and his intention was to help someone who had sought his advice.

45. Having heard Mr Fernando's evidence and applied the test the Tribunal was not satisfied on the balance of probabilities that he was dishonest in his actions set out in paragraph 2.

46. The Tribunal therefore found paragraph 4b not proved.

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

47. The Tribunal has determined the Allegation as follows:

1. On 22 August 2017, a Fitness to Practise Panel determined to erase your name from the medical register. Your name was erased from the medical register on 23 March 2018. **Admitted and found proved**
2. In September 2023, you held yourself out as being a registered doctor in that you:
  - a. on or around 12/13 September 2023, attended a meeting with Dr A and a patient to whom you had provided a second opinion ('the Meeting') and you: **Admitted and found proved**
    - i. introduced yourself as a consultant urologist surgeon, or words to that effect; **Not proved**
    - ii. provided your GMC number; **Admitted and found proved**
    - iii. provided a medical opinion regarding the patient. **Admitted and found proved**
  - b. on 14 September 2023 sent an email following the Meeting confirming you had provided your 'professional opinion'. **Admitted and found proved**
  - c. did not make clear that you were not a registered doctor due to the matters set out at paragraph 1 above. **Determined and found proved**
3. You knew that from 23 March 2018, you were no longer a registered doctor as your name had been erased from the GMC medical register. **Admitted and found proved**

4. Your actions at paragraph 2:
  - a. lacked integrity, and/or **Determined and found proved**
  - b. were dishonest, by reason of paragraph 3. **Not proved**

#### **Determination on Restoration following Disciplinary Erasure - 20/06/2025**

48. Following its finding of fact on the new matters, the Tribunal considered Mr Fernando's application for his name to be restored to the Medical Register following his erasure for disciplinary reasons in March 2018. It considered the application in accordance with Section 41 of the Medical Act 1983, as amended ('the Act') and Rule 24 of the GMC (Fitness to Practise) Rules 2004, as amended ('the Rules').

#### **Outcome of applications made at this stage of the hearing**

49. The Tribunal granted an application, made by Ms Maudsley on behalf of Mr Fernando, pursuant to Rule 34(1) of the Rules, that, further documentation be adduced at this stage. This comprised a copy of Mr Fernando's Curriculum Vitae and a letter regarding his security clearance in relation to a position he currently holds. The application was not opposed by Mr Grundy, Counsel, on behalf of the GMC. The Tribunal also granted an application made by Ms Maudsley for parts of the hearing where the latter document was referred to be heard in private in accordance with Rule 41 of the Rules due to the sensitive nature of the document.

#### **The Evidence**

50. The Tribunal has taken into account all the evidence that it has received, both oral and documentary.

51. Mr Fernando also provided further oral evidence at this stage of the hearing.

#### **Documentary evidence**

52. In addition to the documentary evidence considered in relation to the new matters, the Tribunal also considered the following documentary evidence provided in support of Mr Fernando's restoration application:

- UD4 Application for restoration 4 January 2024
- Dr Fernando's reflective statement 6 May 2025
- Non-clinical CPD, Various dates
- XXX
- Report of Dr G, mentor to Dr Fernando 14 May 2025

- Email of apology 3 September 2017
- Clinical attachment, Ashton Medical Practice confirmation 23 September 2024
- Email requesting clinical attachments 2022/2023
- Professional status at Medical Council, New Zealand 15 May 2025
- Temporary license to practice in Rwanda 5 December 2024
- Membership of European Association of Urology certificate Undated
- Surgical E-log book 12 – 19 Dec 2024 & 27 – 29 April 2025
- CPD Documents
- Certificates of appreciation
- Thank you cards/ emails
- Attendance at Doctors Support Group confirmation 5 May 2025
- Testimony from Ms E, XXX 7 May 2025
- Testimonials May 2025
- Certificate for programme of anger management 28 May 2025

### Submissions on Impairment and Restoration

#### Submissions on behalf of the GMC

53. On behalf of the GMC, Mr Grundy submitted that Mr Fernando should not be restored to the medical register. Throughout his submissions Mr Grundy referred the Tribunal to the relevant paragraphs of the *‘Guidance for medical practitioners tribunals on restoration following disciplinary erasure’* (*‘the Guidance’*).

