PUBLIC RECORD

Dates: 08/02/2021 - 09/02/2021
05/07/2021 – 09/07/2021

Medical Practitioner's name:	Dr Andrew NISBET
GMC reference number:	6045279
Primary medical qualification:	MB BCh 2002 University of Wales

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

Summary of outcome

Erasure

Immediate order imposed

Tribunal:

Legally Qualified Chair	Miss Rachel Wedderspoon (08/02/2021 – 09/02/2021) Mr Tim Smith (05/07/2021 – 09/07/2021)
Lay Tribunal Member:	Ms April Marland (08/02/2021 – 09/02/2021) Ms Barbara Larkin (05/07/2021 – 09/07/2021)
Medical Tribunal Member:	Dr Edward Doyle (08/02/2021 – 09/02/2021) Dr Michael Morton (05/07/2021 – 09/07/2021)
Tribunal Clerk:	Mr Laurence Millea (08/02/2021 – 09/02/2021) Ms Fiona Johnston (05/07/2021 – 09/07/2021)

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Christopher Gillespie, Counsel, instructed by Medical Protection Society
GMC Representative:	Mr Tom Gilbart, Counsel (08/02/2021 – 09/02/2021) Mr Terence Rigby, Counsel (05/07/2021 – 09/07/2021)

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 09/02/2021

1. This determination will be read in private. However, as this case concerns Dr Nisbet's conviction, a redacted version will be published at the close of the hearing XXX.

Background

2. Dr Nisbet qualified with an MB BCh from the University of Wales in 2002, obtaining his specialist registration in clinical radiology in August 2013. At the time of the events which are the subject of this hearing Dr Nisbet was residing in Jersey.

3. The allegation that has led to Dr Nisbet's hearing can be summarised as follows: At the time of the events, XXX. After an ongoing dispute and tension between Dr Nisbet and XXX about living arrangements, an eviction notice was served. XXX. On 6 August 2019, during a discussion between Dr Nisbet and Ms A XXX, Dr Nisbet stabbed Ms A once in the neck and Ms A died later.

4. Dr Nisbet was subsequently arrested, and on 19 August 2020 in the Royal Court of Jersey, Dr Nisbet was convicted of the manslaughter of Ms A, on the grounds of diminished responsibility. Although originally charged with murder with manslaughter in the alternative, the Crown, in the light of the XXX evidence, accepted the Defendant's plea of guilty to manslaughter on the grounds of diminished responsibility in that XXX his XXX responsibility for the killing was substantially impaired. All of the experts in that case who provided reports or gave evidence agreed that XXX.

5. On 29 August 2020, Dr Nisbet was sentenced to a XXX order for an indefinite period of time, a restriction order for an indefinite period of time and a restraining order for an indefinite period of time.

The Outcome of Applications Made during the Facts Stage

6. The Tribunal granted an application made on behalf of Dr Nisbet for the hearing to be heard partly in private, pursuant to Rule 41 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). The Tribunal determined that the hearing should be heard in private when considering XXX but otherwise would remain in public. This application was not opposed by the GMC.

7. The Tribunal refused an application, made on behalf of Dr Nisbet under Rule 29(2) of the Rules, to adjourn proceedings at the outset of the facts stage. The Tribunal's written determination can be found at Annex A.

8. The Tribunal granted an application, made on behalf of Dr Nisbet under Rule 29(2) of the Rules, to adjourn proceedings following the conclusion of the facts stage and prior to commencing the impairment stage. The Tribunal's written determination can be found at Annex B.

The Allegation and the Doctor's Response

9. The Allegation made against Dr Nisbet is as follows:

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

1. On 19 August 2020 in the Royal Court of Jersey you were convicted of manslaughter, on the grounds of diminished responsibility, of Ms A.
   Admitted and found proved

2. On 29 August 2020 you were sentenced to:
   a. a XXX order for an indefinite period of time;
   Admitted and found proved

   b. a restriction order for an indefinite period of time;
   Admitted and found proved

c. a restraining order for an indefinite period of time.
Admitted and found proved

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

The Admitted Facts

10. At the outset of these proceedings, through his counsel, Dr Nisbet admitted the entirety of the factual allegations, as set out above, in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

Determination on Impairment - 07/07/2021

11. 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 Nisbet's fitness to practise is impaired by reason of a conviction.

The Outcome of Applications Made during the Facts Stage

12. The Tribunal granted an application made on behalf of Dr Nisbet for the hearing to be heard partly in private, pursuant to Rule 41 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). The Tribunal determined that the hearing should be heard in private when considering XXX but otherwise would remain in public. This application was not opposed by the GMC.

The Evidence

13. The Tribunal has taken into account all the evidence received during the facts stage of the hearing.

14. Dr Nisbet provided two witness statements, the first dated 9 August 2019 and the second dated 28 June 2021 and gave oral evidence at the hearing.

