

**PUBLIC RECORD**

Dates: 18/10/2023 - 26/10/2023

Medical Practitioner's name: Dr Amin MOHAMED  
GMC reference number: 7059665  
Primary medical qualification: MB BS 1991 University of Khartoum

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Not Impaired

**Summary of outcome**

No action (warning not considered)

**Tribunal:**

Legally Qualified Chair	Mr Christopher Harper
Lay Tribunal Member:	Mr George Ritchie
Medical Tribunal Member:	Mr Gurpreet Singh
Tribunal Clerk:	Ms Angela Carney

**Attendance and Representation:**

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Rosalie Myttas- Perris, Counsel/QC, instructed by Stephenson Solicitors
GMC Representative:	Mr Chris Hamlet, 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 - 26/10/2023

### Background

1. This determination will be handed down in private. However, as this case concerns Dr Mohamed's misconduct a redacted version will be published at the close of the hearing.
2. Dr Mohamed qualified as a doctor in 1991 and prior to the events which are the subject of the hearing he worked in the Sudan and Saudi Arabia. In October 2021 Dr Mohamed moved to the United Kingdom and took up a 12-month Locum Consultant position in Oncology at the Royal Wolverhampton NHS Trust ('the Trust'). On 31 August 2022 Dr Mohamed resigned from his position at the Trust and returned to work in Saudi Arabia, to take up a post he had accepted in March 2022.
3. The allegation that has led to Dr Mohamed's hearing can be summarised that on 20 May 2022 during and following a meeting with Ms A, a female colleague, he inappropriately touched and asked questions of her, his actions being sexually motivated and constituting sexual harassment. It is further alleged that on 23 May 2022, Dr Mohamed called Ms A attempting to intimidate her and dissuade her from making a complaint.

### The Outcome of Applications Made during the Facts Stage

4. The Tribunal granted Dr Mohamed's application, made pursuant to Rule 41 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that parts of the hearing be heard in private. The Tribunal's full decision on the application is included at Annex A.
5. The Tribunal granted Dr Mohamed's application, made pursuant to Rule 34 of the Rules, to adduce evidence in the form of photographs. The Tribunal's full decision on the application is included at Annex B.

## The Allegation and the Doctor's Response

6. The Allegation made against Dr Mohamed is as follows:

1. On 20 May 2022, during a meeting with Ms A:

a. your conduct towards Ms A was inappropriate, in that you:

i. put your hand on her right thigh;

**To be determined**

ii. moved your hand up and down her right leg;

**To be determined**

iii. whispered in her ear 'You are such a nice girl' or words to that effect;

**To be determined**

iv. hugged Ms A on one or more occasion;

**To be determined**

v. kissed the left hand side of her head;

**To be determined**

vi. whispered in her ear 'You are so beautiful' or words to that effect;

**To be determined**

vii. kissed Ms A's right cheek;

**To be determined**

viii. locked your office door and said 'I don't want us to be disturbed' or words to that effect;

**To be determined**

ix. squeezed her bottom.

**To be determined**

b. you asked Ms A if:

i. she was single;

**To be determined**

ii. she lived alone;

**To be determined**

iii. you could visit her in the future.

**To be determined**

2. Your conduct as described at paragraphs 1a and 1b:

a. was sexually motivated;

**To be determined**

b. constituted sexual harassment as defined in Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct of a sexual nature, which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms A.

**To be determined**

3. On 23 May 2022, you called Ms A on her personal mobile number and:

a. said ‘why have you told Dr B on me?’ or words to that effect;

**To be determined**

b. made one or more further attempts to call Ms A.

**To be determined**

4. Your conduct as described at paragraph 3 was intended to:

a. intimidate Ms A;

**To be determined**

b. dissuade Ms A from bringing a complaint against you.

**To be determined**

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

**To be determined**

### **The Facts to be Determined**

7. In light of Dr Mohamed’s response to the Allegation made against him the Tribunal is required to determine all paragraphs and sub-paragraphs of the Allegation.

### **Witness Evidence**

8. The Tribunal received written statements and oral evidence by video link on behalf of the GMC from the following witnesses:

- Ms A, the complainant, XXX, Royal Wolverhampton NHS Trust

- Ms C, Personal Assistant, Royal Wolverhampton NHS Trust
- Dr D, Consultant in Acute Medicine, Royal Wolverhampton NHS Trust
- Dr B, Chief Medical Officer, Royal Wolverhampton NHS Trust
- Ms E, Group Director of Education and Training, Royal Wolverhampton NHS Trust and Walsall Healthcare NHS Trust

9. The Tribunal also received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Ms F, Personal Assistant, Royal Wolverhampton NHS Trust

10. Dr Mohamed provided a witness statement, dated 21 August 2023, and also gave oral evidence at the hearing.

11. The Tribunal also received evidence on behalf of Dr Mohamed in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Dr G, Clinical Fellow in Oncology, Royal Wolverhampton NHS Trust

### Documentary Evidence

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

- GMC statements of Ms A, dated 19 July 2022 and 12 December 2022
- Trust Statement of Ms A, dated 22 May 2023
- Trust Investigation Interview Notes of Ms A, dated 9 June 2022
- Trust Statement of Dr Mohamed, dated 26 May 2022
- Trust Interview Notes of Dr Mohamed, dated 9 June 2022
- Trust statement of Ms E, dated 14 July 2022
- Trust interview of Ms E, dated 25 July 2022
- Corrections by Dr Mohamed to his Trust Interview Notes, dated 2 August 2022
- Investigation Interview Notes of Dr D, dated 25 July 2022
- Email to Trust investigator from Dr B, dated 25 July 2022
- Email from Dr B to his Personal Assistant, Ms F, dated 20 May 2022, timed 19:27

### The Tribunal's Approach

13. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC to prove the Allegation. Dr Mohamed does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e., whether it is more likely than not that the events occurred as alleged. The Tribunal noted that standard applies to all allegations. Neither the seriousness of the allegation nor the seriousness

of the consequences should make any difference to the standard of proof to be applied in determining the facts.

14. The Tribunal has borne in mind, in relation to witnesses generally, that an honest witness can be mistaken, and a mistaken witness is not necessarily wrong about every fact. The Tribunal should make a rounded assessment of a witness' reliability, rather than approaching their reliability in respect of each charge in isolation from the others.

15. The Tribunal was conscious it must not assess a witness's credibility or reliability exclusively on their demeanour when giving evidence but should test all evidence by reference to objective evidence where possible, including the documents in the case.

16. The Tribunal noted that, as Dr Mohamed chose to give evidence, it must judge his evidence by precisely the same fair standards as it would apply to any other witness evidence in the case.

17. The Tribunal was able to draw reasonable inferences from the evidence. However, the Tribunal did not speculate about matters not in evidence before it.

18. The Tribunal bore in mind when considering the evidence of the witnesses and Dr Mohamed the extent to which the passage of time may have affected those witnesses' memories. It was conscious that memories can fade with the passage of time, and that recollections of events or sequences of events may change or may become confused. Further, inconsistencies in accounts can arise whether a person is telling the truth or not. This is because if someone has had a traumatic experience their memory may be affected in different ways. It may affect that person's ability to take in and later recall the details of the experience. The Tribunal was conscious that recalling and retelling events later may assist with recollection or may result in memory shifting even where the witness is doing their best to recall accurately.

19. The Tribunal bore in mind that just because a person makes a consistent account about an event does not necessarily mean that account must be true, any more than an inconsistent account must be untrue.