54. Mr Grundy submitted that it was for Mr Fernando to satisfy the Tribunal that he should be restored. He reminded the Tribunal of the test to be applied by tribunals when considering if a doctor should be restored as set out in the case of *GMC v Chandra [2018] EWCA Civ 1898* and outlined at B2 of the Guidance. He submitted that the Tribunal should consider the circumstances which led to erasure and the extent of remediation and insight and consider whether the doctor is now fit to practise having regard to each of the three elements of the overarching objective. He observed that the case of *Chandra* did not involve new allegations.

55. It was submitted that the circumstances that led to the disciplinary erasure are wide-ranging. He summarised that they involved findings of dishonesty, XXX violence, making threatening phone calls including a threat to kill, and a failure to advise the GMC of criminal charges and a conviction. Mr Grundy recounted that at the FTP in August 2017 Mr Fernando took the view that the New Zealand determination was unfair and he had also appealed his criminal conviction for common assault. Mr Grundy acknowledged that it was very difficult in such a serious case to demonstrate sufficient remediation so as to allow this Tribunal to find that he is fit to return to unrestricted practice.

56. The Tribunal were invited to assess Mr Fernando’s insight and remorse. He questioned whether Mr Fernando has demonstrated full and genuine insight and whether he

has taken sufficient steps to remediate his actions. In relation to the XXX, Mr Grundy submitted that even in 2020, when engaging with XXX, it was clear that Mr Fernando did not accept Miss C's account of what he had done. Further it was not clear from Mr Fernando's evidence when it was that he accepted the account given by Miss C as being true and accurate.

57. It was pointed out that Mr Fernando had undertaken an anger management course but that this was only undertaken in May 2025, weeks before the restoration application. He referred to Mr Fernando's evidence that he had done an anger management course previously and that this was a refresher. It was evident that the previous course related to dealing with matters in XXX. It was submitted that this would have little relevance to addressing XXX issues. On that basis Mr Fernando does not really appear to have properly addressed those issues.

58. Mr Grundy referred to Mr Fernando's position regarding his failure to inform the GMC of the common assault matter. He appeared to make a distinction between being charged with and being convicted of a criminal offence. Further he had not read Good Medical Practice and was not aware he needed to. Mr Grundy submitted that in evidence to this Tribunal, Mr Fernando stated he had read Good Medical Practice and the most up to date version he was aware of was either 2014 or 2016. He was unaware that an updated version came into force in January 2024.

59. It was submitted that since his erasure, Mr Fernando has not been open and transparent about the reasons for his erasure and that showed a lack of integrity. When Mr Fernando applied for a clinical attachment in October 2022, he did not reveal the full reasons for his removal from the register and appeared to minimise the facts. Further, when giving evidence about the new allegation he accepted that he had not told the patient's partner about the matters relating to XXX violence.

60. In conclusion, Mr Grundy submitted that it is difficult to demonstrate sufficient remediation in cases involving serious behaviour such as dishonesty, violence or abusive behaviour.

61. It was submitted that Mr Fernando's conduct in September 2023 lacked integrity, that there is risk that he will act without integrity in the future and that consequently his fitness to practise is impaired.

62. In relation to steps taken to keep his medical knowledge and skills up to date, Mr Grundy noted the reference to a significant amount of CPD undertaken by Mr Fernando, however it did not include Basic Life Support or Advanced Cardiac Life Support, which would be needed for him to return to work.

63. Mr Grundy reminded the Tribunal of the overarching objective. He submitted that this is a case where Mr Fernando's past behaviour is so serious that it remains capable of

undermining the trust that the public place in a doctor. He further submitted that the new matters in relation to September 2023 give rise to impairment by reason of misconduct.