Documentary evidence

15. The Tribunal had regard to the following documentary, evidence including but not limited to:

- Initial XXX Report of Dr B, dated 19 December 2019;
- Report of Dr C, dated 10 April 2020;

- Report of Dr D, dated 25 May 2020;
- Report of Dr E, dated 16 July 2020;
- Addendum Report of Dr D, dated 30 July 2020;
- Addendum Report of Dr C, dated 30 July 2020;
- Joint Report of Dr D and Dr C, dated 17 August 2020;
- Letter to The Royal Court of Jersey from Dr Nisbet, dated 7 July 2020;
- Various testimonials;
- The Royal Court of Jersey –submissions on sentencing, dated 19 August 2020.

Submissions on behalf of GMC

16. On behalf of the GMC, Mr Rigby submitted that Dr Nisbet is impaired by reason of his conviction. He submitted that manslaughter is a most serious offence and contrary to a doctor's duty to protect life. The conviction was so egregious that it engaged all three limbs of the overarching objective. Mr Rigby submitted that a finding of impairment is necessary in this case to protect the public, maintain public confidence in the profession and to promote and uphold professional standards and conduct for members of the medical profession. Accordingly, he submitted that Dr Nisbet's fitness to practise is currently impaired.

17. He submitted that it is accepted by the GMC, as it was by the Royal Courts of Jersey, that XXX his XXX responsibility for the killing of Ms A was substantially impaired.

18. Mr Rigby submitted that the facts upon which he was convicted remain, however, that in the course of a disagreement with Ms A he took out a knife which he had with him and fatally stabbed her in the neck before grappling with Mr F, who was trying to disarm him and help [Ms A].

19. He submitted that Dr Nisbet in his written statement to the police on the 9 August 2019, did not refer to being cornered or attacked by Ms A nor that he committed the act out of fear, as he now alleges. He said it is a matter for the Tribunal, but submitted that the account given in the doctor's recent statement demonstrates a retreat from his previously accepted position, which was potentially relevant to the issue of insight and acceptance of responsibility.

Submissions on behalf of Dr Nisbet

20. Mr Gillespie referred the Tribunal to the XXX evidence which established that Dr Nisbet XXX at the time of the events.

21. He submitted it was necessary to look not only at the conviction but XXX. The unambiguous expert evidence is that XXX subsequently impacted upon his actions.

22. Mr Gillespie submitted that Dr Nisbet does not pose a risk to his patients nor the public at large. There may be a small risk to XXX, however, taken as a whole the evidence does not

suggest that it would be appropriate to find that Dr Nisbet's fitness to practise is impaired on public protection grounds. He further submitted that there is certainly no evidence that Dr Nisbet poses a risk to patients in his former adjusted role as a tele-radiologist as he had no contact with patients.

23. Mr Gillespie submitted that in the circumstances leading to Dr Nisbet's arrest and conviction that the most significant factor was XXX. The unanimous expert evidence is that XXX substantially impacted upon his actions. XXX.

24. He submitted that in addition to XXX at the time of the offence, the following factors should be considered. There is no history of offending or violence, the offence was not premeditated, the assault was by means of a single blow and the weapon was a penknife-type implement, which Dr Nisbet was accustomed to carrying, rather than a weapon with which he had armed himself in order to commit the offence.

25. Mr Gillespie reminded the Tribunal that Dr Nisbet made admissions well before his first court appearance, had co-operated with the police and his regulator and had been candid in giving evidence to the Tribunal. He submitted that Dr Nisbet had been proactive in reflecting on his behaviour, in trying to understand his conduct and was engaging with XXX, all of which were to his credit.

26. He submitted that Dr Nisbet has demonstrated over the years that he can achieve academically, lead a fulfilling professional life, in a role that complements his strengths and abilities, and maintain a loving and stable relationship with his partner and children. As was clear from his evidence, both written and oral, he does display insight into the issues of risk and how he and the profession are perceived by the public. It may be that because of XXX he has had to work harder to achieve that insight but that should not be a factor that should be held against him.

27. XXX.

The Relevant Legal Principles

28. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision on impairment is a matter for the Tribunal's judgement alone.

29. The Tribunal is required to consider whether Dr Nisbet's fitness to practise is impaired as a result of his conviction.

30. The Tribunal must determine whether Dr Nisbet's fitness to practise is impaired today, taking into account his conviction and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

31. The Tribunal took into account the observations of Dame Janet Smith in the fifth report of the Shipman inquiry which have been approved in cases such as *CHRE v NMC & Grant [2011] EWHC 927 (Admin)* with regard to the features, which are likely to be present when impairment is found. The features relevant to this case are as follows:

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

The Tribunal's Determination on Impairment

32. The Tribunal was mindful of the overarching objective as set out in section 1 of the Medical Act 1983 (as amended) which requires the Tribunal to:

a. Protect, promote and maintain the health, safety and well-being of the public,

b. Promote and maintain public confidence in the medical profession, and

c. Promote and maintain proper professional standards and conduct for members of that profession.

