

PUBLIC RECORD

Dates: 14/05/2024 - 22/05/2024

Medical Practitioner's name: Dr Alexander GATES

GMC reference number: 7136480

Primary medical qualification: BM BS 2011 Universities of Exeter and Plymouth

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

Summary of outcome

Conditions, 24 months
Immediate order imposed
Review hearing directed

Tribunal:

Legally Qualified Chair	Mr Duncan Toole
Lay Tribunal Member:	Ms Jo Palmiero
Medical Tribunal Member:	Dr Laura Florence
Tribunal Clerk:	Miss Maria Khan

Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Peter Lownds, Counsel, instructed by DAC Beachcroft
GMC Representative:	Ms Eleanor Fry, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts and Impairment - 20/05/2024

1. This determination will be handed down in private. However, as this case concerns Dr Gates' conviction a redacted version will be published at the close of the hearing.

Background

2. Dr Gates completed his medical degree in 2011 at the Peninsula Medical School. Following the completion of Foundation Years 1 and 2, Dr Gates became a Trust Senior House Officer in Bath, in General Medicine, for a year across 2014/2015. In 2015, Dr Gates joined the Bath GP training scheme and was assigned to Somerton House Surgery ('the Surgery'), although he did not formally start working there until 2017. Dr Gates also completed out of hours training with Medvivo, who provide Urgent Care and Out of Hours GP services in Wilshire, Bath and North East Somerset, before qualifying as a GP in 2019.

3. At the time of the events leading to these proceedings, Dr Gates was practising as a GP at the Surgery as well as undertaking regular sessional work with Medvivo.

4. Although Dr Gates' employment at the Surgery was terminated in July 2021, he continues to work as a GP for Medvivo.

5. The allegation that has led to Dr Gates' hearing can be summarised as follows. On 1 June 2021, at Bristol Crown Court, Dr Gates was convicted of stalking Ms A without fear/alarm/distress. It is also alleged that on 30 June 2021, Dr Gates was sentenced to four months' imprisonment suspended for 24 months and to a restraining order for a period of seven years.

6. Dr Gates met Ms A on an internet dating site in 2016 when she was XXX years old. At that point, Dr Gates was 28 years old and was in a long-term relationship with his partner. It is understood that Dr Gates had initially stated on his online profile that he was single but

later admitted to Ms A that he was in a long-term relationship. Ms A XXX.

7. Dr Gates and Ms A pursued the relationship until late 2017, when Ms A told Dr Gates that she wanted an exclusive relationship. They subsequently saw each other until the middle of January 2018, during which time Ms A felt compelled to continue some contact, not least because Dr Gates XXX and what may happen to him if she did not maintain contact.

8. The message exchanges between the pair demonstrate that from mid- January 2018, Ms A became much clearer with Dr Gates that she no longer wanted a relationship with him. However Dr Gates proceeded to contact Ms A repeatedly via messages, emails and social media. He contacted her family and her XXX partner. Dr Gates also attended Ms A's XXX accommodation, as well as her family home and place of work, all without invitation. As a result of Dr Gates' stalking Ms A had to leave her work XXX and XXX accommodation due to feeling unsafe. Ms A's parents also paid to have CCTV cameras installed at their address.

9. In March 2018, Ms A reported Dr Gates to the police. Dr Gates was interviewed by police on 6 April 2018, where he made admissions.

10. XXX.

11. On 1 June 2021, in the Crown Court at Bristol, Dr Gates pleaded guilty to:

- a. One count of stalking, contrary to section 2A of the Protection from Harassment Act 1997.

12. On 30 June 2021, he was sentenced by His Honour Judge K to:

- a. 4 months' imprisonment, suspended for 24 months, with a requirement to complete the Better Relationships course.
- b. pay £2,500 prosecution costs.
- c. pay £2,950 compensation to the parents of the victim.
- d. A restraining order for a period of seven years (prohibiting contact with the victim, her family or her partner, by any means, including directly or indirectly).

13. XXX

14. XXX

15. XXX

The Outcome of Applications Made during the Facts Stage

16. Mr Peter Lownds, Counsel, on behalf of Dr Gates, made an application pursuant to Rule 41 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the

Rules’), for the entirety of the hearing to be held in private session. The Tribunal refused the application and the full decision is included at Annex A.

The Allegation and the Doctor’s Response

17. The Allegation made against Dr Gates is as follows:

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

1. On 1 June 2021 at Bristol Crown Court, you were convicted of stalking without fear/alarm/distress under section 2a of the Protection from Harassment Act 1997.
Admitted and found proved
2. On 30 June 2021 at Bristol Crown Court, you were sentenced for the offence detailed in paragraph 1 to:
 - a. four months’ imprisonment suspended for 24 months on suspended sentence; **Admitted and found proved**
 - b. a restraining order (under section 5 of the Protection from Harassment Act 1997) which prohibits you from:
 - i. contacting Ms A either directly, indirectly or via a third party including by social media;
Admitted and found proved
 - ii. contacting the family of Ms A either directly, indirectly or via a third party including by social media, nor to go within 50 meters of the family address;
Admitted and found proved
 - iii. contacting Mr B, the partner of Ms A either directly, indirectly or via a third party including by social media, for a period of seven years.
Admitted and found proved
3. XXX
4. XXX

And that by reason of the matters set out above your fitness to practise is impaired because of your:

- a. conviction in respect of paragraphs 1 and 2;
To be determined
XXX

The Admitted Facts

18. At the outset of these proceedings, Dr Gates made admissions to all the paragraphs and sub-paragraphs of the Allegation, 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

19. 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 above, Dr Gates' fitness to practise is impaired by reason of a conviction for a criminal offence XXX.

The Evidence

20. The Tribunal has taken into account all the evidence received during the hearing, both oral and documentary.

Witness Evidence

XXX

21. The Tribunal received evidence from XXX; Dr C and Dr D. Both gave oral evidence via video link. XXX

Dr Gates

22. Dr Gates provided his own witness statement, dated 27 April 2024, and also gave oral evidence at the hearing.

Documentary Evidence

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

- Certificate of conviction, dated 1 June 2021;
- Transcript of sentencing remarks, dated 30 June 2021;
- Record of Ms A's police interview x 2, dated 23 & 24 March 2018
- Ms A's police witness statements x 3, dated 6 August 2019, 24 November 2020, one undated;
- Contemporaneous evidence (text messages, cards, emails and letters) provided to the police by Ms A, various dates;
- Record of Dr Gates' police interview, dated 6 April 2018;
- Extract from record of Dr Gates' police interview, undated;

- Probation pre-sentencing report, dated 29 June 2021;
- Correspondence between the GMC and Dr Gates, various dates;
- XXX;
- Email from GMC Employer Liaison Officer to GMC Investigation Officer, dated 19 May 2022;
- XXX;
- Dr Gates' CV, dated 2023;
- Colleague feedback, dated 2023;
- XXX;
- Testimonials from colleagues, various dates.