64. Mr Grundy submitted that it is open to the Tribunal to find that there is a risk Mr Fernando will not act with integrity in the future and therefore a finding of impairment is necessary to uphold proper standards and maintain public confidence in the profession. He submitted that given what occurred in September 2023 it would be very difficult for Mr Fernando to persuade the Tribunal that he is no longer impaired. He submitted that the Tribunal must take all relevant factors into account and weigh them in the balance when considering whether Mr Fernando's overall fitness to practise remains impaired and whether restoration is in line with the overarching objective.

#### Submissions on behalf of Mr Fernando

65. On behalf of Mr Fernando, Ms Maudsley submitted that the Tribunal should grant Mr Fernando's application for restoration. Throughout her submissions she also referred the Tribunal to the relevant paragraphs of the Guidance.

66. Ms Maudsley submitted that Mr Fernando admitted most of the allegations at the original FTP hearing and now admits all the underlying facts. She submitted that in evidence he accepted the facts as outlined by Miss C, namely XXX. Further, he now accepts that the calls he made to Miss A were threatening. It was submitted that Mr Fernando is not trying to minimise his actions or justify them in any way. With regard to the new allegations from September 2023, he accepts the findings of the Tribunal that he acted without integrity by not informing Dr A and his colleagues that he was erased from the register.

67. It was submitted that due to the passage of time, Mr Fernando has had a number of years to work on his insight and to reflect on his actions. She explained that Mr Fernando now says that at the time he had allowed his personal emotions and unresolved pain from XXX to cloud his judgement. He lost sight of the boundaries that define professional integrity, and was driven by anger and a desire for control, rather than compassion and ethical thinking.

68. Dealing with the matters that led to erasure, Ms Maudsley made submissions in relation to each of the matters which led to Mr Fernando's erasure. Regarding the offence of common assault Ms Maudsley submitted that in evidence Mr Fernando accepted that there is no justification for what he did and that his actions were a gross breach of trust, not only towards Miss C, but also towards his profession. It was submitted that in evidence Mr Fernando accepted that there is no justification for physical violence and he was ashamed of what he did. Further he has reflected, recognises the impact his actions had on Miss C and is genuinely ashamed and remorseful for his actions. Mr Fernando had also sent an unreserved apology to Miss C by email on 3 September 2017.

69. Regarding not assisting the police, Ms Maudsley submitted that Mr Fernando has reflected and now says that he understands he reacted out of a place of ego and fear and

sees how such behaviour undermines the very foundations of professional trust and transparency.

70. With regard to accessing the medical records of Miss C and XXX in New Zealand, Mr Fernando recognises that confidentiality is a cornerstone of medical ethics and that if doctors break that trust it undermines not just individual relationships, but the entire profession. It was submitted that Mr Fernando accepts he was deceitful in the lengths he went to access those records.

71. By not informing the GMC of his conviction and charges, Mr Fernando accepts that he acted in a way that was dishonest and disrespectful to the regulatory framework. He had feared the consequences and hoped to avoid further scrutiny, which was both naïve and unethical. She submitted that Mr Fernando now fully accepts that transparency is essential not to just maintain public trust, but to ensure patient safety.

72. In relation to the new matters, Ms Maudsley submitted that Mr Fernando accepts that he allowed Dr A to believe he was a registered doctor and accepts, looking back, that he should have made his status clear and had a responsibility to do so. She submitted that Mr Fernando has reflected and realises how important it is that doctors do not hold themselves out to be registered and holding a licence when they are not. She submitted that Mr Fernando accepted that a patient may rely on advice believing it came from a regulated professional which could lead to harm if something went wrong. Mr Fernando also accepted it erodes public trust in regulation and undermines the work of registered professionals. Ms Maudsley submitted that Mr Fernando says that looking back he could have acted differently by stating clearly that he was not on the register and looking forward he will undertake to do that if a similar situation were to occur.