33. The Tribunal records that the fact that Dr Nisbet has not conceded impairment is not a factor that this Tribunal considers in anyway weighs against him.

34. The Tribunal also considered that despite the gravity of the offence it did not automatically follow that Dr Nisbet's fitness to practise is currently impaired. The Tribunal was required to take into consideration the matters relating to the doctor and the individual circumstances surrounding the event.

35. XXX. That said the Tribunal agreed with Mr Gillespie that XXX, in this particular case, was highly relevant in terms of the conviction.

36. The Tribunal noted that Dr Nisbet was convicted of manslaughter. He was sentenced following his conviction on grounds of diminished responsibility to a XXX order with special restrictions XXX for an indefinite period, with an ancillary restraining order XXX, also for an indefinite period. XXX

37. At the time of the index event Dr Nisbet described XXX. He became aware of XXX while arguing with Ms A. In his witness statement of 9 August 2019, he described the events after the incident: '*The next thing I remember is standing a few feet away from [Ms A] who was lying on the floor. I realised I had a knife in my hand, and I felt very confused*'.

38. The doctor is currently detained for an indefinite period and whilst that disposal is predominately XXX, the Tribunal is entitled to infer from the sentencing comments that it contains an element of public protection. XXX.

39. The background events to the tragic death of Ms A were that Dr Nisbet had experienced difficulties, for some years interacting with others, including patients and work colleagues. Hence the adjustment that had been made by his employers in Scotland that they were content that he worked remotely from XXX, reporting on films.

40. XXX.

41. XXX.

42. XXX.

43. The Tribunal has seen some evidence to indicate that Dr Nisbet has insight into XXX and actions as previously described but it is not fully developed. He wants XXX but does not appear to fully understand it is impossible in the present circumstances. The Tribunal find that Dr Nisbet has some coping strategies in stressful situations, but they have not fully developed, XXX. He said himself in evidence that whilst he has some insight it does not always stop him from doing things.

44. Part of the reason for the Tribunal considering Dr Nisbet did not have full insight can be illustrated by his own evidence. Following the stabbing of Ms A he mentioned how Mr F had hit him with his walking stick so hard that it broke. The Tribunal considered Dr Nisbet concentrated more on himself than realising why Mr F acted as he did, having seen [Ms A] being killed in front of him. Dr Nisbet had difficulty in putting himself in [Mr F]'s shoes.

45. In addition, he did not fully appreciate the need to maintain professional standards and the confidence in the profession had to take precedence over his own personal circumstances. He stated he did not consider the public would believe he was impaired because XXX at the time of the index event. Again, this demonstrates Dr Nisbet has not developed full insight.

46. Dr Nisbet recognises that he will be XXX for some time. He has also voluntarily applied for early retirement and he has no intention of working or seeing patients until XXX.

47. The Tribunal noted a disparity in events in the police report compared to his account now. However, the Tribunal found that Dr Nisbet was not being dishonest but had thought about the events in question and created a narrative in his head. The narrative was limited by

XXX and his ability to see things from the view of another person. The Tribunal did not hold this disparity against him.

48. XXX

49. With regard to patient and public safety the Tribunal has considered the information in relation to XXX. The Tribunal had regard to a XXX report by Dr E, dated 16 July 2020 in which he remarks:

> *'XXX – doctors who kill are very rare and this underscores the unique nature of the offence and additionally that it is my opinion unlikely to be repeated; therefore I would consider Dr Nisbet a low risk to the general public'.*

50. A report by Dr C, dated 30 July 2020:

> *'The assessment of risk of future violence is very limited because predicting violence several years or decades into the future is very limited. Dr Nisbet has few risk factors for violence except for the obvious facts of this offence.'*

51. A joint report by Dr D and C, dated 17 August 2020:

> *'Though the general risk to the public is low, there may be some risk to [Mr F],XXX.'*

52. The Tribunal did not accept Mr Gillespie's submission that there was no risk to the public if he were to be permitted to return to medical practice. It noted that in his previous role as a radiologist he had no contact with patients and there is no history of offending or violence, however, there is not a recent risk assessment available nor any guarantee that he would have the benefit of similar work place adjustments. The Tribunal also noted a lack of XXX before it and it can only rely on the evidence at the time which suggests there is a low risk to the public. XXX. On his evidence he appears to be making slow but steady progress to address XXX Despite his progress he still remains a risk to the public.

53. Dr Nisbet is in a difficult situation in terms of demonstrating remediation. What the Tribunal can fairly record is that he has accepted at the earliest stage what he has done was wrong, he has engaged with his regulator and appeared to be cooperating fully with XXX.