Submissions

On behalf of the GMC

24. On behalf of the GMC, Ms Eleanor Fry, Counsel, submitted that Dr Gates' fitness to practise is currently impaired by reason of XXX his conviction XXX. She referred the Tribunal to the 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*. She submitted that Dr Gates has in the past brought the medical profession into disrepute and that he has breached one of the fundamental tenets of the medical profession.

25. Ms Fry submitted that Dr Gates had received a conviction for stalking. The sentencing remarks of the judge made it clear that the offence was so serious that it warranted a custodial sentence and that the impact on Ms A had been devastating. While the suspended custodial element of the sentence had passed, the restraining order was still live and had been deemed necessary and appropriate to impose it for a period of seven years. Ms Fry submitted that protective measures still remained necessary, as Dr Gates had made recent comments about not being able to have a reparative experience.

26. Ms Fry invited the Tribunal to exercise caution in accepting at face value Dr Gates' suggestion that he had gained insight into his actions. Some elements of his evidence suggested that full insight was not yet developed. Ms Fry drew the Tribunal's attention to examples of the accuracy of Dr Gates' self-reporting. These examples were of Dr Gates providing incorrect information about the reasons for Ms A XXX and the impact it had on Dr Gates. Further, that Dr Gates had not informed XXX about his new relationship.

27. Ms Fry then drew the Tribunal's attention to Dr Gates' witness statement written two weeks prior to this hearing. She submitted that his choice of words in one paragraph of his witness statement, in which he described his actions as "*trying to demonstrate my love for her in entirely the wrong way*", showed he did not accept the gravity or impact of his conduct. In addition, Ms Fry submitted that Dr Gates had recently told a witness that had he known about the consequences of pleading guilty, he would not have done so. Dr Gates could not remember that conversation, but the witness was able to give specific details.

28. Ms Fry reminded the Tribunal of Dr Gates' anxiety in relation to being prevented from accessing some dating sites as a consequence of his conviction. She submitted that while anyone in Dr Gates' situation would want to move on with their life and build new relationships, safeguarding rules were in place for a reason. The fact that Dr Gates does not see the need for those safeguards to apply to him, suggested that he had not yet fully developed insight.

29. The GMC's first witness recalled being told by Dr Gates that the inability to use certain dating apps was a current issue for him and, Ms Fry submitted, the Tribunal may think this raised an alarm given that he reports being in an 8-month monogamous relationship. Ms Fry submitted that XXX had made clear that Dr Gates' current relationship, a long-distance one, had not yet been tested and that this may undermine any suggestion that his current relationship is a stabilising factor XXX.

30. XXX

31. XXX

32. Ms Fry submitted that Ms A was made to feel responsible for XXX and was emotionally blackmailed into seeing him, being bullied by Dr Gates when she tried to put safeguarding measures and procedures in place to protect herself. Dr Gates also tried to isolate Ms A by telling her that her parents or boyfriend should not know of his contact.

33. Ms Fry drew the Tribunal's attention to the case of *Brocklebank v GMC* [2003] UKPC 57, specifically paragraph XXX:

XXX

34. Ms Fry closed her submission XXX.

On behalf of Dr Gates

35. On behalf of Dr Gates, Mr Lownds first referred the Tribunal to the guidance in the case of *Meadow v GMC* [2006] EWCA Civ 1390:

'the purpose of fitness to practise procedures is not to punish the practitioner for past misdoings but to protect the public against the actions or omissions of those who are not fit to practise. The [Panel] thus looks forward and not back. However, in order to form a view as to the fitness of a person to practise today it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past.'

36. Mr Lownds also reminded the Tribunal of paragraph 116 of the Sanctions Guidance (February 2024 edition) ('the SG') that states:

116 The purpose of the hearing is not to punish the doctor a second time for the offences they were found guilty of. The purpose is to consider whether the doctor's fitness to practise is impaired as a result

37. Mr Lownds submitted that the actions that led to the conviction happened over a four-month period that took place six years ago. This was a unique chapter involving conduct at odds with how Dr Gates had conducted himself before that, and since. This was behaviour capable of being remediated and, on fair assessment, Dr Gates had remediated this behaviour over the course of the long period that had elapsed and, consequently, his fitness to practise was no longer impaired on the basis of his conviction.

38. XXX.

39. Mr Lownds submitted that the issue of taking responsibility for the conduct was the starting point for any meaningful remediation. XXX in 2018, Dr Gates fully acknowledged that his behaviour was erratic and out of control. It could be seen that from early 2018, important admissions were made prior to the extensive work over six years with Ms H and the probation service. Dr Gates had pleaded guilty to the offence and accepted the sentence without appealing.

40. Mr Lownds reminded the Tribunal that Dr Gates had no previous adverse fitness to practise history and there has been no repetition of the offending behaviour in the six year period since it occurred, with no suggestion of any breach of the restraining order.

41. Mr Lownds submitted that Dr Gates' new relationship, albeit casual and long-distance, was relevant to any consideration of impairment. It demonstrates Dr Gates' approach has been measured and cautious compared to how he had conducted himself in his relationship with Ms A. This, Mr Lownds submitted, was material for the Tribunal in relation to insight, remediation and appropriateness.

42. Mr Lownds took the Tribunal to the evidence that related to Dr Gates' clinical competence and feedback from colleagues, showing him to be a highly regarded practitioner who conducts himself in a positive manner. Mr Lownds submitted this was powerful evidence in relation to Dr Gates' conduct which spoke volumes about his abilities and his not being currently impaired by reason of his conviction.

43. Mr Lownds invited the Tribunal to grant latitude in terms of judging Dr Gates' insight. He submitted that the Tribunal had had heard significant evidence in relation to Dr Gates' insight both at the time of his sentencing and his current level of understanding and attitude. Mr Lownds referred the Tribunal to XXX, submitting that Dr D was in a good position to have formed a view about Dr Gates' journey in terms of insight, appreciation and understanding. Dr Gates had reflected, describing himself as having a more mature attitude. He now recognised gravity of conduct despite his comments of 2022 in relation to the sentencing remarks, and has worked with a psychotherapist and probation officer to address these

matters. Mr Lownds submitted this was reassuring and important evidence to be given weight in the Tribunal's impairment discussion.

44. Mr Lownds referred the Tribunal to the observations of XXX, Ms H, who has known him for six years and has had many sessions with him. In particular, Mr Lownds drew the Tribunal's attention to the report that Ms H provided in relation to the progress Dr Gates had made in insight XXX.

45. Mr Lownds submitted that the Tribunal had clear evidence of Dr Gates taking responsibility and there had been no repetition of the conduct that led to Dr Gates' conviction.