73. Ms Maudsley submitted that Mr Fernando has learned a salutary lesson and the risk of repetition of him doing anything remotely similar is extremely low. She submitted that Mr Fernando has reflected on how his conduct may be viewed by the public and accepts that the public would rightly be appalled and feel betrayed by his actions. She submitted that he accepts that he breached fundamental tenets of Good Medical Practice and that he should have acted differently and that he damaged the reputation of the profession.

74. Further, it was submitted that Mr Fernando has demonstrated a very good level of insight, shown genuine remorse for his actions and reflected on all the allegations, including the matters relating to 2023. She submitted that Mr Fernando's insight has developed from 2020 when he spoke to XXX during XXX. She submitted that Mr Fernando's insight has developed to the point where it is now very good.

75. Ms Maudsley submitted that Mr Fernando has made attempts to remedy any concerns; he has compiled a CPD learning log from 2018 – 2024, addressing such issues as confidentiality, professional boundaries courses and probity. Further Mr Fernando has completed of an anger management course. She submitted that whilst it was relatively

recent, this was a follow up to the XXX recommendations made by XXX and that Mr Fernando was refreshing himself to make sure that there is no repetition.

76. Reference was made to the report of XXX

77. Reference was made to the report of Dr G, from the Doctor Support Group:

*'We were usefully able to discuss his current thoughts on the behaviours which led to his erasure from the medical register. He demonstrated a good level of insight stating that he "had been stressed and too emotional at the time and acted rather than thought about how I should manage myself". He thought that a number of factors had impacted on him. Including his cultural upbringing, [XXX], frequent moves of country in support of his career, work stresses and difficulties within [XXX]. He acknowledged that he had always had a bit of a temper but through the psychological work he has engaged in, a mellowing with age, and the support of his faith, he considers that he now has coping strategies and can handle his emotions.*

*He referred to his coping strategies as including attending the mosque, meditating, walking and using a stop, think approach, before considering whether to act or not as helpful. He described himself as now being a much calmer individual compared to how he had previously been*

*He expressed remorse about what he had done, noting how his behaviours had negatively affected others and himself...'*

78. The Tribunal were reminded that none of the behaviour that led to Mr Fernando's erasure has been repeated and that it is not likely to be repeated. It was submitted that Mr Fernando now lives a calmer life with XXX.

79. Ms Maudsley submitted that since 2023 Mr Fernando has shown no lack of integrity. She submitted that Mr Fernando has worked in war zones such as in Gaza and Ukraine. Further, he has assisted in Rwanda, Egypt and Pakistan in providing medical training and care. Since 2020 – 2021 Mr Fernando began volunteering with humanitarian organisations on medical missions and has continued with his humanitarian work. Ms Maudsley submitted that Mr Fernando currently works for the government XXX and XXX which can only be granted if he has a clean record. She submitted that Mr Fernando's criminal conviction was spent in 2020. She referred to the fact that Mr Fernando is trusted by the government with classified information.

80. Referring to Mr Fernando's skills and knowledge, Ms Maudsley submitted that Mr Fernando undertook a clinical attachment at a GP surgery as he was not able to secure a clinical attachment in hospitals. She submitted that he was described by the GP as being very professional. It was also highlighted that he has undertaken over 500 hours of CPD, including structured learning, practical workshops and reflective exercises, and produced a surgical logbook. She submitted that there are no issues with Mr Fernando's knowledge and skills.

81. It was submitted that Mr Fernando has shown a significant level of insight into all his previous actions. Ms Maudsley submitted that he has made great strides in addressing his behaviour. She submitted that the conduct which led to his erasure dates back some years and that Mr Fernando is more mature. Due to changes in his lifestyle and deep reflection, he has come to terms with what he did, accepted all the concerns and remedied the misconduct through targeted work, XXX and mentorship. Further, Mr Fernando's remorse is genuine, that he has learned a hard lesson, and that his actions will never be repeated.