54. Dr Nisbet accepted that members of the public would be appalled by what he had done.

55. The Tribunal noted that doctors occupy a position of trust and that their professional role necessarily requires high standards of personal conduct and behaviour at all times. The public have a legitimate expectation that a doctor will abide by the law and avoid any involvement in behaviour which contributes, or may contribute, to the cause of harm to others. Dr Nisbet's conduct fell far below the standards expected of a registered medical

practitioner. The Tribunal found his conduct breached a fundamental tenet of the profession, in that his behaviour undermines his professional standing, and has brought the profession into disrepute.

56. The Tribunal considered that a reasonable and well-informed member of the public would expect a finding of impairment to be made in this case. Such a person would be appalled if Dr Nisbet, who had been convicted of manslaughter, was permitted to return to unrestricted practice. Whilst the Tribunal has sympathy for Dr Nisbet's personal circumstances these must yield to the need to maintain public confidence in the profession and the maintenance of proper professional standards. The Tribunal concluded that Dr Nisbet's fitness to practise is impaired by reason of his conviction on all three limbs of the overarching objective.

Determination on Sanction - 09/07/2021

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

The Evidence

58. The Tribunal has taken into account the evidence received during the earlier stages of the hearing, where relevant, in reaching its decision on sanction.

Submissions on behalf of the GMC

59. On behalf of the GMC, Mr Rigby took the Tribunal through the relevant paragraphs the impairment determination:

> ***28*** *The doctor is currently detained for an indefinite period and whilst that disposal is predominantly XXX, the Tribunal is entitled to infer from the sentencing comments that it contains an element of public protection. XXX*
>
> ***36*** *Dr Nisbet recognises that he will be XXX for some time. He has also voluntarily applied for early retirement and he has no intention of working or seeing patients until XXX.*
>
> ***42****The Tribunal did not accept Mr Gillespie's submission that there was no risk to the public if he were to be permitted to return to general practice. … Despite his progress he still remains a risk to the public.*
>
> ***44*** *Dr Nisbet accepted that members of the public would be appalled by what he had done.*

60. Mr Rigby submitted that due to the seriousness of Dr Nisbet's offence it would be inappropriate for this Tribunal to take no action or to impose conditions on his registration. Mr Rigby submitted that erasure is the only appropriate sanction in this case. He submitted that erasure is necessary to protect the public and to uphold and maintain public confidence in the medical profession.

Submissions on behalf of Dr Nisbet

61. Mr Gillespie referred the Tribunal to Sanctions Guidance (November 2020) ('SG') in particular 119:

> *"As a general principle, where a doctor has been convicted of a serious criminal offence or offences, they should not be permitted to resume unrestricted practice until they have completed their sentence."*

62. He stressed the word '*unrestricted*' and emphasised that if his suggested disposal of suspension was adopted there would be no breach of paragraph 119.

63. Mr Gillespie reminded the Tribunal that a serious conviction does not automatically mean that the appropriate sanction is erasure. The Tribunal should consider not only the fact of the conviction but also the surrounding circumstances, including XXX. He stated that Dr Nisbet has faced up to the consequences of his actions and has demonstrated some insight. Dr Nisbet stresses that he fully understands how [Mr F] felt at the time and how he continues to feel. Dr Nisbet understands the importance of the reputation of the profession and upholding its standards.

64. He submitted that the Tribunal has set out its reasoning on the overarching objective and the three parts of the public interest in its determination on impairment. Whilst the final determination, comprising all the findings at all the various stages, must read logically as a whole, the consideration of the public interest may differ according to the particular stage. He submitted that a member of the public may be appalled at the prospect of a finding of impairment not being made, because the consequence would be that the doctor could return immediately to unrestricted practice but it does not necessarily follow that the same member of the public would be appalled if Dr Nisbet were not erased.

65. At the invitation of the Tribunal Mr Gillespie addressed the Tribunal on the case of *Regulation of Healthcare Professionals v GDC and Fleischmann [2005] EWHC 87* and *Bolton v Law Society (1994) 1 WLR 512.*

66. He submitted that although the general principle established in *Fleischmann* was undoubtedly sound, namely a doctor should not return to unrestricted practice before completing a sentence, at the relevant time, the powers of the GDC in respect of suspension were limited either to suspension for twelve months or erasure.

67. In contrast, the effect of Medical Act 1983 sections 35D(2)(b), (4)(a), (4A) and (5) is to permit the MPT to make an order of suspension for twelve months with a review at which

the MPT can extend the suspension for a further twelve months or impose conditions for a period not exceeding three years.

68. He submitted that taking into account the particular facts of the case, everything known about Dr Nisbet and the findings previously made, the Tribunal can properly make an order for suspension.

The Tribunal's Determination on Sanction

69. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement.

70. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Nisbet's interests with the public interest. It has also taken account of the overarching objective. The Tribunal has addressed impairment above and has taken all relevant matters into account in its deliberations on sanction.