46. Mr Lownds submitted there was no evidence to support there was any risk to patients. Mr Lownds accepted that through his conviction Dr Gates had brought the profession into disrepute, but because of the period of time that had elapsed, there was no basis for concluding that Dr Gates was liable to act in the same way in the future. In relation to fundamental tenets being breached, there was an issue of integrity in terms of Dr Gates' conduct at the time of the events. However, Mr Lownds submitted that there was nothing to suggest he would breach fundamental tenets in future.

47. In relation to Dr Gates' conviction, Mr Lownds submitted that a long period of time had elapsed and this was not a case where professional standards and public confidence in the profession would be undermined if a finding of impairment were not made.

48. XXX Mr Lownds submitted that XXX. Dr Gates had successfully returned to work, with face-to-face work commencing since summer of 2023, without further interruption. Mr Lownds again referred the Tribunal to the relevant testimonials from colleagues who were aware of the challenges faced by Dr Gates XXX.

49. XXX

50. XXX

51. Mr Lownds ended his submission by advising the Tribunal that should it conclude Dr Gates' fitness to practise to be not impaired on either basis, it could conclude that a warning could be given to him as per paragraph 61 of the SG:

61 Where a tribunal finds a doctor's fitness to practise is not impaired, it cannot impose a sanction. However, it must consider, under rule 17(2)(n) whether to:

a take no action

b issue a warning if the doctor's conduct, behaviour or performance has significantly departed from the guidance in Good medical practice.

The Relevant Legal Principles

52. The Tribunal shall bear in mind the overarching objective is set out in Section 1A of the Medical Act of 1983. In doing so, the Tribunal will consider the overarching objective as a whole, not giving excessive weight to any one limb.

53. Whilst there is no statutory definition of impairment, the Tribunal will be assisted by the 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.

54. The Tribunal must determine whether Dr Gates' 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.

55. The Tribunal should also have regard to the case of *Brocklebank*, in particular paragraph 11, which states:

'Their Lordships do not think that the jurisdiction of the Committee depends upon an assessment of the chances of the impairment recurring. It is sufficient that the condition, if it recurs, may be expected to cause serious impairment. Of course the Committee will have regard to what it considers to be the likelihood of recurrence in deciding whether to impose conditions upon the registration and for how long. But the existence of an underlying condition capable of causing serious impairment if it should recur is sufficient to found jurisdiction.'

The Tribunal's Determination on Impairment

56. The Tribunal took into account the documentary and oral evidence presented before it, as well as the submissions from both parties.

Conviction

57. When considering whether Dr Gates' fitness to practise is currently impaired by reason of his conviction, the Tribunal considered the circumstances surrounding the offence. Dr Gates had stalked Ms A over a period of four months in 2018, after Ms A had made it clear that she no longer wanted to be in a relationship with Dr Gates. The offending behaviour included sending a high number of messages, writing letters, attending Ms A's workplace uninvited and contacting her family and XXX partner. The remarks of the sentencing Judge highlighted the devastating effect that his conduct had on the victim:

"One does not have to seek further than the victim impact statement and the facts to know that this is a case of very serious distress caused to her and indicated by all of the evidence and her victim impact statement. She has been caused to make considerable changes to her life. She had to move addresses. She feared addresses she

did go to. She had to move employment and even entering a new relationship was a major difficulty for her. There can be no doubt that significant psychological harm has been caused to her and is continuing.”

Dr Gates’ behaviour was considered so serious that it crossed the custody threshold. He had received a four month suspended custodial sentence in June 2021. It was evident to the Tribunal that Dr Gates’ actions had a very serious impact on Ms A.

58. In acting as he did, Dr Gates did not make sure that his conduct justified patients’ trust in him and the public’s trust in the profession. His actions had breached a fundamental tenet of the profession and had brought the profession into disrepute.

59. The Tribunal considered Dr Gates’ insight. Dr Gates had made admissions during the police interview on 6 April 2018 and had pleaded guilty to the offence. Since that time, Dr Gates had spoken openly to XXX about his offending behaviour and the impact that his actions had on the victim. The Tribunal was of the view that Dr Gates had over time, accepted the judge’s sentencing remarks. The Tribunal also took into account Dr Gates’ oral evidence, during which he told the Tribunal how he had gained a deeper understanding of the gravity of his behaviour once he had processed the contents of Ms A’s victim impact statement.

60. Dr Gates has completed the work required as part of his suspended sentence and has XXX as requested of him. The Tribunal was also mindful that the index events had occurred in 2018, six years prior to this hearing and that huge progress had been made in terms of his insight. It took into account the comments from XXX from her report dated 7 March 2024 in which she wrote:

“Dr Gates has often used our sessions to consider the impact of his behaviour on others during the time in questions and has spoken of his feelings of remorse and shame. Dr Gates has always been aware that his behaviour was inappropriate, and we have often talked about what it must have been like for those others caught up in his distressing behaviour, again showing Dr Gates’ ability to be reflective.”

61. The Tribunal considered the contents of Dr Gates’ witness statement, dated 27 April 2024. Within the statement, Dr Gates had expressed an apology to Ms A, her family and partner, to his family and to the public and wider profession for his actions. He accepted the significant impact his actions would have had on Ms A and others, including his colleagues.

62. Dr Gates’ expressions of apology and regret are clearly positive and demonstrate a level of insight. The Tribunal noted that Dr Gates had referred to not being allowed to have a reparative experience. However, there was no suggestion that Dr Gates had, in the past, breached his restraining order or intended to do so in the future. The Tribunal viewed this comment as a general reflection that he shared in the context of his XXX sessions, rather than an intention to contact Ms A to express his apologies.

63. The Tribunal noted that the majority of Dr Gates' witness statement and reflections discussed his own personal circumstances at the time and the subsequent impact on him, rather than exploring in detail what the impact had been on Ms A. Dr Gates did accept in oral evidence, that during his pursuit to maintain the relationship with Ms A, he had focused on his own needs. This could have been explored further in Dr Gates' written reflections to demonstrate his full understanding and insight.

64. The Tribunal took into account Ms Fry's reference to Dr Gates' self-reporting. The Tribunal did note that Dr Gates had allegedly told Dr D in 2018 that he had *"struggled to tolerate or accept the decision by Ms A to XXX and had become emotionally distressed"*. Dr Gates did not specifically recollect the conversation with Dr D, but accepted in oral evidence that this was not correct and that Ms A had been deeply affected by XXX, which was not her decision alone. The Tribunal noted the concern with the apparent incorrect reporting of the circumstances by Dr Gates, but did bear in mind that this conversation was said to have taken place in June 2018.