#### Section 26 of the Equality Act 2010

20. Harassment is prohibited conduct under section 26 (2) of the Equality Act 2010, which provides that:

#### ***'26 Harassment***

*(1) A person (A) harasses another (B) if—*

*(a)[...]*

*(b)the conduct has the purpose or effect of—*

*(i)violating B's dignity, or*

*(ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*

*(2) A also harasses B if—*

*(a)A engages in unwanted conduct of a sexual nature, and*

*(b)the conduct has the purpose or effect referred to in subsection (1)(b)...”*

21. The Tribunal noted that Dr Mohamed is of good character and there is no history of previous fitness to practise proceedings against him. That may indicate he is less likely to have acted as alleged, and that his evidence is more capable of belief, than if he had a history of findings against him.

### **The Tribunal’s Analysis of the Evidence and Findings**

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

### **The Evidence Generally**

23. The Tribunal was mindful that the Trust interview notes were written by a third party and recounted a discussion. It is possible that any apparent inconsistency between the notes and other accounts arises from the interpretation of the author, or the perceived focus of the questioning. Each party appears to have had an opportunity to review those notes. The significance of an apparently minor inconsistency in a draft may not then have been apparent to the reviewer.

24. The Tribunal was assisted by the accounts of witnesses to whom Ms A spoke near the time of the incidents. However, the accounts they give are second-hand. They will have received some or all of Ms A’s account and will have focussed on the parts that interested or concerned them most. Some of Ms A’s account may not have been discussed or may not have attracted the attention of the witness. Similarly, in recounting what they were told, the witnesses will have included features they thought to be of relevance. The absence of a particular feature in those accounts is not definitive evidence that it was not discussed, or that it did not happen.

### **Ms A’s Evidence**

25. The Tribunal was satisfied throughout that Ms A was doing her best, each time she provided an account, to give a truthful, full, and accurate account of events as she recalled them.

26. There was clear evidence before the Tribunal that Ms A was distressed and upset by events shortly after they had concluded. The Tribunal accepts that this was a genuine reaction to what she understood to have happened. As outlined below, the Tribunal accepts that Ms A genuinely believed that Dr Mohamed had tried to kiss her, called her a “nice girl” and “beautiful”, and had locked her in a room with him. They were in close proximity at times and there was likely to have been a degree of contact between them.

27. The Tribunal noted in her oral evidence, Ms A accepted she could not, now, remember the timeline of events clearly. She was sure that everything she had described had happened. When challenged on apparent differences in the timeline in her accounts, Ms A attempted to reconstruct events logically to explain her thinking at the time. The Tribunal accepts Ms A was trying to help by answering those questions as best she could, however, that approach did not assist the Tribunal in assessing objectively what happened and when. In particular, Ms A's account of which actions made her feel uncomfortable, and which she dismissed as normal or friendly, changed more than once as she revisited potential timelines.

28. The Tribunal took the view that Ms A had reviewed the events of 20 May 2022 a number of times since they occurred. Each time, she did so through the lens of her genuine distress and emotion that day. The Tribunal concluded that how she felt following those events has coloured her recollection of them. In respect of each of the allegations, the Tribunal dealt with the evidence on that particular point, but the overall nature of Ms A's evidence is that it has developed over time. The Tribunal fully accepts that Ms A is a witness doing her best to recall subjectively traumatic events. However, at times, her evidence could not be relied upon as objectively recounting the facts as they occurred.

**Paragraphs 1(a)(i) and 1(a)(ii)**

***1(a)(i) On 20 May 2022, during a meeting with Ms A your conduct towards Ms A was inappropriate, in that you put your hand on her right thigh;***

***1(a)(ii) On 20 May 2022, during a meeting with Ms A your conduct towards Ms A was inappropriate, in that you moved your hand up and down her right leg;***

29. In her Trust statement Ms A stated:

*‘He started to open up about how he was feeling and I was trying to reassure him that we are there to offer support and the few things he mentioned I would discuss with [Dr D] at this point he just said “you are such a nice girl”.*

*I then proceeded to show him examples and ideas of certain sections, he would then wheel his chair across to my screen and make notes, at this point he rubbed my leg a few times but my dress was long so he didn't touch my skin.’*

30. In the notes of Ms A's Trust interview the word thigh is not mentioned but it was recorded that Dr Mohamed touched her leg in a widespread motion.



31. In Ms A's GMC statement regarding her Trust interview she stated:

*'5... Where I have referred to Dr Mohamed whispering in my ear 'You are such a nice girl', I cannot remember the exact time during this incident that he said this to me, but I think he said this to me whilst he was touching my leg. When Dr Mohamed touched my leg, he intentionally touched my right thigh with his full palm over my dress, and moved his hand up and down my leg a few times from my knee to the top of my thigh for a few seconds, so this couldn't have been accidental.'*

32. In her first statement Ms A does not mention the word 'thigh' and her Trust interview uses the word "leg". Explicit reference to the "leg/thigh" first appears in Dr D's evidence and is then in Ms A's statement to the GMC. The Tribunal was satisfied that, in this context, the words "leg" and "thigh" had substantially the same meaning. It did not take the view that Ms A had changed her evidence in that regard.

33. Dr Mohamed denies that he put his hand on Ms A's right thigh and moved his hand up and down her right leg.

34. In his Trust statement Dr Mohamed stated:

*'I did not touch any sensitive part of her body during the meeting, but when she opened her laptop to show me some examples about appraisals, I came close to her and my upper arm/shoulder touched her upper arm/shoulder and I put my right arm around her shoulders which occur unintentionally and unconsciously and I realized that is inappropriate and I removed my arm immediately, after that she asked me to take screen shot of the screen (which I have it in my mobile).'*

35. In his Trust interview it was recorded:

*'His arm brushed against hers and when looking at the screen he instinctively put his arm around the back of her chair. Dr Mohamed stated the back of the chair was quite low. Dr Mohamed stated that he realised after doing it, that it was inappropriate at the time and moved immediately.'*

36. In his GMC statement Dr Mohamed stated:

*'22. After Dr G had left our shared office, I continued to discuss my concerns with the appraisal process. My concerns were predominantly the format of the appraisal and what information had to be included within each section. Initially, we were working from my desktop computer and I was going through the Trust website page and we were discussed the different sections of the appraisal.*

*...*

*24. Ms A wanted to show me some example appraisals which she had on her laptop. Ms A remained seated and I moved my chair closer to where Ms A was sat. The chair had a relatively low back and as I moved closer to view Ms A's laptop, I put my arm around Ms A*

*attempting to take hold of the back of the chair. Unfortunately, I in advertently touched Ms A's upper arm and shoulder which was not my intention. I immediately recognised that this was inappropriate and removed my arm. Ms A did not raise any concern or suggest that she felt uncomfortable. Ms A simply suggested that I take photographs of the example appraisals on my mobile telephone, which I did.'*

### Timing

37. There is an inconsistency between Ms A's Trust statement, where she indicates that she was called a "nice girl" before her leg was touched, and her Trust interview, which recounts the opposite order, and her GMC statement where she says they happened at the same time.

38. The Tribunal noted that in her oral evidence she described the reference to being a "nice girl" as a friendly, nice comment. The Tribunal takes the view that it would not have been seen that way if it was at the same time, or after, the rubbing of her leg as it is described in her GMC statement.

39. The Tribunal also noted that there had been a wider discussion of the appraisal and revalidation process when Ms A and Dr Mohamed had been sitting apart, during which both Dr G and Dr H were present for parts. It appears to the Tribunal that it was in the early part of the conversation that Dr Mohamed raised concerns with his workload and was reassured by Ms A telling him there was support available and she would speak to her superiors.