71. The Tribunal considered the following aggravating and mitigating circumstances in this case:

Aggravating Factors

- The first and most important was that Dr Nisbet had killed Ms A. This was an act of violence at the very top of the scale. He had been convicted of a most serious charge namely manslaughter. Whilst the Tribunal had taken account of XXX, the Crown Court had found he had diminished responsibility, and not no responsibility, for the death of Ms A;
- Secondly it was contrary to the tenets that underpin the profession of medicine and good medial practice to take a life. Coupled with this factor the doctor's conviction itself would undermine public trust in the profession;
- Thirdly the XXX evidence does not point to there being no risk of repetition, merely a low risk of repetition. Repetition has to examined through the lens of the harm that would be caused if repeated. Although the repetition risk may be low, the harm resulting from any repetition could be high.

Mitigating factors

- Dr Nisbet has a number of favourable testimonials and while they speak well of him they carry little weight, given the nature of the conviction;
- Dr Nisbet made full admissions from the outset of the hearing and engaged with his regulator and the court proceedings;
- Dr Nisbet had been able to undertake work with reasonable adjustments XXX for a considerable period before the index event;
- This was a single incident in a reasonably long career;

- Dr Nisbet has provided some evidence of progress towards remediation through XXX and had developed some insight into his conviction;
- The Tribunal noted Dr Nisbet had apologised for his actions;
- In the Tribunal's judgement the most powerful mitigating factor was XXX at the time of the incident. The Tribunal has been careful not to double count this factor, given XXX was taken into account in reducing the criminal charge against him from murder to manslaughter. Even making that allowance, it was still a powerful mitigating factor.

72. It was argued on Dr Nisbet's behalf that a further mitigating factor was lack of repetition. Whilst true, the Tribunal gave this factor little weight given, since the index incident, his liberty has been restricted and XXX.

73. It is appropriate for the Tribunal to address the various submissions made to it on the general principles prior to applying its findings to the issue of sanction.

74. The Tribunal considered whether paragraph 119 of the SG and the decision in *Fleischmann* would rule out the possibility of suspension.

75. Paragraph 54 of *Fleischmann* states as follows

> *54. I am satisfied the Committee did not sufficiently consider the significance of the sentence which had been imposed by the Crown Court. His duty of disclosure to his patients would require that patients were informed of the sentence and the conditions attached to it. I am satisfied that, as a general principle, where a practitioner has been convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he has satisfactorily completed his sentence. Only circumstances which plainly justify a different course should permit otherwise. Such circumstances could arise in connection with a period of disqualification from driving or time allowed by the court for the payment of a fine. The rationale for the principle is not that it can serve to punish the practitioner whilst serving his sentence, but that good standing in a profession must be earned if the reputation of the profession is to be maintained."*

76. It is proper to acknowledge that Dr Nisbet is subject to indefinite detention. He is thus subject to a court order. As the Tribunal already noted detention was principally to address XXX but also to protect the public. The Tribunal cannot know when that indefinite detention will end, if at all.

77. On the face of it, *Fleischmann* and paragraph 119 of the SG point away from suspension. However, *Fleischmann* was determined, at the time, the GDC tribunal had a binary choice between erasure or one-year suspension. It did not have any other realistic option. Mr Gillespie's submission is that this Tribunal has further options. If it was to impose a sanction of suspension it could order a review. It follows therefore if suspension was ordered

Dr Nisbet would be subject to future scrutiny by a further Tribunal before being permitted to return to practice, if at all. This submission is well made.

78. In addition, *Fleischmann* does not provide an absolute bar to the possibility of suspension whilst a person has been detained for an indefinite period. As paragraph 52 makes clear the Tribunal can depart from that guidance if circumstances plainly justify a different course. The Tribunal considered that the '*plainly justify'* was a high threshold.

79. In *Fleischmann* the court quoted with approval the words of Sir Thomas Bingham in *Bolton v Law Society (1994)* that a person should not normally to be permitted to return to practice before '*he paid his debt to society'*.

80. Here the concept of paying a debt to society is easy to envisage in a case where a doctor receives a custodial sentence. The Tribunal did not find this a helpful or relevant concept to apply in the particular circumstances of Dr Nisbet.

81. In the Tribunal's judgement for the above reasons the fact that Dr Nisbet remains subject to indefinite detention does not in itself wholly exclude the possibility of suspension as an appropriate sanction.

82. Further the Tribunal would not be departing from paragraph 119 of the SG if Dr Nisbet was suspended as he would not be returning to '*unrestricted*' practice.

83. The Tribunal raised with the parties the decision in *Chandrasekera v NMC [2009] EWHC 144 (Admin)*. In that case the registrant was convicted of manslaughter on the grounds of diminished responsibly after she had killed her husband. Potentially she had an additional mitigating factor in that she had been permitted to return to practice prior to the substantive determination of her case. The High Court upheld the decision of the NMC that the public interest in maintaining standards justified erasure.

84. The Tribunal does not read that case as setting out a general principle in respect of manslaughter where the registrant has diminished responsibility. The case itself emphasises the need for a fact specific analysis and a careful balance of all relevant factors. It follows that the Tribunal concluded that the decision in *Chandrasekera* did not rule out the possibility of suspension where a registrant had been convicted of manslaughter on the grounds of diminished responsibility. The case did however emphasise the well-established principle that the registrant's interest may have to yield to the wider public interest.