65. The Tribunal also considered Dr C's email of 10 May 2024 to the GMC, in which he suggested a conversation had taken place during XXX on 7 March 2024, whereby Dr Gates stated that had he known what the consequences of pleading guilty would be, he would not have pleaded guilty. Dr C gave oral evidence on this issue and whilst he recalled the conversation from his memory, he accepted that no note had been made and that the conversation had taken place two months ago. Dr Gates' explained that a conversation had taken place around his decision to plead guilty to a lesser charge, but he denied saying that he would not have pleaded guilty if he had known the consequences. The Tribunal concluded that whilst Dr C was attempting to recall the conversation from the best of his recollection, in the absence of a clear note, the Tribunal was not persuaded there was sufficient evidence before it, to demonstrate that such a statement had been made by Dr Gates on 7 March 2024.

66. The Tribunal considered the evidence around Dr Gates' new partner and whether there was relevance in respect of insight into the circumstances surrounding his conviction. In XXX, Dr D refers to Dr Gates being in a six month long distance relationship, but Dr Gates does not regard this as being especially serious at the moment. Dr Gates makes no mention of his new partner in his recent witness statement.

67. The Tribunal also had regard to the XXX letter from Dr F XXX, dated 4 March 2024, in which she writes:

"He does not socialise much and is not exploring any new personal relationships."

In oral evidence, Dr Gates explained that he began speaking with his new partner via a dating website in the summer of XXX. He first met her around XXX months ago and they have been meeting around once or twice per month since then. Dr Gates confirmed that he had made his new partner aware of his conviction. However, when questioned by the Tribunal, he did not provide much information around the conversation with his new partner and the level of

detail that he had provided to her and appeared to have no vivid recollection of the discussion.

68. The Tribunal was of the view that this would have been a significant conversation to have had at this point in a new relationship. Dr Gates could have demonstrated a greater level of insight during his oral evidence when asked about his current relationship and how he had raised the topic of his conviction with her. For example, Dr Gates did not share his feelings about how he approached the conversation, the reaction of his partner and his thought processes in sharing certain information about his conviction. This would have been directly relevant to the level of insight he has into his own offending behaviour.

69. Based on the above matters, the Tribunal concluded that Dr Gates had good insight into the actions that led to his conviction, but his insight was not yet fully developed.

70. The Tribunal considered that Dr Gates' actions in 2018 were capable of being remediated. He had taken a number of steps to do so. These included several expressions of apology from his police interview onwards. Dr Gates had successfully completed all requirements of the suspended sentence order, including the Better Relationships course (albeit on a 1:1 basis with his probation officer). In addition, he had been attending sessions with XXX, Ms H, on a weekly basis for a number of years.

71. Despite Dr Gates having displayed good insight and taking steps to remediate, the Tribunal determined that a finding of impairment was necessary in circumstances where his insight was not yet complete and that the conviction and sentence was so serious that public confidence would be undermined if a finding of impairment was not made.

XXX

72. XXX

73. XXX

74. XXX

75. XXX

76. XXX

77. XXX

78. XXX

79. The Tribunal noted that XXX. The Tribunal did hear evidence of Dr Gates' new relationship. However, Dr Gates confirmed that the relationship was in its early stages and that they were only seeing each other around once per month. When referring to the current

relationship, Dr D stated that the relationship had not been tested, with no emotional investment yet on Dr Gates' part. Whilst it was positive that Dr Gates had met a new partner, given the circumstances and the level of contact that they had to date, the Tribunal did not consider this to be persuasive evidence of a factor that had significantly lowered the risk of repetition of XXX or offending behaviour.

80. XXX

81. Accordingly, The Tribunal concluded that a finding of impairment in respect of XXX conviction XXX was required in order 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.

82. The Tribunal has therefore determined that Dr Gates' fitness to practise is impaired by reason of XXX a conviction for a criminal offence.

Determination on Sanction - 22/05/2024

83. This determination will be handed down in private. However, as this case concerns Dr Gates' conviction a redacted version will be published at the close of the hearing.

84. Having determined that Dr Gates' fitness to practise is impaired by reason of his conviction XXX, 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

85. The Tribunal has taken into account the evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

86. At this stage in the proceedings, the Tribunal received the following further evidence on behalf of the GMC:

- Victim Impact Statement of Ms A, dated 9 May 2024;
- Video recording of Ms A reading her Victim Impact Statement, dated 21 May 2024.

Submissions

On behalf of the GMC

87. On behalf of the GMC, Ms Fry referred the Tribunal to the paragraphs of the Sanctions Guidance (February 2024 edition) ('the SG') that she submitted were relevant in this case.

88. Ms Fry submitted that if this case were XXX, the Tribunal may consider that conditions would provide the minimum necessary safeguard to protect the public. However this case did not simply relate XXX, and whilst there was a link between XXX and the conviction, it was clear that even at the time of the offence, Dr Gates was aware of the nature and consequences of his actions and was simply unwilling or unable to restrain himself from behaving in that manner and causing serious harm to Ms A and those around her.

89. Ms Fry told the Tribunal that the minimum sanction which was necessary to protect the public was one of suspension, even if this might lead to difficulties for Dr Gates. Ms Fry acknowledged that this was an offence which arose in Dr Gates' private life. However she submitted that it was a serious offence, leading to a criminal conviction for which only custody would do.

90. Ms Fry invited the Tribunal to consider the aggravating and mitigating features of the case. She submitted that the conduct involved inappropriate behaviour towards a vulnerable adult and that Dr Gates had acted without integrity (as outlined in paragraph 56(a) of the SG). Whilst it was right to say that XXX offered some mitigation, it was also fair to remember that it did not offer a defence or justification for the offending behaviour itself. Ms Fry drew the Tribunal's attention to the sentencing remarks of HHJ K, during which the aggravating and mitigating features of the offending were outlined. She also referred to Ms A's Victim Impact Statement, which made clear the gravity of the impact of Dr Gates' serious misconduct.

91. Ms Fry submitted that it merited consideration that whilst the sentence itself had now been served, the protective restraining order is in force until 2028, which means that an element of the sentence remains live.

92. Ms Fry, closing her submission, reminded the Tribunal that the length of any suspension was a matter for its discretion. Further, she submitted that a review hearing would be necessary in this case, as a reviewing Tribunal would need to consider any updating information and assure itself that the doctor was safe to return to work. This was particularly appropriate given the view of Dr D that it was Dr Gates' XXX which left him vulnerable to repeating his behaviour, in particular when in combination with environmental stressors and XXX.

On behalf of Dr Gates

93. On behalf of Dr Gates, Mr Lownds acknowledged that there had been a serious period of misconduct and it was clear that Ms A remained affected by the events.