40. It was after that, that both Ms A and Dr Mohamed recount specific examples being shown on her computer screen, such that they sat closer together to view it. The Tribunal is therefore of the view that the allegation of leg touching came later in time, than the allegation of calling Ms A a nice girl.

### Determination on the Paragraph

41. The Tribunal noted that in her Trust statement and her interview, Ms A indicated feeling uncomfortable from the point at which Dr Mohamed was staring at her. That, in both accounts, came after the alleged leg touching. Therefore, the implication of those accounts, is that she did not feel uncomfortable from the leg rubbing at the time. In her Trust statement she indicates a degree of acceptance of the contact with her leg, because her dress covered her skin.

42. In her oral evidence, when attempting to reconstruct the timeline, Ms A was clearly distressed by her recollection of the event. Ms A described feeling uncomfortable when her leg was touched but said that she wanted to be professional. She said that she "hoped it was flippant contact", and that she became more uncomfortable as matters progressed. She said she wanted to wrap up the meeting and to leave the room.

43. The Tribunal noted that, after the alleged rubbing of her thigh, Ms A continued the meeting. That included, on her account, receiving a kiss on the head from Dr Mohamed, which she was unconcerned by, describing it in her oral evidence as "like a father". She also recalled a

number of hugs between her and Dr Mohamed, which she said she thought of as normal because she regularly received hugs from doctors in the course of her job, due to her personality and helpfulness. She told the Tribunal she took the hugs as indications of gratitude and was not made to feel uncomfortable by them. She also went with him to the café at the conclusion of the meeting. She did not terminate the meeting, challenge Dr Mohamed's behaviour, or decline the coffee she had been offered.

44. The Tribunal accepted that different people react differently in traumatic situations, but Ms A's apparent reactions at the time of the incident appear to demonstrate that she was either unconcerned by the touching of her leg, or at least willing and able to remain calmly in Dr Mohamed's presence for some considerable time.

45. By the time of Ms A's evidence in her GMC statement, and orally in front of the Tribunal, she appeared to attach much greater significance to this part of the incident, which is said to have occurred at an early stage. In her oral evidence Ms A gave a detailed account of how the material of the dress felt as it moved on her skin, and of not being able to wear that dress any longer because of the memories it brought back. The Tribunal accepted that strength of feeling is genuine based on her recollection of events now.

46. The Tribunal took the view that, had the description in her GMC statement been her perception at the time, the hugs and kiss on the head she reports would not appear benign in the way she has described.

47. The Tribunal noted that Ms A did not describe a "hand" specifically touching her leg in her Trust statement or interview. That comes in her GMC statement of 12 December 2022. The tone and content of Ms A's Trust statement on this point appears consistent with much more limited contact than she described subsequently.

48. Ms E recounts, in her Trust statement, that Ms A moved away from Dr Mohamed when he put his hand on her knee. In her interview she reports that Ms A pushed Dr Mohamed away when his hand was on her knee. Neither features in Ms A's accounts at all. The Tribunal is of the view that this demonstrates a degree of post rationalisation on Ms A's part in recounting events to Ms E, or a mistake on Ms E's part. The Tribunal also noted that neither of Ms E's accounts involved movement against Ms A's leg.

49. In the context of her genuine distress when reviewing the events of 20 May 2022, the Tribunal concluded she may, quite properly, have come to see any contact she remembers with her leg as more sinister than she perceived it at the time. However, the level of detail provided latterly does not reflect the account given closer to the time and is difficult to characterise as "flippant".

50. On balance, the Tribunal was able to place more weight on the tone of her earlier descriptions. The Tribunal does not dismiss the possibility that some touching of Ms A's leg did occur when she and Dr Mohamed were sitting in close proximity, but it takes the view any such touching would have been inadvertent due to sitting close to each other and it cannot be

satisfied that any touching was by Dr Mohamed's hand. It is clear to the Tribunal that Ms A's evidence has shifted as she has recalled the incident, with the seriousness and content of the account changing. The Tribunal accepted she genuinely now recalls what she describes but it cannot be satisfied that her most recent account is reliable.

51. On the balance of probabilities the Tribunal concluded that the GMC has not discharged its burden of proof that, Dr Mohamed put his hand on Ms A's right thigh and that he moved his hand up and down her right leg.

52. Accordingly, the Tribunal found paragraphs 1(a)(i) and 1(a)(ii) not proved.

**Paragraph 1(a)(iii)**

***1(a)(iii) On 20 May 2022, during a meeting with Ms A your conduct towards Ms A was inappropriate, in that you whispered in her ear 'You are such a nice girl' or words to that effect;***

53. In her Trust statement Ms A stated:

*'He started to open up about how he was feeling and I was trying to reassure him that we are there to offer support and the few things he mentioned I would discuss with [Dr D] at this point he just said 'you are such a nice girl'.'*

54. In her Trust interview it was recorded:

*'[Ms A] stated that whilst they were still seated that Dr Mohamed opened up to her stating that he felt unsupported in his role, especially in terms of training. [Ms A] responded that she could raise his concerns to the lead – Dr Mohamed was worried about this as he did not want to be named, however [Ms A] reassured him that it would be fine. In response to this Dr Mohamed told [Ms A] that she was 'such a nice girl' to which [Ms A] didn't think much of as she thought it was a friendly comment.'*

55. In her GMC Statement Ms A stated she said that Dr Mohamed whispered in her ear 'You are such a nice girl' but could not remember the exact time during this incident that he said this.

56. During her oral evidence Ms A was challenged as to whether it was a whisper, or whether the words were "said". She was clear that the words had been spoken but was not able to add to her previous comments. She reiterated that she had taken it as a friendly comment at the time. The Tribunal takes the view that there may be a material difference between the words being whispered in her ear or said from greater distance.

57. The Tribunal accepted that Ms A recollection of Dr Mohamed using the words 'You are such a nice girl' was consistent in her Trust and GMC statements and her Trust interview.

58. The Tribunal noted that Dr Mohamed accepted that he was grateful for Ms A's help and support and had thanked her for it but denied using the words 'You are such a nice girl'. The

Tribunal considered it was more likely than not that the words ‘*You are such a nice girl*’ or words to that effect were said.

59. However, given the timeline outlined by the Tribunal above, Ms A and Dr Mohamed were sitting apart, and it considered it unlikely that he whispered these words in her ear. The Tribunal was of the opinion that the words used were meant in gratitude of Ms A’s help and support. The Tribunal notes that would be consistent with Ms A’s views that it was a friendly comment at the time. While the words are likely inadvisable, the context in which they were used, and the fact that they were likely to be said rather than whispered in her ear, leads the Tribunal to conclude their use was not inappropriate as alleged in this paragraph.

60. On the balance of probabilities the Tribunal was not satisfied the GMC has discharged its burden of proof that, Dr Mohamed whispered in Ms A’s ear ‘*You are such a nice girl*’ or words to that effect.

61. Accordingly, the Tribunal found paragraph 1(a)(iii) not proved.

**Paragraph 1(a)(iv)**

***1(a)(iv) On 20 May 2022, during a meeting with Ms A your conduct towards Ms A was inappropriate, in that you hugged Ms A on one or more occasions;***

62. In Ms A’s Trust statement she stated:

*‘He then hugged me again sitting side by side in our chairs and kissed the left hand side of my head.’*

63. In her oral evidence Ms A was asked about the word ‘again’ in her Trust statement and explained that this must have been a typing error as she had not mentioned a hug previously in that statement. In the Trust statement she makes reference to two further hugs, both while standing, one involving her bottom being touched.