85. Having addressed the above points the Tribunal then turned to the question of sanction.

86. Mr Gillespie conceded that even on his best case the least restrictive sanction was suspension.

87. However the Tribunal is not bound by any concession as sanction is solely a matter for it. Therefore, it considered it appropriate to approach its task in an incremental manner starting with the least restrictive.

No Action

88. In coming to its decision as to the appropriate sanction to impose, if any, the Tribunal first considered whether to conclude Dr Nisbet's case by taking no action.

89. The Tribunal concluded that, in view of the nature and seriousness of the conviction and its findings on impairment, it would be insufficient and inappropriate to take no action. It would not satisfy the statutory overarching objective to protect the public, maintain public confidence and the standard in the profession. The Tribunal was unable to identify any exceptional circumstances which would justify no action being taken on Dr Nisbet's registration. Furthermore, taking no action would undermine rather than promote and maintain public confidence and promote proper standards in the profession.

Conditions

90. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Nisbet's registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable.

91. Due to the nature of the facts found proved in this case, the Tribunal was of the view that no workable conditions could be formulated to address Dr Nisbet's impairment. It also concluded that conditions would be insufficient to meet the public interest and to maintain proper professional standards of conduct for members of the profession.

92. The Tribunal then turned to suspension and erasure. The Tribunal have not found this an easy decision and accept that compelling arguments can be deployed for the appropriateness and proportionality of either sanction.

Suspension

93. The Tribunal had regard to the following paragraphs of the SG:

> *'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).

93 Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions

97. Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.

…e. No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.

f. No evidence of repetition of similar behaviour since incident.

g. The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.'

94. In considering the relevant factors of the SG the Tribunal acknowledged that there is no evidence to indicate that Dr Nisbet would be incapable of demonstrating remediation given sufficient time and a willingness to be open and honest with himself. There was no evidence of repetition but for the reasons already given this carries negligible weight. Whilst the Tribunal has already accepted that Dr Nisbet has some insight, it is not fully developed and he remains a risk, albeit a low risk. The Tribunal was of the view that whilst Dr Nisbet's conviction was extremely grave it related to a one-off act. The Tribunal was conscious that at the time of the events Dr Nisbet was undoubtedly XXX

95. Before reaching a final determination on sanction the Tribunal then looked at the option of erasure.

96. The Tribunal considered paragraph 109 of the SG was particularly relevant. The Tribunal reminded itself that not all the sub factors need to be met and even if one or more sub factors were met it was an indication that erasure was the appropriate sanction, but not determinative.

97. The Tribunal considered sub-paragraph *a, b* (although this does largely repeat sub paragraph *a*), *c* and *g* were engaged. It did not accept Mr Rigby's submission that subparagraph *j* was engaged.

'109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).

a A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.

b A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.

c Doing serious harm to others (patients or otherwise), either deliberately or through incompetence and particularly where there is a continuing risk to patients (…).'

g Offences involving violence.

j Persistent lack of insight into the seriousness of their actions or the consequences.

98. Whilst his conviction can be difficult to remediate, it is not impossible to do so.

99. There has been a particularly serious departure from the principles of good medical practice therefore sub-paragraph *a* is satisfied. Sub-paragraph *b* is not satisfied as the Tribunal considered that the actions of Dr Nisbet were neither deliberate nor reckless due to XXX. Sub-paragraph *c* is satisfied in that Dr Nisbet did serious harm to others and sub paragraph *g* is equally satisfied.

Conclusion

100. The Tribunal has concluded, having carefully considered all the facts, that only erasure would be a proportionate sanction to mark the serious nature of Dr Nisbet's serious conviction. It has given very careful consideration to the possibility of suspension but having regard to the SG considered that the factors set out there in pointed to erasure as being the appropriate sanction.

101. The Tribunal has borne in mind the principle in *Fleischmann* and, whilst for the reasons already given, it does not prevent a finding of suspension Dr Nisbet has not been able to '*plainly justify'* a departure from this principle. In concluding that erasure was the only proportionate sanction the Tribunal considered the greatest weight had to be given to the need maintain public confidence in the profession. The death of Ms A at Dr Nisbet's hand in these circumstances was a fundamental departure from the principles of GMP and incompatible with continued registration.

102. That is not to say this Tribunal does not have the greatest sympathy for the doctor on a personal level but the need to maintain public confidence in the profession must take precedence over the individual circumstances of Dr Nisbet.

Determination on Immediate Order - 09/07/2021

103. Having determined to erase Dr Nisbet's name from the medical register, 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

104. On behalf of the GMC, Mr Rigby submitted that given the Tribunal's findings, it is necessary for the protection of members of the public and in the public interest, to impose an immediate order of suspension on Dr Nisbet's registration.