94. He submitted that while case law supported the principle that maintenance of public confidence in the profession must outweigh the interests of the individual doctor, public confidence would be maintained by imposing such sanction as was appropriate in all the circumstances. Mr Lownds submitted that the two sanctions realistically available were either a period of conditional registration or one of suspension. He submitted that a sanction of

suspension was disproportionate and unnecessary for public protection. In this case, a period of conditional registration would be proportionate to maintain public confidence in the profession.

95. Mr Lownds took the Tribunal through the mitigating factors of this case. He submitted that Dr Gates had demonstrated a clear acceptance of responsibility at an early stage. He had pleaded guilty to the charges and engaged with probation.

96. Mr Lownds submitted that this was a case where XXX underlay a unique period of conduct. He told the Tribunal that there had been no repetition of the offending behaviour over a six-year period and Dr Gates had neither attempted to contact Ms A, nor had he breached his restraining order. Mr Lownds drew the Tribunal's attention to the testimonials and colleague feedback which attested to the manner in which Dr Gates conducts himself in a professional setting.

97. Whilst Mr Lownds did not ask the Tribunal to place great weight on the new relationship, he submitted that it demonstrated the contrast in how Dr Gates had approached it, compared to his relationship with Ms A. He was now more cautious and measured.

98. Mr Lownds told the Tribunal that this had been a private life matter, not involving a patient. He submitted there was no evidence of any risk to patients and reminded the Tribunal of its own assessment that there was a low risk of reoccurrence unless there was XXX. There was no history of stalking prior to this, or since. The history of the six-year period was highly relevant to meet the public confidence requirement when determining the appropriate sanction to impose.

99. In terms of insight, Mr Lownds submitted there was evidence of Dr Gates' insight into XXX his conviction XXX. This was reflected in the Tribunal's determination at the previous stage, in which the Tribunal found that he had made huge progress. Dr Gates had appreciated the impact of his actions on Ms A after reading her original Victim Impact Statement and the Tribunal had the evidence of Dr D and Ms H, which demonstrated Dr Gates' development of insight over time. This was the journey to be expected when XXX had contributed to conduct: XXX; a period of processing; understanding the consequences of their behaviour; and development of insight.

100. XXX

101. Mr Lownds drew the Tribunal's attention to the paragraphs of the SG that he submitted were relevant. He stated that it was a fair summary to conclude Dr Gates was a valued and highly regarded GP who provided a valuable service to the public. A period of conditions would be proportionate to Dr Gates' misconduct, would protect the public and be in Dr Gates' interests. The conditions could be formulated so as not to be an effective suspension and written in a way that compliance could be easily verified. There was no issue that Dr Gates had the capacity to comply with conditions.

102. Mr Lownds submitted that while suspension may have a deterrent effect and send out a signal, it would be disproportionate on the facts of this case, where there was a link between XXX and his misconduct.

103. Mr Lownds, in closing, submitted that there were no patient safety issues arising from either the conviction or XXX. Nor, in this case, was suspension necessary to maintain public confidence in the profession. Overall, the appropriate and proportionate sanction in this case was one of conditions.

The Relevant Legal Principles

104. The decision as to the appropriate sanction to impose, if any, is a matter for the Tribunal exercising its own judgement. In reaching its decision, the Tribunal will take account of the SG, considering the least restrictive sanction first before moving on to consider the other available sanctions in ascending order of severity.

105. The Tribunal will take a proportionate approach by weighing the public interest against the interests of Dr Gates. The Tribunal must bear in mind that the purpose for imposing a sanction is to protect the public and its purpose is not to punish, although it may have a punitive effect.

106. The Tribunal must make sure the action it proposes to take is sufficient to protect patients and the public interest. In making its decision on sanction, the Tribunal must have in mind the need 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.

The Tribunal's Determination on Sanction

107. Before considering what action, if any, to take in respect of Dr Gates' registration, the Tribunal considered the aggravating and mitigating factors in this case.

Aggravating Factors

108. The Tribunal identified the following aggravating factors:

- The criminal offence committed by Dr Gates was serious. It resulted in a suspended custodial sentence and a lengthy restraining order. The offence involved Dr Gates persistently contacting Ms A, her family and her XXX partner via different methods.
- Dr Gates' behaviour has had a devastating and long lasting effect on Ms A. While the Tribunal did not consider Ms A to have been vulnerable at the time she met Dr Gates, the impact of Dr Gates' inappropriate behaviour and emotional manipulation has led to Ms A becoming vulnerable since the events of 2018.

109. The Tribunal considered the submission of Ms Fry that Dr Gates had acted without integrity. The Tribunal noted that paragraph 56(a) of the SG refers to “*issues relating to probity*”. There was no allegation or suggestion in this case that Dr Gates had at any time acted dishonestly and the Tribunal had already deemed the seriousness of the offence and the impact on Ms A to be aggravating. Therefore, the Tribunal did not consider that paragraph 56(a) should be regarded as an additional aggravating factor.

Mitigating Factors

110. The Tribunal identified the following mitigating factors:

- There is evidence that Dr Gates had good insight into his conviction XXX. Dr Gates made admissions in his first police interview in 2018 and pleaded guilty. He had expressed his wish to apologise to Ms A and had done so most recently in his witness statement and in oral evidence.
- Dr Gates has no previous fitness to practise history. He has been seeing patients face-to-face again, and there were testimonials and colleague feedback comments, that demonstrated that Dr Gates was adhering to good practice in his clinical setting.
- XXX.
- The behaviour that led to his criminal conviction took place in 2018, over six years ago. There has been no repetition of the offending behaviour since 2018. Dr Gates has completed the work required as part of his suspended sentence order and has adhered to the terms of his restraining order.

No action

111. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Gates’ case, the Tribunal first considered whether to take no action. The Tribunal acknowledged that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

112. Dr Gates’ case could not be considered to be so rare as to amount to exceptional circumstances that would justify taking no action. Furthermore, the Tribunal had found in the previous stage of these proceedings that the level of Dr Gates’ insight, whilst good, was not yet fully developed.

113. The Tribunal determined that given the seriousness of Dr Gates’ conviction, and in the absence of any exceptional circumstances in this case, taking no action was neither appropriate nor proportionate and was not in the public interest.

Conditions

114. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Gates' registration. It had regard to paragraphs XXX 82(a) and (c) and 84(a) XXX of the SG, which it considered to be of particular relevance in this case:

XXX

82 Conditions are likely to be workable where:

a the doctor has insight

...

c the tribunal is satisfied the doctor will comply with them

...

84 Depending on the type of case (eg health, language, performance or misconduct), some or all of the following factors being present (this list is not exhaustive) would indicate that conditions may be appropriate:

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

XXX.

115. In considering whether conditions might be appropriate, the Tribunal reminded itself of paragraph 85 of the SG, which states that conditions should be appropriate, proportionate, workable and measurable.

