

PUBLIC RECORD**Dates:** 23/06/2025 - 24/06/2025

Doctor: Mr Manoj SEN

GMC reference number: 3401862

Primary medical qualification: MB BS 1983 Calcutta

Type of case

New - Misconduct

New - Caution

Summary of outcome

Adjourned to new tribunal

Tribunal:

Legally Qualified Chair	Mrs Catherine Moxon
Lay Tribunal Member:	Mrs Hannah De Merode
Registrant Tribunal Member:	Dr Shri Babarao
Tribunal Clerk:	Miss Maria Khan

Attendance and Representation:

Doctor:	Not present, not represented
GMC Representative:	Ms Amy Rollings, 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.

ANNEX A – 24/06/2025

Service and proceeding in absence

1. Dr Sen was neither present nor represented at the hearing. The Tribunal therefore considered whether to continue the hearing in his absence.

Submissions

2. The Tribunal was provided with a copy of a Service bundle from the General Medical Council ('GMC'). This included:

- Screenshots of the contact information held for Dr Sen by the GMC, namely his registered postal address and his email address;
- Last email received by GMC from Dr Sen's registered email address confirming receipt of final disclosure at Rule 7, dated 8 August 2024;
- Telephone note of call with Dr Sen, dated 6 January 2025;
- GMC emails to Dr Sen's registered email address, dated 6 January 2025;
- GMC Email to Dr Sen's registered email address attaching Rule 34(9) letter, Draft Hearing Bundle and Index, and delivery receipt ("Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:") dated 7 April 2025;
- GMC Rule 34(9) Letter and enclosures sent to Dr Sen's registered postal address via special delivery, and proof of delivery, dated 7 April 2025 and 8 April 2025 respectively;
- GMC email to Dr Sen's registered email address enclosing Notice of Allegation, and delivery receipt ("Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:") dated 8 May 2025;
- GMC letter to Dr Sen enclosing Notice of Allegation sent to Dr Sen's registered postal address by special delivery, and proof of delivery, dated 8 May 2025 and 16 May 2025 respectively;
- MPTS email to Dr Sen's registered email address enclosing Notice of Hearing, (no delivery or read receipt) dated 9 May 2025;
- MPTS letter to Dr Sen's registered postal address enclosing Notice of Hearing, dated 9 May 2025;
- Delivery status for Notice of Hearing, dated 16 May 2025;

- GMC email to Dr Sen’s registered email address enclosing letter with proposed sanction submission, and delivery receipt (“Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:”) dated 27 May 2025;
- GMC letter to Dr Sen’s registered postal address with proposed sanction submission (proposed sanction redacted), and proof of delivery, dated 27 May 2025 and 29 May 2025 respectively;
- MPTS letter to Dr Sen’s registered postal address enclosing Notice of Hearing by first class post, dated 18 June 2025;
- MPTS letter to Dr Sen’s registered postal address enclosing Notice of Hearing by special delivery, dated 18 June 2025;
- Telephone note of call with Dr Sen, dated 18 June 2025.

3. Ms Amy Rollings, Counsel, on behalf of the GMC, referred the Tribunal to Rule 40 of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’), as well as paragraph 8 of Schedule 4 to the Medical Act 1983, which highlights the different ways Notice of Hearing (‘NOH’) can be served on a registrant:

- (a) by delivering it to him;
- (b) by leaving it at his proper address;
- (c) by sending it by a registered post service;
- (d) by sending it by a postal service which provides for the delivery of the notice by post to be recorded; or
- (e) by sending it to an email address which the person provides for the purpose of fitness to practise proceedings.

4. Ms Rollings took the Tribunal through the bundle. She reminded the Tribunal that for service to be deemed effective via email, there must be a read receipt, and there had been no such receipt in response to the MPTS NOH email sent to Dr Sen on 9 May 2025. She submitted that although the official MPTS NOH was sent to Dr Sen’s registered address, also on 9 May 2025 by special delivery, it had not been delivered and was therefore not compliant with the Rules.