64. In Ms A’s Trust interview notes it was recorded:

*‘Dr Mohamed then hugged [Ms A] whilst they were seated.*

*...*

*At that point they both stood up and Dr Mohamed hugged [Ms A]. [Ms A] described the hug as a full embrace, however stated she did not think anything of it as it is not unusual to receive a hug from doctors.*

*...*

*Dr Mohamed hugged her once more, however squeezed her bottom as well.’*

65. In her oral evidence Ms A stated:

*‘I recall two occasions when he hugged me to the side and the standing up hug with the mask down. I turned so he caught my cheek.*

*... After the sweating and panting he hugs and squeezes my bottom. It might be out of order but it all happened in that moment.*

66. In her supplemental GMC statement Ms A stated:

*'...I told my XXX lead what happened regarding the incident where he hugged me...'*

67. Dr Mohamed denies this sub-paragraph of the Allegation.

68. In his Trust statement, he said:

*'... when she opened her laptop to show me some examples about appraisals, I came close to her and my upper arm/ shoulder touched her upper arm/ shoulder and I put my right arm around her shoulders which occur [sic] unintentionally and unconsciously and I realized that is inappropriate and I removed my arm immediately...'*

69. In his Trust interview it is recorded that

*'The only time Dr Mohamed could recall having physical contact with [Ms A] was when he moved his chair closer to her laptop as she was showing him some useful links. His arm brushed against hers and when looking at the screen he instinctively put his arm around the back of her chair. Dr Mohamed stated the back of the chair was quite low. Dr Mohamed stated that he realised after doing it, that it was inappropriate at the time and moved immediately.'*

70. In Dr Mohamed 's GMC Statement he stated:

*24. Ms A wanted to show me some example appraisals which she had on her laptop. Ms A remained seated and I moved my chair closer to where Ms A was sat. The chair had a relatively low back and as I moved closer to view Ms A's laptop, I put my arm around Ms A attempting to take hold of the back of the chair. Unfortunately, I inadvertently touched Ms A's upper arm and shoulder which was not my intention. I immediately recognised that this was inappropriate and removed my arm. Ms A did not raise any concern or suggest that she felt uncomfortable. Ms A simply suggested that I take photographs of the example appraisals on my mobile telephone, which I did. A copy of the image taken at 14.45 can be found attached herewith at Exhibit AM/09.*

71. Dr Mohamed was challenged in oral evidence about differences in those recitations of events. He said that he had meant the same thing each time he had recounted the events and that he had not made contact with Ms A when putting his arm around the back of her chair. He said any reference to contact was about nudging her shoulder or upper arm with his own as he moved towards her.

72. The Tribunal carefully considered the content of each of those accounts. It accepted what he said about his meaning, and therefore accepts he did not intend any of his statements to be taken as indicating that he did hug Ms A while seated.

73. When questioned by Mr Hamlet about Dr Mohamed's GMC statement regarding the sitting down hug Ms A stated:

*'He didn't apologise. It was a clear embrace of endearment, a few seconds. At this stage it was building up. I wasn't overly bothered. He was just showing me appreciation at this stage.'*

74. The Tribunal accepted that Ms A and Dr Mohamed were both giving an honest account of their perception of the same incident, in respect of the alleged hug while sitting. It considered that it was more likely than not that Dr Mohamed placed his arm around the back of the chair and that Ms A perceived this to have been a side hug. The Tribunal is not satisfied that this was an intentional hug as described by Ms A.

75. Ms A described receiving hugs from doctors as relatively common when they were grateful for her help. The Tribunal noted that Dr Mohamed had received considerable assistance over the course of a lengthy meeting with Ms A, about topics that were weighing heavily on him at the time. Notwithstanding his evidence to the contrary, the Tribunal is satisfied that there was likely to have been at least one hug between them while standing. The Tribunal accepts that hugs between colleagues are common and, where that is the case, there is nothing inappropriate about them. Ms A was clear in her oral evidence that the hugs themselves did not cause her any concern. Her distress arose from other actions she reported. In light of the Tribunal's other findings, it does not find the hug or hugs to have been inappropriate in their context.

76. Therefore, on the balance of probabilities the Tribunal was not satisfied the GMC has discharged its burden of proof that the standing hug or hugs were inappropriate.

77. Accordingly, the Tribunal found paragraph 1(a)(iv) not proved.

**Paragraph 1(a)(v)**

***1(a)(v) On 20 May 2022, during a meeting with Ms A your conduct towards Ms A was inappropriate, in that you kissed the left hand side of her head;***

78. In Ms A's Trust statement she stated:

*'He then hugged me again sitting side by side in our chairs and kissed the left hand side of my head.'*

79. In Ms A's oral evidence she stated that she was not uncomfortable about the kiss on the side of her head as she thought it was a friendly kiss and felt it was of a paternal nature.

80. There is no mention of a kiss in Ms A's Trust interview notes or her GMC statement.

81. Dr Mohamed denies this sub-paragraph of the Allegation. He stated that he did not touch any sensitive part of her body.

82. The Tribunal having found that as there was no intentional hug whilst sitting down by Dr Mohamed, it was unlikely that he kissed Ms A on the left hand side of her head as described.

83. On the balance of probabilities, the Tribunal determined that the GMC had not discharged its burden of proof that Dr Mohamed kissed the left hand side of Ms A's head.

84. Accordingly, the Tribunal found paragraph 1(a)(v) not proved.

**Paragraph 1(a)(vi)**

***1(a)(vi) On 20 May 2022, during a meeting with Ms A your conduct towards Ms A was inappropriate, in that you whispered in her ear 'You are so beautiful' or words to that effect;***

85. The Tribunal considered the alleged action by Dr Mohamed of whispering in Ms A's ear the words '*You are so beautiful*' or words to that effect, may have occurred during or around the time of the alleged kiss in paragraph 1(a)(vii).

86. In Ms A's Trust statement she stated:

*'He asked if I liked coffee and said he would walk up to the ED café and buy me one, we both then got up and he then hugged me again, I had my laptop in my left hand so I think I just tapped his back in response very briefly, he then whispered in my ear " you are so beautiful" I looked away to my left side and just said thank you, because it was hot in the room and I was very nervous I stupidly pulled my mask down to cool down and I felt he was trying to kiss me on the lips so I kept looking to the left, he then locked the door and said "I don't want us to be disturbed" or something along those lines.'*

87. In Ms A's Trust interview notes it is recorded:

*'Dr Mohamed then whispered in her ear and said 'You are so beautiful'.'*

88. The Tribunal noted that Ms A recalled the words '*You are so beautiful*' in all of her statements although Ms C and Dr D make no record of it.

89. Dr Mohamed denies this sub-paragraph of the Allegation.

90. In Dr Mohamed's Trust interview it was recorded:

*'...that he did not say this, but he recalls being very grateful towards [Ms A] for the support she was giving him and was very thankful in the meeting.'*



91. It also noted that during Dr Mohamed's oral evidence he maintained that no words of this nature were said but accepted that he expressed gratitude to Ms A.

92. The Tribunal noted Ms A had recalled the word '*beautiful*' throughout. It did not accept Dr Mohamed's account that nothing at all was said. It noted that, if the words were said in the context of giving Ms A a hug, they would be said into her ear. The Tribunal was mindful, again, that Ms A recalls the events in the office through the lens of the distress she suffered. In that context, the word '*you're so beautiful*' spoken into her ear could take on the more sinister appearance she has reported.