116. In order to consider whether conditions are likely to be workable, the Tribunal took into account its findings from the previous stage relating to Dr Gates' level of insight. The Tribunal had concluded that there was currently a low risk of repetition and Dr Gates had good insight into his conviction XXX. The Tribunal also took into consideration that Dr Gates has been working under conditions imposed by NHS England since returning to work. There was evidence from the Medical Director at Medvivo who also acts as Dr Gates' workplace reporter. She confirmed that he had complied with conditions such as keeping a chaperone log and having regular catch-ups.

117. There was no evidence that demonstrated an unwillingness from Dr Gates to undertake remediation work. To the contrary, the Tribunal had already acknowledged the steps that he had taken, which had included an apology and full admission during the police interview and subsequent expressions of regret and apology throughout the past six years in different settings, including in probation sessions XXX.

118. The issue for the Tribunal was whether the imposition of conditions was ‘appropriate’ and ‘proportionate’ to the seriousness of the offending behaviour and XXX, taking into account all the relevant circumstances.

119. In order to assist with this analysis, the Tribunal did consider the relevant paragraphs of the SG that related to suspension.

Suspension

120. It took into account paragraphs 91, 92, and 97(a), XXX, (e), (f) and (g) of the SG when considering whether a period of suspension would be the appropriate and proportionate sanction in this case:

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).

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

a A serious breach of Good medical practice, but where the doctor’s misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.

...

XXX

...

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.

121. The Tribunal had concluded that Dr Gates had good insight, he had engaged in meaningful remediation and there was no evidence of him having repeated his offending behaviour since the period in 2018. The Tribunal had also assessed the current risk of repetition as being low, though this was open to fluctuation, depending on XXX.

122. Dr Gates' conviction was serious and had a lasting and continuing impact on Ms A. However, the Tribunal agreed with the submissions of Ms Fry that his actions were capable of being remedied and that they were not fundamentally incompatible with registration.

123. The Tribunal had previously found impairment in respect of conviction XXX. However, in doing so, the Tribunal had not concluded that Dr Gates was a risk to patients. Referring specifically to paragraph XXX of the SG the Tribunal considered there was no risk to patient safety if Dr Gates be allowed to continue to practise under conditions. His behaviour leading to his conviction occurred in his personal life and there was evidence that when Dr Gates had previously experienced XXX, he made a decision to stop working. Therefore, the issue for the Tribunal to assess was whether the breach was serious enough that a sanction lower than a suspension would not be sufficient to maintain confidence in doctors.

124. In carrying out this analysis, the Tribunal began by reminding itself of the circumstances around the offending behaviour and the impact that it had on the victim. The stalking was persistent and carried out over a four month period. On a number of occasions, Dr Gates XXX in an attempt to force Ms A to respond to his messages and/or to meet him. The remarks of the sentencing Judge included the following passage:

“In effect by your persistent actions you trapped her into a world that you intended to create for her. This was coercive behaviour where the threats to frighten the victim were that if she rejected you, XXX, and in doing so and in the steps you took you used your intelligence, your knowledge of her, your knowledge of her personality and her susceptibility due to her sympathy and most importantly something you do not share, empathy, for someone who was in need and cared.”

125. The Tribunal heard from Ms A herself about the impact that Dr Gates' offending had on her at the time and that this impact is ongoing. She described that his actions had led to her prematurely ending her XXX tenancy, the suspension of her XXX placement, a breakdown in relationship XXX, and ultimately, to Ms A preparing to take her own life. Thankfully, she described how she felt able to seek help from a charity and continues to receive counselling. Ms A said the following:

“I still don't think I've gone through a day since this happened without being afraid of him in some way. My sense of security has been completely shattered. The way Dr Gates' actions escalated, the unpredictability of them, and the fact they invaded every part of me, and my life has profoundly impacted me”.

126. Whilst the impact on Ms A was unquestionable, it was important in the context of these proceedings to have in mind the mitigating factors that the Tribunal had identified. Namely, that the offending behaviour took place over six years ago and that there had been no offence committed prior to 2018. Further, that Dr Gates had completed the work required as part of his suspended sentence order and that he had complied with the restraining order. Since 2018, he has attended XXX psychotherapy sessions, where he has explored the reasons for his behaviour and the impact on the victim.

127. The XXX and the report from Ms H attest to the good insight that Dr Gates has. The Tribunal acknowledged his good level of insight, though did consider that there were areas where this could be further developed.

128. In respect of his current clinical practice, the Tribunal noted the many positive comments of colleagues in a January 2023 feedback summary report. Colleagues describe him as a caring, kind and competent doctor, who respects his patients and colleagues and is well liked by staff. One colleague commented as follows:

“I have spent a large number of hours over the course of three years working closely with Dr Gates in the Clinical Hub of an Out of Hours primary care organisation. We worked together through the pandemic, open under conditions of immense pressure. His clinical skills, communication with colleagues, clinical knowledge and acumen, and work ethic have always been superb. I have been in a position whilst working in our open-plan Clinical Hub to hear his conversations with patients on telephone triage calls and his manner is very empathic and patient-centred”.

129. The Tribunal also considered the testimonials that had been produced by Dr Gates as part of these proceedings. Dr I worked with Dr Gates at the Surgery at the time of the offence in 2018. She explained that Dr Gates was always open and honest about the allegations against him and only showed extreme remorse for his actions. In a testimonial dated 7 March 2024, Ms H outlined the number of psychotherapy sessions that she had undertaken with Dr Gates. She described initially meeting Dr Gates in a time of crisis and since then, has used the sessions to explore the impact that his behaviour had on others. She states that during these discussions, Dr Gates has shown insight and a capacity to be empathetic.

130. In a testimonial dated 2 February 2024, Dr J (who works as GP for Medvivo), explained that she has worked with Dr Gates for around five years. She stated:

“I can honestly say that in the huge number of conversations I overheard him to have with patients and relatives, he always communicated in a thoroughly compassionate, empathic, measured and thoughtful way. He has a very rare ability to listen and respond in a patient-centred way and on an appropriate level for each patient. I have heard him deal with many emotionally distressed patients and relatives, and with seriously unwell and frightened patients, and he has always remained calm and professional. I would describe him as being a superb GP”.

131. XXX.

132. On balance, the Tribunal concluded that whilst this offence was serious, given the particular circumstances of this case and the length of time since the offending behaviour, public confidence in the profession could be maintained by the imposition of conditions. This would enable an otherwise good doctor to continue to practise, but with restrictions designed to ensure that his situation would be monitored by appropriate professionals. This sanction would provide additional and necessary safeguards, to provide the public with confidence that XXX, thus also reducing the risk of any repetition of the conduct which led to his conviction. In circumstances where there had been XXX in the past three years, the Tribunal determined that the period of conditions would need to be lengthy, as the XXX was ongoing.