5. Ms Rollings submitted that a further copy of the NOH was sent to Dr Sen’s registered address on 18 June 2025 by both special delivery and first class mail. As of yet, no proof of delivery had been received for the letter sent by special delivery. However, Ms Rollings submitted, the Tribunal could look at whether service had been effected by the letter sent by first class post.

6. Ms Rollings submitted that there was further evidence within the bundle that showed Dr Sen was aware of the date and time of this hearing, and of the Allegation against him. She drew the Tribunal’s attention to the letters that had been successfully delivered to Dr Sen’s address, including the Rule 34(9) letter, Draft Hearing Bundle and Index, and the GMC proposed sanction submission.

7. Ms Rollings drew the Tribunal's attention to the telephone note of the call made by the GMC to Dr Sen on 18 June 2025. Dr Sen told the caller that he has not worked for the past three years, has XXX and is currently XXX. He said he had applied for voluntary erasure some time ago. When asked on the call if he was aware of the hearing due to commence on 23 June 2025, Dr Sen confirmed that he was aware and that he could not participate as XXX. Dr Sen was then asked if he would want to participate if the hearing was listed to another time, to which he responded that he had no intention of attending ever, as he has not worked for the past three years and has no intention of working again. Dr Sen confirmed that this hearing could go ahead in his absence.

8. Ms Rollings submitted that despite the difficulties caused in this case by the special delivery NOH letters not being delivered, there was enough evidence to show all reasonable attempts had been made to serve notice on Dr Sen, and that notice had been effected by post.

9. Ms Rollings invited the Tribunal to proceed with the hearing in Dr Sen's absence. She drew the Tribunal's attention to Rule 31 the Rules', which states:

31 Where the practitioner is neither present nor represented at a hearing, the Committee or Tribunal may nevertheless proceed to consider and determine the allegation if they are satisfied that all reasonable efforts have been made to serve the practitioner with notice of the hearing in accordance with these Rules.

The Relevant Legal Principles

10. The Legally Qualified Chair provided legal guidance on the relevant rules and case law regarding proceeding with a hearing in the absence of the doctor.

11. The Tribunal's attention was brought to the case of *General Medical Council v Adeogba/Visvardis* [2016] EWCA Civ 163. It had regard to all the circumstances including, but not limited to the following:

- The public interest that a hearing should take place within a reasonable time;
- The nature and circumstances of the doctor's behaviour in absenting himself, in particular, whether the behaviour was voluntary and therefore waived the right to be present;
- Whether an adjournment would result in the doctor being present;
- Inconvenience to any witnesses due to attend the hearing;
- The extent of any disadvantage to the doctor in not being able to present his account of events;
- The seriousness of the Allegation.

The Tribunal's Decision

Service

12. The Tribunal first considered whether the relevant NOH documents had been served in accordance with Rules 15 and 40 and paragraph 8 of Schedule 4 to the Medical Act 1983.

13. The Tribunal took into account that neither NOH posted by special delivery to Dr Sen's registered address on 9 May 2025 and 18 June 2025 had been delivered. The reasons for unsuccessful delivery were unknown. The Tribunal acknowledged Ms Rolling's submission that the Tribunal could be satisfied that notice had been served, based on the fact that a letter had been sent by first class to Dr Sen's registered address on 18 June 2025. However, the Tribunal rejected this submission on the basis that two letters sent by a guaranteed next day special delivery service had not been delivered. The Tribunal was of the view that this was particularly relevant to the same NOH letter which was sent by both first class post and special delivery on the 18 June 2025. There was no evidence that Dr Sen, or anyone else, had refused delivery of the special delivery mail and so there was evidence before the Tribunal of some present tense postal delivery problem at Dr Sen's registered address. For that reason less reliance could be placed on a first class letter being delivered than would ordinarily be the case. Additionally, there was no proof of posting of this letter, only a letter that had been drafted, that said '*First Class*' at the top of the page. The Tribunal concluded that in this case it was unfair to rely strictly on the proof of service rules for first class post in light of the totality of the evidence around postage.