105. On behalf of Dr Nisbet, Mr Gillespie made no submissions on the matter of the imposition of an immediate order.

Tribunal's decision

106. The Tribunal has taken account of the relevant paragraphs of the SG in relation to when it is appropriate to impose an immediate order. Paragraphs 172 and 173 of the SG state:

> '172. *The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.*
>
> 173. *An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.'*

107. The Tribunal determined that given the serious nature of Dr Nisbet's conviction an immediate order of suspension was necessary to maintain public confidence in the profession and to protect the public. The Tribunal noted that in accordance with Section 38 of the Medical Act 1983.

108. This means that Dr Nisbet's registration will be suspended from today. The substantive direction for erasure, will take effect 28 days from when written notice of this determination has been served upon Dr Nisbet, unless an appeal is made in the interim. If an appeal is made, the immediate order of suspension will remain in force until the appeal has concluded.

109. The interim order currently imposed on Dr Nisbet's registration will be revoked when the immediate order takes effect.

110. That concludes this hearing.

Confirmed
Date 12 July 2021 Mr Tim Smith, Chair

ANNEX A – 09/02/2021

Application to adjourn proceedings

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

2. At the outset of proceedings, the Tribunal received an application, made by Mr Gillespie, counsel on behalf of Dr Nisbet, to adjourn proceedings under Rule 29(2) of the Rules 2004 (as amended) ('the Rules'), which states:

> *"29(2) Where a hearing of which notice has been served on the practitioner in accordance with these Rules has commenced, the Committee or Tribunal considering the matter may, at any stage in their proceedings, whether of their own motion or upon the application of a party to the proceedings, adjourn the hearing until such time and date as they think fit."*

Submissions

3. Mr Gillespie submitted that owing to the difficulties faced by Dr Nisbet in attending the hearing, the Tribunal should adjourn until April or May 2021 in order to accommodate his attendance. He submitted that Dr Nisbet is unable to attend the hearing in person, due to staff shortages and lack of resource at XXX and has attempted to attend the hearing remotely via Skype for Business, but this has been mostly unsuccessful due to technical issues at XXX.

4. Mr Gillespie submitted that these technical issues have led to XXX. He submitted that such difficulties in attending proceedings will continue to impact Dr Nisbet for the near future and that even if he were to overcome the technical and logistical difficulties and managed to attend, he would not be able to focus properly on the proceedings due to the stress these issues are causing him. As such, Mr Gillespie submitted, it would be unfair to expect the doctor to be able to properly engage under the circumstances.

5. Mr Gillespie submitted that Dr Nisbet is due to move to XXX in March 2021, where the facilities are 'far better' than XXX. Mr Gillespie submitted that when Dr Nisbet moves to XXX, there may be the opportunity for him to attend the hearing in person and if not, certainly remotely. Therefore, Mr Gillespie submitted that given the circumstances, the hearing should adjourn until April or May 2021, when Dr Nisbet has moved to XXX and when his chance of attending the hearing, whether that be remotely or in person, is far greater.

6. Mr Gilbart, on behalf of the GMC, opposed the adjournment application and invited the Tribunal to continue with proceedings at this stage.

7. Mr Gilbart submitted that the facts at Stage 1 are not contested and that the doctor has the advantage of legal representation to ensure fairness should this stage proceed in his

absence. Mr Gilbart submitted that whilst the Tribunal must bear in mind fairness to the doctor, it must also bear in mind the public interest. Mr Gilbart submitted that when balancing those factors, Stage 1 should proceed and he invited the Tribunal to refuse the application at this stage.

8. Mr Gilbart submitted that Dr Nisbet will be entitled to make a further application for adjournment at the impairment stage should he wish to do so.

The Tribunal's Determination

9. In reaching its decision on whether to adjourn the hearing, the Tribunal balanced the interests of the doctor with the public interest.

10. The Tribunal was mindful that a balance must be struck between making progress with the case and the matters before it, and dealing with proceedings in a fair and effective manner.

11. In reaching its decision, the Tribunal considered the submissions of Mr Gilbart that the factual allegations set out against Dr Nisbet are not disputed and Mr Gillespie has indicated that they are to be admitted in their entirety. Further, Dr Nisbet is legally represented at these proceedings and so were the facts stage to proceed in his absence there would be no unfairness to him.

12. The Tribunal noted that Mr Gillespie has confirmed that his instructions are to admit the factual allegations in full, and as such, these facts are not contentious. It considered that whilst Dr Nisbet may feel excluded if he is unable to participate in this stage of proceedings, there would be no material disadvantage to him were the Tribunal to do so.

13. The Tribunal concluded that it was in the public interest for these proceedings to be conducted fairly and effectively and that there would be no unfairness or injustice to Dr Nisbet were it to proceed with the facts stage in his absence.

14. The Tribunal recognised that it would be open to Dr Nisbet and his legal representatives to make a further application for adjournment at the impairment stage of proceedings if they wished to do so, and that the Tribunal would consider any such application in due course.