82. Ms Maudsley submitted that Mr Fernando poses no risk to patient safety. She submitted that given Mr Fernando's high level of reflection and all the remedial work that he has completed, as well as his insight, the public interest would not be undermined if he were to be restored to the medical register.

83. In summary, it was submitted that Mr Fernando is now fit to practise as a medical practitioner. She submitted that the public need good surgeons and will benefit from his skills as a surgeon. Accordingly, she submitted that the Tribunal should allow Mr Fernando's application for restoration.

### The Tribunal's Approach

84. The Tribunal reminded itself that its power to restore a practitioner to the Medical Register is a discretionary power to be exercised in the context of the Tribunal's primary responsibility to act in accordance with the statutory overarching objective, to protect the public, as set out later in this determination.

85. While the Tribunal has borne in mind the submissions made by the parties, the decision as to whether to restore Mr Fernando's name to the Medical Register is a matter for this Tribunal exercising its own judgment.

86. Throughout its consideration of Mr Fernando's application for restoration, the Tribunal was guided by the approach laid out in the MPTS 'Guidance for medical practitioners tribunals on restoration following disciplinary erasure' ('the Guidance').

87. The Tribunal reminded itself that the onus is on Mr Fernando to satisfy it that he is fit to return to unrestricted practice and that the Tribunal should not seek to go behind the original Panel's findings on facts, impairment and sanction. However, the Tribunal findings in respect to the new matters are relevant to its consideration of the application for restoration as the Tribunal must consider whether Mr Fernando's fitness to practise is impaired by reason of the new allegations.

88. The LQC advised the Tribunal that the test to be applied when considering whether a doctor should be restored was set out in the case of *GMC v Chandra [2018] EWCA Civ 1898*, in that '*Having considered the circumstances which led to erasure and the extent of*

*remediation and insight, is the doctor now fit to practise having regard to each of the three elements of the overarching objective?’*

89. The Tribunal reminded itself that, in making its decision, in accordance with the guidance it should consider the following factors:

- a. the circumstances that led to the erasure;
- b. whether Mr Fernando has demonstrated insight into the matters that led to erasure, taken responsibility for his actions and actively addressed the findings about his behaviour or skills;
- c. what Mr Fernando has done since his name was erased from the register;
- d. the steps Mr Fernando has taken to keep his skills and knowledge up to date; and
- e. the lapse of time since erasure;

90. The LQC advised that the Tribunal must consider whether Mr Fernando’s fitness to practise is impaired by reason of the new allegation. She reminded the Tribunal that in reaching its determination on impairment, it must have regard to the statutory overarching objective which is:

- To protect, promote and maintain the health, safety and well-being of the public;
- To promote and maintain public confidence in the medical profession;
- To promote and maintain proper professional standards and conduct for members of that profession.

91. The Tribunal was reminded that there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal’s judgement alone.

92. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted: first the Tribunal must determine 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.

93. In considering misconduct the Tribunal was reminded that whether the misconduct is serious has to be determined by the Tribunal exercising its own judgment on the facts and circumstances in light of the evidence [*Roylance v GMC (No 2)* 1 AC 311].

94. In relation to impairment, the LQC reminded the Tribunal of guidance provided by Dame Janet Smith in the *Fifth Shipman Report* as adopted by the High Court in *CHRE v NMC and Paula Grant* [2011] EWHC 297 Admin. In particular, the Tribunal should be aware that one or more of the following features are likely to be present when a doctor’s fitness to practise is found to be impaired in that he/she has:

- a. *in the past acted or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

- b. *in the past or is liable in the future to bring the medical profession into disrepute; and/or*
- c. *in the past breached or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d. *in the past acted dishonestly or is liable to act dishonestly in the future.*

95. The Tribunal must determine whether Mr Fernando’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.

96. The Tribunal should also consider the case of *Cohen v General Medical Council* [2008] EWHC 581 (Admin), where Mr Justice Silber ruled that at the impairment stage, a tribunal ought to take account of any evidence and/or any submissions from both the doctor and the GMC that the doctor’s failing is either;

- i. easily remediable; or
- ii. already been remedied; and/or
- iii. highly unlikely to be repeated

97. The Tribunal should consider whether Mr Fernando has demonstrated any insight into his conduct. It should balance its findings against whether restoration would meet the overarching objective. In particular, would restoring the doctor to the register pose any future risk to patients and members of the public? Is there a risk of a behaviour being repeated which may result in physical or emotional harm being caused to a patient. In the event the Tribunal is not satisfied a doctor is fit to practise unrestricted, restoration would not be in line with the overarching objective to protect the public.