93. The Tribunal considered it was plausible that Dr Mohamed may have been attempting to give Ms A a compliment in the context of thanking her for the help that she had given him, as he did when calling her a 'nice girl' previously. The Tribunal noted Dr Mohamed had not advanced that suggestion but considered it proper to consider alternative meanings of the words in the context of its other findings.

94. The Tribunal considered that the words '*You are so beautiful*' are inadvisable and could have the capacity to upset the recipient, particularly a junior colleague. Given Dr Mohamed does not have English as a first language the Tribunal noted that the word '*beautiful*' may not necessarily have been a comment about physical attractiveness.

95. The Tribunal, in light of its finding on paragraph 1(a)(vii) below, and that the standing hug was not inappropriate, concluded that what was said had not been meant in an inappropriate manner.

96. On the balance of probabilities the Tribunal found the GMC has not discharged its burden of proof that, inappropriately Dr Mohamed whispered in Ms A's ear '*You are so beautiful*' or words to that effect.

97. Accordingly, the Tribunal found paragraph 1(a)(v) not proved.

#### **Paragraph 1(a)(vii)**

***1(a)(vii) On 20 May 2022, during a meeting with Ms A your conduct towards Ms A was inappropriate, in that you kissed Ms A's right cheek;***

98. Dr Mohamed denies this sub-paragraph of the Allegation.

99. In Ms A's Trust statement she stated:

*'...I had my laptop in my left hand so I think I just tapped his back in response very briefly, he then whispered in my ear "you are so beautiful" I looked away to my left side and just said thank you, because it was hot in the room and I was very nervous I stupidly pulled my mask down to cool down and I felt he was trying to kiss me on the lips so I kept looking to the left, he then locked the door and said "I don't want us to be disturbed"*

100. In her Trust interview notes it was recorded:

*'However, Dr Mohamed leaned his head forward as though he was going to kiss her, to which [Ms A] moved her head.'*

101. In Ms A's supplemental GMC statement she stated:

*'He then whispered 'you're so beautiful' into my right ear, and I turned to my left, because I felt like he wanted to kiss me on the lips, and I didn't want him to do this. I thought if he was going to kiss me, this way he will have to kiss me on the cheek rather than on my lips. I was turned to the left for more than five seconds, and Dr Mohamed's lips made contact with my right cheek.'*

102. The Tribunal noted that in Ms A's Trust statement she said that she 'felt' Dr Mohamed was trying to kiss her and, in her Trust interview it was recorded that she said that Dr Mohamed leaned forward as if he was going to kiss her. Dr D reported Ms A describing Dr Mohamed "attempting to kiss her".

103. The Tribunal accepted that Ms A genuinely believes that Dr Mohamed was attempting to kiss her. However, it noted that the evidence of an actual kiss making contact with her cheek was given later in Ms A's supplemental GMC statement. The Tribunal concluded that Ms A, in trying to assist, appears to have added to the narrative, in the context of reflecting sometime later, through her genuine distress.

104. The Tribunal accepted that Ms A believed Dr Mohamed was attempting to kiss her, but by her own contemporaneous evidence there was no actual kiss.

105. Aside from Ms A's supplemental GMC Statement the Tribunal found no other documented evidence that there was an actual kiss to Ms A's right cheek. Therefore, on the balance of probabilities, the Tribunal found the GMC has not discharged its burden of proof, that Dr Mohamed kissed Ms A's right cheek. In that context, it also accepts Dr Mohamed's evidence that he was not, in fact, attempting to kiss Ms A.

106. Accordingly, the Tribunal found paragraph 1(a)(vii) not proved.

**Paragraph 1(a)(viii)**

***1(a)(viii) On 20 May 2022, during a meeting with Ms A your conduct towards Ms A was inappropriate, in that you locked your office door and said 'I don't want us to be disturbed' or words to that effect;***

107. In Ms A's Trust statement she stated:

*'I felt he was trying to kiss me on the lips so I kept looking to the left, he then locked the door and said "I don't want us to be disturbed" or something along those lines.'*

108. In her Trust interview notes it was recorded:

*‘Dr Mohamed then began to pant and turned and locked the door, muttering something along the lines of I Don’t want us to be disturbed. He then went and sat down at his desk and had some water.’*

109. In Ms A’s GMC statement she did not mention that Dr Mohamed locked the door.

110. It was Dr Mohamed’s evidence that he did not lock the door at all but that the door was closed.

111. The Tribunal received uncontroversial evidence that the door could be locked and unlocked from the inside by way of a turning mechanism but could be opened from the outside using a key. It also noted that two of Dr Mohamed’s colleagues had a key to the door.

112. The Tribunal noted the two accounts from Ms A that the locking of the door occurred either before Dr Mohamed sat down and was ‘panting’ in Ms A’s words or after he sat down and was panting. There is therefore a confusion in the timeline of events as she reports them. In both cases, it is alleged he locked the door, and sat down prior to touching Ms A’s bottom. This appears to have occurred shortly prior to Dr Mohamed and Ms A leaving the room and going to the coffee shop.

113. Ms A attributed Dr Mohamed panting, sitting down and taking a glass of water as an indication that he had recognised his actions were inappropriate. The Tribunal takes the view it is very unlikely that a man, recognising his actions were inappropriate and panicking as a result, would stand up again and then touch Ms A’s bottom. The improbable nature of that timeline appears to have fed into the change in Ms A’s evidence in her GMC statement when she had reflected on events. The Tribunal therefore takes the view that her recollection at the time is the order in which these events should be read as being alleged. The subsequent change appears to reflect an attempt by Ms A to rationalise what she remembered into a more logical order, rather than a change in what she remembered.

114. The Tribunal received evidence of Dr Mohamed’s XXX, needing to sit down and to have a glass of water. In light of that evidence, the Tribunal did not accept that Dr Mohamed’s apparent XXX indicated that he recognised impropriety in his own actions.

115. The evidence before the Tribunal indicates that Dr Mohamed and Ms A stood to leave the room, which would have involved moving towards the door. Dr Mohamed then XXX. It is entirely plausible that Ms A, in a heightened state of unease, presumed or believed Dr Mohamed to have locked the door when he moved to stand near it briefly, particularly in light of her genuine belief he had just tried to kiss her. The Tribunal also accepts that, in XXX, Dr Mohamed could have said that he wanted to be alone, or not to be disturbed.

116. The Tribunal noted that had Dr Mohamed locked the door, his colleagues would still have been able to enter the room with their keys. Importantly, Ms A would still have been able to open the door once Dr Mohamed moved away from it. Indeed, that is how Ms A reports she ultimately left the room. Therefore, locking the door would not prevent Ms A from the leaving the room. Having found paragraphs 1(a)(i) to 1(a)(vii) not proved the Tribunal found that Dr Mohamed would have no reason to lock the door.

117. The Tribunal considered that there were actions that could be consistent with Ms A's recollection of the door being locked. However, The Tribunal noted that Ms A was, at least, uneasy at this point. It concluded that Ms A's genuine perception of Dr Mohamed locking the door was incorrect.

118. On the balance of probabilities the GMC has not discharged its burden of proof that Dr Mohamed inappropriately locked the office door and said '*I don't want us to be disturbed*' or words to that effect.