133. Therefore in all the circumstances, the Tribunal concluded that a lengthy period of restrictions on Dr Gates' practise would be sufficient to mark the seriousness of the conviction and XXX. Conditions would uphold the overarching objective and allow a competent doctor to continue to serve the public while ensuring the public interest was met.

134. The Tribunal therefore determined to impose the following public conditions upon Dr Gates' registration:

1. He must personally ensure that the GMC is notified of the following information within seven calendar days of the date these conditions become effective:
 - a. the details of his current post, including:
 - i. his job title
 - ii. his job location
 - iii. his responsible officer (or their nominated deputy)
 - b. the contact details of his employer and any contracting body including his direct line manager
 - c. any organisation where he has practising privileges and/or admitting rights
 - d. any training programmes he is in
 - e. the organisation on whose medical performers list he is included.
2. He must personally ensure the GMC is notified:

- a. of any post he accepts, before starting it
 - b. that all relevant people have been notified of his conditions, in accordance with condition 7
 - c. if any formal disciplinary proceedings against him are started by his employer and/or contracting body, within seven calendar days of being formally notified of such proceedings
 - d. if any of his posts, practising privileges or admitting rights have been suspended or terminated by his employer before the agreed date within seven calendar days of being notified of the termination
 - e. if he applies for a post outside the UK.
3. He must allow the GMC to exchange information with his employer and/or any contracting body for which he provides medical services.
4. a He must have a workplace reporter appointed by his responsible officer (or their nominated deputy).
- b He must not work until:
- i his responsible officer (or their nominated deputy) has appointed his workplace reporter
 - ii he has personally ensured that the GMC has been notified of the name and contact details of his workplace reporter.
5. a He must get the approval of his GMC Adviser before accepting any post.
- b He must keep his professional commitments under review and limit his work if his GMC Adviser tells him to.
- c He must stop work immediately if his GMC Adviser tells him to and must get the approval of his GMC Adviser before returning to work.
6. He must get the approval of the GMC before working in a non-NHS post or setting.
7. He must personally ensure the following persons are notified of the conditions listed at 1 to 6:
- a his responsible officer (or their nominated deputy)

- b the responsible officer of the following organisations:
 - i his place(s) of work, and any prospective place of work (at the time of application)
 - ii all his contracting bodies and any prospective contracting body (prior to entering a contract)
 - iii any organisation where he has, or has applied for, practising privileges and/or admitting rights (at the time of application)
 - iv If any of the organisations listed at i to iii does not have a responsible officer, he must notify the person with responsibility for overall clinical governance within that organisation. If he is unable to identify this person, he must contact the GMC for advice before working for that organisation.
- c the responsible officer for the medical performers list on which he is included or seeking inclusion (at the time of application)
- d his immediate line manager and senior clinician (where there is one) at his place of work, at least 24 hours before starting work (for current and new posts).

135. XXX

Length of order

136. The Tribunal next considered the length of the order of the conditional registration. It took into account that Dr Gates' conviction and the behaviours leading to it occurred over six years ago. XXX.

137. The Tribunal concluded that a longer period of conditional registration would allow Dr Gates to be sufficiently overseen by the GMC, in circumstances where there was a risk of repetition of XXX. Dr Gates would also have sufficient time to demonstrate further reflections and insight. The Tribunal also bore in mind that the restraining order continues to be in place until 2028.

138. Taking into account all relevant factors, the Tribunal determined a period of conditional registration for 24 months was necessary and proportionate.

Review

139. The Tribunal determined to direct a review of Dr Gates' case. A review hearing will convene shortly before the end of the period of conditional registration. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Gates to demonstrate how he has

further developed his insight and complied with the conditions imposed. It therefore may assist the reviewing Tribunal if Dr Gates provides:

- XXX;
- Evidence of any further development of insight into the behaviours that led to the conviction and the impact on Ms A;
- Any other information that Dr Gates considers will assist.

Determination on Immediate Order - 22/05/2024

140. Having determined to impose conditions on Dr Gates' registration for 24 months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Gates' registration should be subject to an immediate order.

Submissions

141. On behalf of the GMC, Ms Eleanor Fry, Counsel, submitted that in this case an immediate order of conditions was necessary to maintain public confidence and also in the interests of the public and Dr Gates.

142. On behalf of Dr Gates, Mr Peter Lownds, Counsel, did not oppose the submission of the GMC.

The Tribunal's Determination

143. In reaching its decision, the Tribunal exercised its own discretion. It took into account the submissions from both parties as well as the facts of this case and its findings at the previous stages of this hearing.

144. The Tribunal had regard to paragraph 88 of the SG which states:

88 The tribunal should consider whether the conditions imposed should take effect immediately, taking into account any evidence received and any submissions made by the parties. The tribunal should explain fully the reasons for its decision. Further guidance on when an immediate order might be appropriate is set out in paragraphs 172–178.

145. The Tribunal also had regard to paragraph 177 of the SG:

177 Where the tribunal has directed conditional registration as the substantive outcome of the case, it may impose an immediate order of conditional registration

146. The Tribunal had regard to the paragraphs of the SG that relate to immediate order, especially the following extract from paragraph 172 which states:

172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor...

147. Given the findings of the Tribunal at impairment and sanction stage, the Tribunal concluded that an immediate order was not necessary to protect members of the public as there were no apparent patient safety risks. However, given the reasons for imposing conditions, the Tribunal did conclude that it was in the public interest and the best interests of Dr Gates for the conditions to take effect immediately.

148. This means that Dr Gates' registration will be made subject to the immediate conditions from today. The substantive direction, as already announced, will take effect 28 days from the date on which written notification of this decision is deemed to have been served, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

149. The interim order is hereby revoked.

150. That concludes this case

ANNEX A – 21/05/2024

Application under Rule 41 for the entirety of the hearing to be held in private

151. At the outset of the hearing, Mr Peter Lownds, Counsel, on behalf of Dr Gates, made an application pursuant to Rule 41 of the Rules for the entirety of this hearing to be heard in private.

Submissions

On behalf of Dr Gates

152. Mr Lownds provided a summary of the background to the case and submitted that the Tribunal should make an order under Rule 41 that the entirety of the hearing should be heard in private.

153. Mr Lownds referred the Tribunal to the key aspects of Rule 41 that, he submitted, were relevant in this case:

41. (1) Subject to paragraphs (2) to (6) below, hearings before the Committee and a Medical Practitioners Tribunal shall be held in public.

(2) The Committee or Medical Practitioners Tribunal may determine that the public shall be excluded from the proceedings or any part of the proceedings, where they consider that the particular circumstances of the case outweigh the public interest in holding the hearing in public.