98. In considering the effect of the doctor’s behaviour in relation to the overarching objective the Tribunal should ask whether an ordinary member of the public who is aware of the relevant facts would be concerned to learn that the doctor had been allowed to return to practice. *In considering this the Tribunal should also consider that the interest of maintaining public confidence in the profession as a whole is more important than the interests of an individual doctor.*

99. Furthermore, where there has been a very serious and/or persistent departure from the published standards resulting in erasure, the Tribunal must consider whether it is consistent with the objective to promote and maintain professional standards and conduct to allow the doctor to practise again.

## The Tribunal’s Decision

100. The Tribunal considered relevant factors set out at paragraph B4-34 of the Guidance. The Tribunal had careful regard to the circumstances which led to Mr Fernando’s erasure. It considered the 2017 Panel’s determinations and findings and considered each matter

separately and then went onto consider Mr Fernando's insight and remediation in relation to each issue.

101. In assisting the Tribunal as to the quality of any steps Mr Fernando has taken to remediate the concerns and the impact of that remediation, the Tribunal had regard to paragraph B20 of the Guidance.

**B20** The quality of the steps the doctor has taken to remediate the concerns is key to assessing the impact it has had or is capable of having. The tribunal should consider whether any remediation undertaken by the doctor is:

**a** relevant – in that the steps taken to remediate have directly addressed the concerns identified

**b** measurable – in that there is objective evidence available that helps the tribunal understand what has been done and what, if anything, is left to be done, and

**c** effective – in that there is enough information for the tribunal to see how any learning has been assessed and/or applied by the doctor and its impact or success

102. In relation to the conviction, the Tribunal bore in mind that this was at the lower end of the scale of assault. However, Mr Fernando appealed against the conviction which resulted in Miss C having to give evidence for a second time. The conviction is now spent. There is no evidence of any further episodes of violence since he was erased.

103. In terms of insight the Tribunal took into account that at the FTP Mr Fernando stated that the conviction was a miscarriage of justice. In evidence he stated that at the time he felt it was a miscarriage of justice based on his understanding of the facts.

104. In 2020 Mr Fernando engaged in XXX and at that time he had still not acknowledged the full extent of his offending and gave an account which minimised his involvement; XXX in his evidence to this Tribunal Mr Fernando said that on reflection he was wrong and said he had a lack of insight and did not appreciate the importance of accepting the facts with humility. He said that his professionalism was not what it should have been.

105. The Tribunal noted that Mr Fernando provided a full apology and now accepts the full facts relating to his conviction. The Tribunal also considered that he has shown remorse in his reflective statement. The Tribunal noted he had completed an Anger Management course but that this was only shortly before this hearing. It did not specifically relate to XXX and when asked to explain how violence in XXX differed from XXX he stated *"[XXX] arises out of a misunderstanding between the parties. In the workplace a patient could be aggressive because they didn't like the treatment, with [XXX] is mostly misunderstanding."*

106. It noted the testimonial from Ms E, who lives in another country, but attached limited weight to this testimonial.

107. There was evidence of some progress in terms of insight and remediation but Mr Fernando was unable to demonstrate a sufficient understanding of XXX. The Tribunal determined that until he has fully remediated and shown sufficient insight there remains a risk.

108. The 2017 Panel found that on 5 December 2013 Mr Fernando had been charged with a criminal offence breach of XXX, and it also found that in November 2014 he was charged with harassment and common assault. The 2017 Panel found that Mr Fernando failed to report to the GMC that he had been charged with these criminal offences, and that he also failed to report that that he had been convicted.