119. Accordingly, the Tribunal found paragraph 1(a)(viii) not proved.

**Paragraph 1(a)(ix)**

***1(a)(ix) On 20 May 2022, during a meeting with Ms A your conduct towards Ms A was inappropriate, in that you squeezed her bottom.***

120. In Ms A's Trust statement she stated:

*'To not make a scene I just tried to diffuse the situation and make generally chit chat about weekend working and on calls, he then got up out of his seat and I thought we was about to leave, he then hugged me again and squeezed my bottom (right side) I then just unlocked the door and left with him walking with me.'*

121. In Ms A's Trust interview it was recorded:

*'[Ms A] was standing next to the door at this point. Dr Mohamed hugged her once more, however squeezed her bottom as well.'*

122. In Ms A's GMC statement she stated:

*'He then squeezed my bottom. I then noticed that he got really sweaty and clammy, and was panting, and he sat back on his chair and had some water. I think at that point, he knew that he'd overstepped the mark, so I started to make friendly conversation with him by asking him if he was working that weekend, because I wanted to diffuse the situation.'*

123. As Ms A's oral evidence when asked about the sequence of events described in her Trust interview, she said:

*'This is a bit out of order. When he was going to kiss me, he slid his hand and squeezed my bottom cheek. That was when I made my way to the door. I had my laptop shielding me. I thought "If he comes for me, I will have to hit him with my laptop".'*

124. Dr Mohamed denied that he had touched Ms A's bottom at any stage.

125. The Tribunal noted the significant differences in the sequence of events described at this stage in Ms A's various statements, and the increasing seriousness of the allegation as it has been retold. It has already determined that the shift in timeline appears to reflect an attempt to rationalise an apparently illogical initial timeline.

126. The Tribunal considered during Ms A's oral evidence her recollections became more emotive as she progressed through the sequence of events. As a result, it found her evidence less reliable when it came to matters towards the end of the incident. The Tribunal was conscious that Ms A is likely to have been more distressed towards the end of the sequence after what she thought had happened. Nonetheless, the Tribunal noted again, on Ms A's own accounts, she remained in the room, and went for coffee with Ms A after he had touched her bottom. This was despite, in her oral evidence, saying she had considered the need for a weapon while in the room.

127. Because of the lack of logic within Ms A's oral evidence on this point, the Tribunal could not be satisfied that her recollections or perceptions were accurate.

128. The Tribunal could not rule out the possibility that Ms A perceived that Dr Mohamed touched her bottom, possibly in the course of one of the hugs that did occur, but it was not satisfied that this actually happened. Again, the Tribunal accepts that Ms A genuinely believes the account she gave in oral evidence, but it appears to have changed substantially on this point and its context, and to have undergone revision on reflection. Therefore, on the balance of probabilities the Tribunal found that the GMC has not discharged its burden of proof that Dr Mohamed squeezed Ms A's bottom.

129. Accordingly, the Tribunal found paragraph 1(a)(ix) not proved.

**Paragraphs 1(b)(i), 1(b)(ii) and 1(b)(iii)**

***1(b)(i) On 20 May 2022, during a meeting with Ms A you asked Ms A if she was single;***

***1(b)(ii) On 20 May 2022, during a meeting with Ms A you asked Ms A if she lived alone;***

***1(b)(iii) On 20 May 2022, during a meeting with Ms A you asked Ms A if you could visit her in the future.***

130. The Tribunal understood this conversation to have taken place after Dr Mohamed and Ms A had left the room and either on the way to the café or in the café.

131. The Tribunal considered each of the paragraphs in this part of the Allegation separately but reached the same conclusion on each point for the same reasons, so they are dealt with together.

132. The Tribunal interpreted paragraph 1(b)(iii) as alleging that Dr Mohamed was asking to visit Ms A outside of work and not in a professional setting.

133. Dr Mohamed denied asking any of the questions in paragraph 1(b).

134. Ms A made no reference to these comments in her Trust statement.

135. In her Trust interview it was recorded:

*'When both [Ms A] and Dr Mohamed were ordering at the ED café. Dr Mohamed asked [Ms A] whether she was single to which she replied yes. Dr Mohamed then asked if he was able to come and see her in the future.'*

136. There was no mention of being asked about whether she lived alone. It was not clear to the Tribunal that the question alleged in the Trust interview related to a visit outside of work, as opposed to a further work-related meeting.

137. In Ms A's GMC statement she stated:

*'He then asked me if I was single, and I said well yeah, because I wanted to be honest, and he then asked me if I lived alone and I said yes because I wanted to be honest.'*

138. There was no mention of being asked whether Dr Mohamed could visit her.

139. In her oral evidence when questioned why this information was not in her previous statement Ms A said that she didn't think of it, she had been happy to be out of the room. When asked about being single Ms A said she was single because she wanted to be honest, that she didn't think anything of it she just said yes and commented that she could have lied but that she should not have to.

140. In the context of what the Tribunal has found not proved in paragraph 1, it was of the opinion that there may have been some amount of 'small talk' directed by Dr Mohamed towards Ms A at the cafe. In any event, and in light of the previous findings, the Tribunal is satisfied that any questions he asked were, to his mind, benign. The Tribunal noted that paragraph 2 does not allege that the questions were 'inappropriate', and only alleges that the questions were asked. The Tribunal was not satisfied that the burden of proof has been discharged in respect of these particular questions.

141. Accordingly, the Tribunal found paragraph 1(b) not proved in its entirety.

## Paragraph 2

***2(a). Your conduct as described at paragraphs 1a and 1b was sexually motivated.***

***2(b). Your conduct as described at paragraphs 1a and 1b constituted sexual harassment as defined in Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct of a***

*sexual nature, which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms A.*

142. As the Tribunal found paragraph 1 not proved in its entirety paragraph 2 necessarily falls. The events that the Tribunal found did occur, it has found not to be inappropriate. It follows they were not sexually motivated, nor did they constitute sexual harassment as defined in s26(2) of the Equality Act 2010.

**Paragraph 3(a)**

***3(a) On 23 May 2022, you called Ms A on her personal mobile number and said ‘why have you told Dr B on me?’ or words to that effect;***

143. The Tribunal noted that following the meeting with Dr Mohamed Ms A made a complaint which was escalated to Dr B, Chief Medical Officer (Dr B). The Tribunal noted the email dated 20 May 2022, timed 19:27 from Dr B to his Personal Assistant, Ms F which states:

*‘I need to have an urgent meeting with one of the oncology consultants (Dr Mohamed Amin)*

*Ideally need to speak with him on Monday afternoon (face to face) – I can miss ESERG and should be back from CCH around 2*

*Could you see if you can contact him Monday am and ask h[sic] to come to see me between 2 and 3.30? It relates to a concern brought to my attention.’*

144. In Ms F’s witness statement she said that she contacted Dr Mohamed by telephone on Monday 23 May 2022 and to the best of her recollection she called him in the morning. She said that she was not aware of what the concerns were about. Dr B confirmed that he had not told Ms F of the reasons for the meeting. As Dr Mohamed was working at another hospital on that day, she arranged the meeting for 1.00pm Tuesday 24 May 2022. It follows that she did not relay the intended purpose of the meeting to Dr Mohamed.

145. No witness suggested that Dr Mohamed was told the meeting needed to be urgent. Rather, he was asked to come to a meeting later that day and, when he was not able, to come the next day.

146. It was Dr Mohamed’s oral evidence that he had been working in clinic and he received a call from Ms F and went into the corridor to take the call. He said that following the call from Ms F, whilst still in the corridor, he called Ms A on her mobile to find out what she had said to Dr B. He said he presumed that she had raised the concerns about his workload, as they had discussed she would. His evidence was that he wanted to find out what had been said, to be prepared for the meeting. Dr Mohamed denied that he used the words ‘*why have you told Dr B on me?*’, or that he was seeking to challenge Ms A for having made a complaint about him. Dr Mohamed told the Tribunal that when he joined the Trust, he had a brief induction and he was not aware that Dr B was the Chief Medical Officer of the Trust until he attended the meeting with him.