14. The Tribunal also considered whether, in the alternative, enough notice period had been given to Dr Sen. An NOH must be served at least 28 days before the hearing date, unless the practitioner consents to a lesser period of notice or the Tribunal determine that it is in the public interest for there to be a lesser period.

15. The GMC seek to reduce the 28 day notice period to remedy an administrative error in failing to recognise in enough time that the special delivery NOH had not been effective.

16. The Tribunal had regard to the telephone note of 18 June 2025. It was recorded that Dr Sen knew of this hearing and could not participate in this hearing as XXX. Ordinarily greater scrutiny would be given to an account of XXX as a reason for non-attendance raised at the last minute. However, Dr Sen did not receive the minimum statutory notice of the hearing and was unrepresented which would reduce the likelihood of Dr Sen knowing to provide any XXX evidence and having the opportunity to do so. Dr Sen explained on the call that he had XXX and was currently XXX. There is no evidence before the Tribunal of when XXX took place and what, if any, adjustments could be offered to Dr Sen so that he could be enabled to participate in the hearing. There is no evidence this was discussed.

17. The Tribunal took into account that while Dr Sen was XXX, he had been asked about participating in the future. It considered that Dr Sen may have a different view if he was XXX, and have the opportunity to consider whether he wishes to present his perspective on the

seriousness of the matters set out in the Allegation, as well as evidencing any reflections and insight into his conduct, in front of a future Tribunal.

18. Dr Sen presented XXX as his reason for non-attendance when first asked if he was aware of the hearing date. XXX. The Tribunal took into account that this telephone call was only two minutes long, during which Dr Sen was not able to be identified by his GMC number. It is unfair to place weight on Dr Sen's position that he would have no intention of attending a future hearing in those circumstances. This is even greater a concern when considered in the context of an unrepresented doctor and in circumstances where the GMC cannot formally evidence statutory NOH.

19. This XXX does, potentially, cast in a different light the lack of participation from Dr Sen with the case management processes.

20. The Tribunal considered the inconvenience and stress that an adjournment could cause to both Dr Sen and Mr A when weighing the public interest. The public interest demands that hearings are promptly dealt with, in a reasonable time. However, this does not outweigh the concerns that the Tribunal has that the procedures be properly followed for justice to be done and to be seen to be done. The Tribunal has been told that Mr A is keen to give evidence and Mr A has been able to be flexible to attend during this hearing. Mr A's evidence surrounds matters of evidence already reduced to writing by the nature of the Allegation, which mitigates any concern about his memory fading. Should the Tribunal proceed, the risk of an improper conclusion being drawn on what, on the face of the papers, is a serious Allegation, is too great.

21. The Tribunal determined that an adjournment would allow the proper procedures to be followed. Hopefully Dr Sen may be able to attend the relisted hearing, with or without XXX to enable his participation. Even if Dr Sen makes a fully informed decision not to attend in the future, the adjournment still holds value to make sure that the foundation of any decision a future Tribunal makes is sound. As the Equal Treatment Bench Book reminds decision makers *"A judgment which results from an unfair trial is written in water"*.

22. The Tribunal determined that service had not been effected and in any event that Tribunal would not have been persuaded that it is in the public interest to reduce the statutory notice period to under 28 days.

Proceeding in absence

23. As the Tribunal was not satisfied that all reasonable efforts had been made to serve the NOH, the Tribunal refused the application to hear this case in Dr Sen's absence. For completeness, the Tribunal considered that the same reasons for relisting the application to find it was in the public interest to accept a lesser period of notice than 28 days would also have resulted in a decision not to proceed in Dr Sen's absence.

24. In all the circumstances, the Tribunal determined that it was not in the best interests of Dr Sen or the public, to proceed in his absence.

25. This hearing is now adjourned and will be relisted to a later date.