109. The Tribunal took into account that these were serious matters and that there had been multiple failings to notify the regulator. At the FTP Mr Fernando stated that he was unaware of his obligation to inform the GMC.

110. Mr Fernando stated in evidence that he appreciated why it was necessary to inform the regulator and explained that depending on the offence, the GMC may need to put steps in place to protect the public. The Tribunal accepted that this showed some insight.

111. The Tribunal took into account that when engaging with XXX in 2020, Mr Fernando explained to XXX that he was unaware of his duty to report such matters because he had not read Good Medical Practice. In evidence he stated that he did not realise that he had to report the charge and that he read GMP when he was first registered in 2002. He stated *"I don't think I went through it with a fine-tooth comb, it's not a defence. I was dealing with [XXX] court cases whilst working full time, that perhaps impaired my decision making"*.

112. In evidence Mr Fernando stated that he had read GMP and listened to a lot of podcast series. However, in answer to further questions regarding GMP he stated that the most recent version he had read was from either 2014 or 2016 and was seemingly unaware of the most recent up to date edition.

113. The Tribunal were concerned that in his reflective statement Mr Fernando acknowledged that he acted in a way that was dishonest and disrespectful to the regulatory framework and stated *"I feared the consequences and hoped to avoid further scrutiny, which was both naive and unethical"*.

114. The Tribunal found that Mr Fernando's insight is still developing and his remediation into this matter was insufficient.

115. The 2017 Panel also found that during the course of the police investigation in relation to the charge of harassment, Mr Fernando failed to co-operate with a formal inquiry in that, during a telephone conversation with Police Service in Northern Ireland, he had wished the courts "good luck" in finding him or words to that effect.

116. The 2017 Panel found a number of charges proved that Mr Fernando had made abusive and threatening telephone calls to Miss A and Miss B. In some of those calls Mr Fernando spoke directly to the persons involved and on other occasions he left messages.

117. At the 2017 Panel Mr Fernando denied that his telephone calls had been threatening but he now accepts that they were and stated in evidence that Miss A and Miss B *'would have felt fearful for their lives..'* The Tribunal was mindful that this was an isolated incident and occurred at a time of great emotional stress for Mr Fernando.

118. He has since undertaken XXX and CPD courses dealing with Anger and Stress management and there has been no repetition of similar behaviour.

119. He also sent an apology to Miss A and during the course of XXX developed an acceptance of same sex relationships. The Tribunal concluded that in respect of this matter Mr Fernando had shown insight and had remediated.

120. The Tribunal considered that it was unlikely he would behave similarly in the future.

121. The 2017 Panel found that on 19 September 2016 the New Zealand Health Practitioners Disciplinary determined that Mr Fernando was guilty of professional misconduct and had imposed an order against him cancelling his registration in New Zealand. The Tribunal considered that this misconduct was particularly serious. It was dishonest deceitful conduct which was calculated, deliberate and took place over a significant period.

122. In relation to the findings of the New Zealand Health Practitioners Disciplinary Tribunal in 2016, Mr Fernando accepted that his actions were wrong and showed a lack of insight. At the 2017 Panel said that his actions were motivated by concerns for the wellbeing of others. He asserted that the New Zealand determination was unfair because he was not present at the hearing. In oral evidence to this Tribunal, he explained how he accessed the confidential information by pretending to be the treating doctor and said that XXX and would not be able to give consent and he then asked various questions to elicit the information he wanted. Mr Fernando accepted that his actions were wrong.

123. During the course XXX in 2020 Mr Fernando maintained that he obtained access to confidential records to protect XXX who he feared would come to significant harm. The Tribunal took into account Mr Fernando's evidence and that he had completed a significant amount of CPD work on probity and confidentiality issues.

124. Overall the Tribunal considered that whilst Mr Fernando has developed his insight and taken steps to remediate it is not yet complete and there remains a risk of repetition.