147. Dr Mohamed accepted that he called Ms A three times. He explained that during the first call to Ms A he was cut off so he called back twice as he thought there was a poor mobile signal in the hospital. Dr Mohamed's two subsequent calls were unanswered by Ms A.

148. In her GMC witness statement Ms A stated:

*'The first call I answered because I did not have his number saved, so I did not know it was him calling. He said, why have you told Dr B on me? I was distressed, and said I think you know why. Then I whispered to my line manager Ms I, its him, she said put the phone down, and go and tell Ms E.'*

149. In her oral evidence Ms A said that Dr Mohamed had been told not to contact her. Ms A was mistaken. That instruction was not given to Dr Mohamed during his phone call with Ms F. Dr B confirmed in an email chain that Ms F did not know the purpose of the meeting, and that restrictions were not put in place until the Tuesday.

150. In her oral evidence Ms E told the Tribunal that Ms A did not appear to be upset by the telephone calls from Dr Mohamed, rather that she was getting frustrated by the phone calls.

151. In light of the Tribunal findings in paragraphs 1 and 2 and given that Dr Mohamed was not aware of Ms A's complaint at the time of the phone calls, it determined that it was more likely than not that Dr Mohamed was calling Ms A to follow up their discussion about the concerns regarding his workload before he met with Dr B. The Tribunal was satisfied that Dr Mohamed had no reason to believe the meeting with Dr B concerned any of the alleged actions during the meeting with Ms A.

152. While the language of a question '*what did you tell Dr B about me?*' is similar to '*why did you tell Dr B on me?*', it carries an entirely different meaning. The Tribunal therefore did not consider whatever words were used to have the effect of those alleged.

153. The Tribunal found on the balance of probabilities, that the GMC has not discharged its burden of proof that Dr Mohamed called Ms A on her personal mobile number and said '*why have you told Dr B on me?*' or words to that effect.

154. Accordingly, the Tribunal found paragraph 3(a) not proved.

### **Paragraph 3(b)**

***3(b) On 23 May 2022, you called Ms A on her personal mobile number and made one or more further attempts to call Ms A.***

155. The Tribunal noted that Dr Mohamed accepted at the outset of the hearing that he had called Ms A on her mobile three times, albeit this was not taken as a formal admission, because of the wording of the paragraph.



156. Dr Mohammed told the Tribunal that he made three calls to Ms A, the first of which she answered briefly. Dr Mohamed's first call was disconnected and he thought it was because the signal had dropped. He said he made the subsequent two calls because he thought there was a poor mobile signal at the hospital.

157. The Tribunal noted that Ms A received two calls from a landline number. It was suggested on behalf of the GMC, that these calls came from Dr Mohamed with the purpose of masking his identity. The Tribunal concluded there was no evidence to support that suggestion, and no reason, in the context of its other findings, for Dr Mohamed to want to mask his number.

158. Given Dr Mohamed's factual admission and the evidence from the screen shot of Ms A's mobile phone showing three calls made from Dr Mohamed's telephone number the Tribunal concluded there were "further attempts to call Ms A" notwithstanding the fact that the content of the first call was not as alleged. The Tribunal therefore found paragraph 3(b) proved.

#### Paragraph 4

*4(a) Your conduct as described at paragraph 3 was intended to intimidate Ms A;*

*4(b) Your conduct as described at paragraph 3 was intended to dissuade Ms A from bringing a complaint against you.*

159. Based on the Tribunal's finding at paragraph 3(a), it found that Dr Mohamed's conduct in calling Ms A's mobile was not intended to be intimidating, or an attempt to dissuade Ms A from bringing a complaint against him. While Ms A may have felt intimidated, there was no reason for Dr Mohamed to believe that a complaint had been made at that stage. He, therefore, had no reason to seek to intimidate her, or to dissuade her from making a complaint.

160. Accordingly, the Tribunal found paragraph 4 not proved.

1. On 20 May 2022, during a meeting with Ms A:
  - a. your conduct towards Ms A was inappropriate, in that you:
    - i. put your hand on her right thigh;  
**Found not proved**
    - ii. moved your hand up and down her right leg;  
**Found not proved**
    - iii. whispered in her ear 'You are such a nice girl' or words to that effect;  
**Found not proved**
    - iv. hugged Ms A on one or more occasion;  
**Found not proved**

v. kissed the left hand side of her head;

**Found not proved**

vi. whispered in her ear 'You are so beautiful' or words to that effect;

**Found not proved**

vii. kissed Ms A's right cheek;

**Found not proved**

viii. locked your office door and said 'I don't want us to be disturbed' or words to that effect;

**Found not proved**

ix. squeezed her bottom.

**Found not proved**

b. you asked Ms A if:

i. she was single;

**Found not proved**

ii. she lived alone;

**Found not proved**

iii. you could visit her in the future.

**Found not proved**

2. Your conduct as described at paragraphs 1a and 1b:

a. was sexually motivated;

**Found not proved**

b. constituted sexual harassment as defined in Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct of a sexual nature, which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms A.

**Found not proved**

3. On 23 May 2022, you called Ms A on her personal mobile number and:

a. said 'why have you told Dr B on me?' or words to that effect;

**Found not proved**

b. made one or more further attempts to call Ms A.

**Found proved**

4. Your conduct as described at paragraph 3 was intended to:
  - a. intimidate Ms A;  
**Found not proved**
  - b. dissuade Ms A from bringing a complaint against you.  
**Found not proved**

**Determination on Impairment - 26/10/2023**

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

**The Evidence**

162. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary.

**Submissions**

163. On behalf of the GMC, Mr Hamlet, Counsel, stated the Tribunal found only paragraph 3(b) proved, that Dr Mohamed made three phone calls to Ms A, and that there were no pejorative findings. Mr Hamlet submitted that that conduct could not be considered inappropriate let alone seriously inappropriate. He said it follows that no positive submissions on misconduct or impairment can be made by the GMC.

164. On behalf of Dr Mohamed, Ms Myttas-Perris, Counsel, agreed with Mr Hamlet's submissions. She said in relation to the fact found proved it does not reach the threshold of misconduct and the absence of any other facts found proved there is no negativity to those phone calls.

165. She reminded the Tribunal that Dr Mohamed engaged throughout the GMC's investigation and this hearing, and provided a written statement in which he recognised the importance of professional boundaries. She submitted that there is no evidence that a finding of impairment would be required either for the protection of the public or in the public interest.

**The Relevant Legal Principles**

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

167. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted: first whether the facts as found proved amounted to misconduct and then whether the finding of that misconduct which was serious, could lead to a finding of impairment.

168. The Tribunal was mindful that misconduct has no formal definition but bore in mind the guidance in the case of *Roylance v GMC* [1999] UKPC 16 that:

*“misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances”.*

169. It remained conscious throughout that the focus of the decision at this stage was on the question of whether any misconduct was serious.

170. If misconduct is found, the Tribunal must determine whether Dr Mohamed’s fitness to practise is impaired today, taking into account his conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition. The Tribunal was mindful that impairment can relate to public protection or the public interest.

## The Tribunal’s Determination on Impairment

### Misconduct

171. The Tribunal found that Dr Mohamed called Ms A from his mobile three times after receiving a phone call asking him to attend a meeting with a senior member of staff. He had recently discussed workload concerns with Ms A, which she said she would escalate. The Tribunal accepted Dr Mohammed’s explanation that the first call was answered briefly by Ms A but was disconnected and he thought it was because the signal had dropped. It also accepted Dr Mohamed’s explanation that he made the subsequent two calls, which went unanswered, because he thought there was a poor mobile signal at the hospital. The Tribunal did not find that Dr Mohamed made these phone calls in order to intimidate Ms A or dissuade her from bringing a complaint against him.