XXX

154. Mr Lownds also submitted that paragraph 138 of the *Guidance to the GMC's Fitness to Practise Rules 2004 (as amended)* was relevant in this case:

Attendance of the public (rule 41)

138 *There is a presumption all Investigation Committee and MPT hearings will be held in public; however the MPT may determine that the public shall be excluded from the proceedings or any part of the proceedings, where they consider that the particular circumstances of the individual case outweigh the public interest in holding the hearing in public.*

155. Mr Lownds referred the Tribunal to the case of *Miller v GMC* [2013] EWHC 1934 (Admin) and submitted that the burden rested on Dr Gates to show that it was necessary and proportionate to derogate from the general principle of open justice.

156. Mr Lownds submitted that for the following reasons, the particular circumstances of Dr Gates' case outweighed the public interest in holding the whole hearing in public:

- (a) The fact of his criminal conviction is already in the public domain;
- (b) The Tribunal will be required to sit in private for the substantial part of the proceedings that concerns XXX;
- (c) There is evidence of a significant connection between XXX and his conduct that led to his criminal conviction;
- (d) It is likely to prove difficult to conduct an efficient and effective hearing if only part of the hearing is held in private;
- (e) There is a danger that the quality of the evidence, particularly from Dr Gates, will be negatively affected unless all the hearing is conducted in private; and
- (f) XXX.

157. Mr Lownds told the Tribunal that any decision it took to commence the hearing entirely in private would be something the Tribunal had the power to review at any point during the hearing. To conduct a balancing exercise between the interests of Dr Gates and the public interest would be a matter the Tribunal would need to review as the case developed.

158. Mr Lownds submitted that this was a case where the particular circumstances outweighed the public interest and he invited the Tribunal to rule, under Rule 41, that it should be heard in private in its entirety.

On behalf of the GMC

159. On behalf of the GMC, Ms Eleanor Fry, Counsel, opposed the application. Referring to the case of *Miller*, she submitted that there were many reasons for opposing the application. Rule 41(1) states that proceedings before the Medical Practitioners' Tribunal shall be heard in public, subject of course, to the provisions set out in the subsequent sub-paragraphs to Rule 41. The first of which, 41(2), permits the Tribunal to '*determine that the public shall be excluded from the proceedings or any part of the proceedings, where they consider that the particular circumstances of the case outweigh the public interest in holding the hearing in public.*'

160. XXX

161. Ms Fry submitted that, as per HHJ Pelling QC in *R (Miller) v General Medical Council* [2023] EWHC 1934 (Admin):

'it is common ground that the discretion under rule 41 of the General Medical Council Rules is to be read subject to Article 6 of the ECHR. Even where one of the Article 6 exceptions to a public hearing can, in principle, be relied upon, the derogation from the general principle ought not to be more than is proportionate – that is, the minimum derogation from the general principle necessary for the purpose of

protecting the interest that has been identified as coming within the scope of the relevant exception.'

162. Ms Fry submitted that whilst it was conceded that the application under Rule 41 in *Miller* (above) arose in different circumstances to the present case, the principles expounded therein are of general application and were clearly intended to be so, given that the court referred specifically to “*the discretion under Rule 41*” and “*the Article 6 exceptions*”, rather than confining the court’s decision solely to the facts of that particular case.

163. Ms Fry referred the Tribunal to Article 6(1) of the European Convention on Human Rights (ECHR) which provides:

‘In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.’

164. Ms Fry submitted that there was a safeguarding aspect in this case and to hear Dr Gates’ case part in public would allow awareness of the matters relating to Dr Gates’ conviction and may encourage complainants in similar situations to come forward.

165. XXX. Ms Fry submitted that the Tribunal could put in place measures and make adjustments in order to enable the doctor to participate as fully as possible and to reduce the stress of doing so. She told the Tribunal that this was ultimately a balancing exercise between the interests of Dr Gates and that of the public and the overarching objective.

166. Ms Fry submitted that in the circumstances of the present case, the Tribunal ought properly to determine that the hearing should take place in public, moving into private session in order to deal with the evidence and submissions relating to XXX.

The Tribunal’s Approach

167. The presumption or starting point in cases before a Medical Practitioners Tribunal is that the case shall be held in public (Rule 41(1)).

168. Rule 41(2) goes on to say:

‘(2) The Committee or Medical Practitioners Tribunal may determine that the public shall be excluded from the proceedings or any part of the proceedings, where they consider that the particular circumstances of the case outweigh the public interest in holding the hearing in public.’

169. The case of *Miller v General Medical Council [2013] EWHC 1934 (Admin)*, did involve different circumstances to those present in this case, in that it involved an application by the GMC. However, Judge Pelling QC helpfully said this at paragraph 20 of the judgment:

“In my judgment the FTPP fell into error at the outset by not reminding itself sufficiently strongly or at all that the clear default position under Article 6 is that the hearing should be in public. It failed to remind itself that Article 6 creates or declares rights that are the rights of the Claimant and that it was for the GMC to prove both the need for any derogation from those rights and for a need to derogate to the extent claimed.”

170. In this case, as the party making the application, the burden rests on Dr Gates to satisfy the Tribunal that the particular circumstances of this case outweigh the public interest in holding the hearing or parts of the hearing in public.

The Tribunal’s Decision

171. The Tribunal carefully considered the circumstances of this case and, in particular, the various factors as outlined by Mr Lownds in his submission.

172. While the facts of Dr Gates’ conviction were already in the public domain, the Tribunal was of the view that it was important that the public are aware of this hearing. This was because it would enable the public and profession to understand the regulatory process and outcome that followed the criminal proceedings. Further, if the public were aware of these proceedings, this may encourage similar victims to come forward. Therefore, there was a public interest in not hearing the matter entirely in private.

173. The Tribunal took into account that while there was a significant connection between XXX and the conduct that led to his conviction, there was no suggestion that XXX at the time was such that he was not aware of the inappropriate nature of his actions. The Tribunal had regard to the sentencing remarks of HHJ K:

“XXX.”

174. While the Tribunal accepted that the majority of proceedings may need to be heard in private, it considered it possible for some matters relating to the conviction to be heard in public and that both Counsel would be experienced in navigating these issues when making submissions.

175. XXX

176. XXX

177. However, the Tribunal did carefully consider whether Dr Gates' evidence may be negatively affected and took into account the legal advice in relation to derogation. Given the background to this case and XXX, the Tribunal was keen to ensure that Dr Gates was able to give his best evidence during the proceedings, without him being concerned as to whether his answers would need to be received in public or private session. Therefore, it considered it appropriate at this stage to direct that the evidence of Dr Gates would be heard in private in its entirety, in order to ensure that his evidence was not negatively affected.

178. Aside from this derogation from the general principle of open justice, for the reasons set out above, the Tribunal considered that an effective hearing could take place by moving it between public and private session where appropriate.

179. Accordingly, the Tribunal determined on that basis to refuse Mr Lownds' application for the hearing to be heard entirely in private.