15. The Tribunal therefore refused Mr Gillespie's application to adjourn proceedings at this stage.

ANNEX B – 09/02/2021

Application to adjourn proceedings

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

127. At the outset of the impairment stage, the Tribunal received an application, made by Mr Gillespie, counsel on behalf of Dr Nisbet, to adjourn proceedings under Rule 29(2) of the Rules 2004 (as amended) ('the Rules'), which states:

> *"29(2) Where a hearing of which notice has been served on the practitioner in accordance with these Rules has commenced, the Committee or Tribunal considering the matter may, at any stage in their proceedings, whether of their own motion or upon the application of a party to the proceedings, adjourn the hearing until such time and date as they think fit."*

Submissions

128. Mr Gillespie submitted that the reasons for the adjournment application remain the same as per the application submitted to MPTS Case Management on 2 February 2021, namely: Dr Nisbet continues to be detained XXX and is awaiting transfer to XXX, it has not been possible to secure his attendance at the hearing in person and the internet connection at XXX is not reliable enough to allow Dr Nisbet to participate remotely; and XXX.

129. XXX.

130. Mr Gillespie submitted that Dr Nisbet is very keen and committed to participating in the hearing and has strong views on whether he is impaired and what should happen to him should impairment be found. He submitted that Dr Nisbet is a dedicated doctor who has battled through the problems he has had to pursue his career, to which he remains committed.

131. Mr Gillespie submitted that there is no question that Dr Nisbet is capable of participating in the hearing XXX. Given the seriousness of the case and the potential consequences for Dr Nisbet, it is important that he is allowed the opportunity to attend and participate. He is entitled to hear what is said and to give evidence, and currently there is no way he could do himself justice.

132. Mr Gillespie submitted that Dr Nisbet has been informed that the limitations on technology and internet issues that he has experienced at his current location do not appear to affect XXX, where he is to be moved. XXX. It may be possible for Dr Nisbet to attend the

hearing in person once at his new location, but in any circumstance, the XXX resources there will enable more productive engagement by him.

133. Mr Gillespie submitted that fairness and expedition also encompasses whether a registrant who wants to participate can do so. Dr Nisbet has not deliberately excluded himself from these proceedings. He submitted that it is not just a general level of fairness that the Tribunal must also consider, but also that Dr Nisbet XXX. His ability to participate in the proceedings can be assured or at least improved by either being able to attend in person, which is currently not possible, or by being able to participate remotely. Mr Gillespie further submitted that a failure to take steps to ensure either of these outcomes amounts to unfavourable treatment for the purposes of XXX.

134. Mr Gilbart, on behalf of the GMC, submitted that the GMC neither supports nor objects to the application, and is neutral on the matter.

135. Mr Gilbart submitted that if the Tribunal granted the application to adjourn then the hearing should be relisted as matter of urgency given that this is a serious case in which the public interest requires the hearing is progressed expeditiously. He submitted that Dr Nisbet and his defence team should ensure that proper arrangements be made to address the issues identified in the application and make Dr Nisbet's participation meaningful.

136. Mr Gilbart submitted that the Tribunal should consider scheduling a further five days to conclude proceedings given that it has been indicated that Dr Nisbet disputes the allegation of impairment and the Tribunal will therefore need to consider the substantial XXX evidence in this case, as well as considering and concluding the sanction stage if impairment is found.

The Guiding Principles

137. In reaching its determination, the Tribunal had regard to the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act), namely 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

138. The Tribunal also had regard to the relevant principles set out in ***Adeogba v GMC [2016] EWCA Civ 162***, particularly paragraphs 17 to 20.

The Tribunal's Determination

139. In reaching its decision on whether to adjourn the hearing at the impairment stage, the Tribunal balanced the interests of the doctor with the need to protect the public interest.

140. The Tribunal bore in mind that a balance must be struck between making progress with the case and the matters before it and dealing with proceedings in a fair and efficient manner.

141. The Tribunal was mindful that Dr Nisbet has a strong desire to participate in proceedings and is very keen to give evidence at the impairment stage. However due to a number of reasons beyond the doctor's control, including technical issues and XXX, this has not been possible. XXX. It took into account the submission of Mr Gillespie that when Dr Nisbet is transferred to XXX, he is likely to have more facilities and support available and remote participation is likely to be possible. The Tribunal also noted that whilst there is a need to progress proceedings, Dr Nisbet's case is in its early stages and only a short period of adjournment is necessary.

142. Given all the circumstances, including the overarching objective, the Tribunal concluded that it was appropriate and fair to adjourn the hearing at the impairment stage of proceedings.

143. The Tribunal therefore determined to grant the application made on Dr Nisbet's behalf and adjourned at this stage.

144. The Tribunal also noted that it may be assisted if Dr Nisbet were to provide a witness statement prior to commencement of the next stage of the hearing.