172. The Tribunal concluded that Dr Mohamed’s intentions in calling Ms A were legitimate, and therefore the purpose of the calls did not amount to misconduct. Three phone calls in the space of 15 minutes, one of which was answered but terminated part-way through, cannot be said to be oppressive in itself, such that the number of calls could amount to misconduct.

173. As such, the Tribunal found that the single paragraph of the allegation found proved, did not fall short of the standards of conduct reasonably to be expected of a doctor. The fact found proved therefore does not amount to misconduct.

174. The Tribunal having determined that the facts found proved did not amount to misconduct consideration of whether Dr Mohamed's fitness to practise is currently impaired was not necessary.

175. That concludes this case.

## ANNEX A – 19/10/2023

### Application Under Rule 41(2)

#### Submissions

176. On behalf of Dr Mohamed, Ms Myttas-Perris made an application under Rule 41 (2) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), for parts of the hearing to be heard in private. Rule 41 states:

*'Rule 41 (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.'*

177. Ms Myttas-Perris referred the Tribunal to Dr Mohamed's witness statement in relation to XXX. She submitted that Dr Mohamed has a right to a private life. She submitted that matters relating to Dr Mohamed's XXX outweigh the public interest, therefore parts of the hearing should be held in private.

178. On behalf of the GMC, Mr Hamlet said that there is no objection to the application if Ms Myttas-Perris so long as the hearing is in private only to deal with XXX matters and returns to public session for any other matters.

#### The Tribunal's Decision

179. The Tribunal has considered the submissions made by Ms Myttas-Perris and Mr Hamlet. It noted that Mr Hamlet does not object to the application in principle.

180. The Tribunal has borne in mind Rule 41(a1) which states:

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

181. The Tribunal balanced Dr Mohamed's interests with the public interest in deciding whether parts of the hearing relating to his XXX should be held in private. The Tribunal took account of fairness to Dr Mohamed, the GMC, the overarching objective, and the wider public interest. The Tribunal is mindful that that matters relating to Dr Mohamed's XXX are private and was satisfied that matters relating to his XXX should be heard in private, notwithstanding the general public interest in hearings being in public.

182. Accordingly, the Tribunal determined to grant Ms Myttas-Perris' application under Rule 41(2) that parts of the hearing relating to Dr Mohamed's XXX will be heard in private.

## ANNEX B – 19/10/2023

### Application Under Rule 34

#### Submissions

183. On behalf of Dr Mohamed, Ms Myttas-Perris made an application under Rule 34 (2) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to adduce further evidence in the form of a document containing photographs of Dr Mohamed's XXX.

184. Ms Myttas-Perris submitted that the evidence is fair and relevant, given that whether Dr Mohamed had XXX was an area of some questioning during his oral evidence. She explained that she had suggested to Dr Mohamed that he look for the unopened XXX over the weekend and only received photographs of it this morning. She said that she did not anticipate that the evidence would be controversial.

185. Ms Myttas-Perris submitted that the GMC can make its point that Dr Mohammed could still exhibit sexual desire even in light of the new evidence. She submitted that this evidence is not central to the case and was only one line in his witness statement. She said that more attention was given to the XXX during Dr Mohamed's live evidence which led to further enquiries being made. Ms Myttas-Perris submitted that it cannot be said that the evidence is not relevant as it came about as a response to Mr Hamlet's questioning.

186. On behalf of the GMC, Mr Hamlet said that this is a balancing exercise. He said that Dr Mohamed referred to not having taken XXX in his GMC statement, so could have provided supporting evidence then. Had he done so, the GMC might have sought to make further enquiries of its own, such as contacting the XXX. He submitted that it is unfair for the defence to be able to introduce new evidence after closing their case, and after Dr Mohamed was released from his affirmation such that he could speak to counsel. He noted that the evidence was provided to him some minutes after he had served his written, closing submissions on the defence.

187. Mr Hamlet stated that the Tribunal has no express power for it to accept fresh evidence at this stage although accepted that Rule 34 allows the Tribunal to accept evidence at any time that is fair and relevant.

188. Mr Hamlet said that the provenance of the photographs provided by Dr Mohamed are an issue. He said that the GMC has not had an opportunity to challenge this evidence. He reminded the Tribunal that Dr Mohammed has had a chance to discuss his case with his legal representative. Mr Hamlet submitted that the risk of unfairness in introducing this evidence outweighs any unfairness in Dr Mohamed being unable to rely upon it.

189. Mr Hamlet confirmed that if the application is granted it is unlikely that he will be amending his written submissions on facts. He said the only way this evidence could be adduced

fairly is if Dr Mohamed was re-called to give evidence and to be questioned on it, although his primary submission was that the evidence could not be introduced fairly.

### The Tribunal's Decision

190. The Tribunal noted that Dr Mohamed had been questioned about his XXX. He had received XXX. He had been questioned extensively about his receipt of two boxes, one in March and one in August 2022. Dr Mohamed gave evidence, which was challenged, that he had not XXX given to him. The new evidence, if the provenance is demonstrated, could have the capacity to support, or to prove, that point, which remains controversial between the parties.

191. The Tribunal considered the submissions made by Ms Myttas-Perris and Mr Hamlet.

192. The Tribunal considered Rule 34, which states:

*'34. (1) The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.'*

193. The Tribunal firstly considered whether or not the evidence is relevant at this stage. It noted that this evidence goes to Dr Mohamed's credibility and may assist with the contested issue of sexual desire. The Tribunal observed that the Parties had closed their case on Day 3 (Friday 20 October 2023) with the conclusion of Dr Mohamed's oral evidence, and were due to provide closing submissions on facts this morning.

194. The Tribunal noted that Dr Mohamed mentioned the XXX in his GMC witness statement dated 21 August 2023. The matter of the XXX arose again during Dr Mohamed's oral evidence and During Dr Mohamed's evidence on Friday he said that he thought he still had the unused XXX.

195. Given that Dr Mohamed mentioned the XXX in his witness statement and was questioned about it during his oral evidence the Tribunal was satisfied that the evidence is relevant.

196. The Tribunal next considered fairness to both parties.

197. The Tribunal noted that the evidence of the unused XXX became controversial during Dr Mohamed's oral evidence.

198. Having found that the evidence is relevant, the Tribunal considered that it would be fair to grant the application. The question of whether Dr Mohamed took XXX is controversial between the parties. It would be unfair to exclude any evidence capable of resolving that question, or of helping the Tribunal to weigh the evidence of a party on that point. The Tribunal was of the view there was nothing unfair about the content of the evidence.



199. On the question of timing, the Tribunal noted the submissions of Mr Hamlet that he had received the new evidence within a few minutes of serving his written submissions. The Tribunal took the view that the evidence was highly unlikely to have been served as a consequence of anything in his submissions given the short time-frame. It noted Ms Myttas-Perris' explanation that the photographs had been sent to her before the submissions were received.

200. The Tribunal took the view that any residual unfairness, as a result of the timing of the evidence being served, could be resolved by Dr Mohamed giving evidence under affirmation. Adducing the photographs in that way would give the GMC the opportunity to question Dr Mohamed and to challenge the provenance of the images. The Tribunal could weigh the evidence in light of any questions and answers given. Both parties can be provided some time to revisit their written submissions if the evidence requires any changes to them.

201. Accordingly, the Tribunal granted Ms Myttas-Peris' application under Rule 34 to adduce further evidence.