125. There had been no concerns expressed about Mr Fernando's clinical performance or that he posed a risk to patients. With regards to keeping his clinical skills and knowledge up to date, the Tribunal considered that Mr Fernando has done as much as could be expected of him given his circumstances. He has attended clinical conferences, read articles, participated

in a clinical observership at a GP Practice. He has worked clinically in Gaza, Ukraine and Pakistan and has provided a logbook of some appropriate surgical procedures.

126. The 2017 Panel determined that Mr Fernando's behaviour was fundamentally incompatible with continued registration and determined to erase his name from the medical register in order to maintain public confidence in the profession, and declare and uphold proper standards of conduct and behaviour.

127. On appeal to the High Court Mr Fernando did not challenge the findings of fact and impairment but he did appeal against the sanctions of erasure. His appeal was dismissed in March 2018 at which point the erasure came into effect.

128. The Tribunal took into account the passage of time and bore in mind that there has been no repetition of the conduct which led to erasure. However, the Tribunal was mindful that this must be weighed against the facts of the new allegations of misconduct.

#### The new matters

129. The Tribunal considered whether the new matters found proved amount to misconduct. In summary the Tribunal found that in September 2023 Mr Fernando held himself out as being a registered doctor, did not make it clear to others that he was no longer a registered doctor and that his actions lacked integrity.

130. At the request of a third party, Mr Fernando provided an opinion on blood tests of a patient in isolation from the rest of their medical records and raised the possibility that the patient may have a tumour. He was critical of the treating doctors, and caused anxiety and worry which led to a complaint. He attended a meeting with the patient and his treating medical team and at no point did he make it clear that he had been erased from the medical register and was not a registered doctor.

131. The Tribunal had regard to the 2013 edition of Good Medical Practice that was in effect in September 2023. It considered that the following paragraphs were engaged:

*66 You must always be honest about your experience, qualifications and current role*

...

*68 You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate*

132. The Tribunal concluded that Mr Fernando's failings amounted to a serious breach of Good Medical Practice. In the circumstances he was under a professional obligation to make his registrational status clear. The Tribunal concluded that Mr Fernando's conduct fell far short of the standards of conduct reasonably to be expected of a doctor and would be

considered as deplorable by fellow practitioners. As a result the Tribunal considered that his conduct amounted to serious misconduct.

133. The Tribunal went on to consider whether Mr Fernando's fitness to practise is impaired by reason of his misconduct.

134. In determining this issue the Tribunal had regard to Mr Fernando's behaviour prior to this episode of misconduct. It was significant that this occurred at a time when Mr Fernando's fitness to practise had been found to be impaired by the regulator for a range of misconduct. Furthermore, since that time he had engaged in extensive CPD and XXX to address these issues. The Tribunal were concerned that notwithstanding this, Mr Fernando failed to understand what his professional obligations were with regard to his status.

135. The Tribunal considered that Mr Fernando's actions and his lack of integrity brought the profession into disrepute and breached fundamental tenets of the profession. Accordingly, it found that his fitness to practise is impaired by reason of misconduct.

#### **Will restoration meet the overarching objective?**

136. In accordance with the guidance at paragraph C8, the Tribunal balanced its findings and considered whether restoration would meet the overriding objective. The Tribunal considered that given the serious findings for which Mr Fernando was originally erased and that his insight and remediation into these matters are not complete, as well as the new matters which have resulted in a finding of impairment, granting the restoration application would not uphold the overarching objective. The Tribunal considered that it was necessary to refuse the application in order to promote and maintain public confidence in the profession, and to promote and maintain proper professional standards and conduct for members of that profession.

137. In conclusion, the Tribunal determined that Mr Fernando's name should not be restored to the Medical Register.

#### **Mr Fernando's right to make further applications for restorations**

138. As the Tribunal has refused Mr Fernando's application for restoration, he must wait at least 12 months from the date of his application for restoration before applying again.