

## PUBLIC RECORD

Dates: 27/08/2024 – 29/08/2024 and 11/11/2024 – 12/11/2024

Medical Practitioner's name: Dr Francis BAILEY

GMC reference number: 5206085

Primary medical qualification: Med Dip 1987 Crimean Medical Institute

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

**Summary of outcome**

Erasure  
Immediate order imposed

**Tribunal:**

Legally Qualified Chair	Mr Simon Bond
Lay Tribunal Member:	Mrs Cindy Mackie
Medical Tribunal Member:	Dr Gillian Livesey

Tribunal Clerk:	Mr Sewa Singh (27-29/08/2024) Mrs Olivia Gamble (11-12/11/2024)
-----------------	--

**Attendance and Representation:**

Medical Practitioner:	Present, not represented
Medical Practitioner's Representative:	None
GMC Representative:	Mr Alex Mullen, Counsel (27-29/08/2024) Mr Tom Phillips, Counsel (11-12/11/2024)

**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 - 11/11/2024

1. This determination will be read in private. However, as this case concerns Dr Bailey's conviction, a redacted version will be published at the close of the hearing with those matters relating to XXX removed.
2. Throughout the decision-making process, the Tribunal has borne in mind the statutory overarching objective as set out in s1 of the Medical Act 1983 (the 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.

## Background

3. Dr Bailey qualified in 1987 from the Crimean Medical Institute in Russia.
4. The background events which have given rise to this hearing are as follows. On 8 December 2023, Dr Bailey was convicted at Cambridge Crown Court of three counts of 'care worker engage in sexual activity with a mentally disordered female - penetration' contrary to the Sexual Offences Act 2003.
5. As a result of these convictions, Dr Bailey was, on 28 February 2024, sentenced to 26 months' imprisonment; a notification requirement (to sign the sex offenders' register) for ten years; and a restraining order not to contact the victim and another individual for ten years.
6. These matters came to the attention of the General Medical Council ('GMC') following a police investigation.

## The Outcome of Applications Made during the Facts Stage

7. The Tribunal granted an application made by Mr Alex Mullen, Counsel for the GMC, pursuant to Rule 34(1) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). The Tribunal's full decision on the application is included at Annex A.

8. The Tribunal granted a further application made by Mr Mullen, pursuant to Rule 35(4) of the Rules, to anonymise the name of Ms A, the complainant involved in the matters which led to Dr Bailey's conviction. The Tribunal's full decision on the application is also included at Annex A.

### The Allegation and the Doctor's Response

9. The Allegation made against Dr Bailey, as amended, is as follows:

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

1. On 8 December 2023, at Cambridge Crown Court, you were convicted of three counts of care worker engage in sexual activity with mentally disordered female – penetration – Sexual Offences Act 2003.

**Admitted and found proved**

2. On 28 February 2024 you were sentenced to:

a. 26 months' imprisonment;

**Admitted and found proved**

b. a notification requirement (to sign the sex offenders' register) for ten years;

**Admitted and found proved**

c. a restraining order not to contact the victim and another individual for ten years.

**Admitted and found proved**

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

**To be determined**

## The Admitted Facts

10. At the outset of these proceedings, Dr Bailey made admissions to all paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('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.

## Impairment

11. With no facts remaining in dispute, the Tribunal 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, Dr Bailey's fitness to practise is currently impaired by reason of his conviction.

## The Evidence

12. Dr Bailey provided a statement and also gave oral evidence at the hearing. In addition, the Tribunal received written and oral evidence from Ms B on Dr Bailey's behalf.

13. The Tribunal also received a number of testimonials in support of Dr Bailey, all of which it has read.

## Documentary Evidence

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

- Certificates of conviction dated 8 April 2024;
- Sentencing Remarks of HHJ D, dated 28 February 2024;
- Dr Bailey's undated statement, together with associated exhibits;
- Statement of Ms B, undated;
- Correspondence between Dr Bailey's legal representatives and Dr Bailey in relation to the criminal matters;
- Record of Dr Bailey's police interview, dated 7 June 2022;
- Witness statement of Ms C, dated 31 August 2022;

- Testimonials from Dr Bailey’s colleagues and patients attesting to his character and clinical practice;
- A supplementary hearing bundle which included a pre-sentence report and further testimonials received from Dr Bailey’s clinical colleagues and acquaintances attesting to his character.

### Dr Bailey’s evidence

15. Dr Bailey gave oral evidence to the Tribunal via video link from HM Prison XXX. He was not represented at the hearing but was accompanied by Mr E, a McKenzie friend. Dr Bailey confirmed that an undated letter to the GMC, contained within his bundle – D1, had been written by him, and that the contents were true and accurate to the best of his knowledge.

16. Dr Bailey told the Tribunal that he had worked in the medical profession at several locations, for a long time and that it was impossible to be free of any complaints. He stated that he had an unblemished record, and that he had built up a good reputation with patients. He said that his conviction had had a detrimental impact on him, and had resulted in him losing his family, home, finances, and reputation. He added that his patients had visited him at the prison and that he was content for the Tribunal to access the visiting records if required. Dr Bailey added that his patients were setting up a fundraising campaign in order to help him fund his appeal against conviction. He said that his career as a doctor meant everything to him and that he had dedicated himself to helping others, sometimes out of his own pocket and in his personal time.

17. Dr Bailey went on to explain the circumstances which gave rise to a relationship developing between him and Ms A. He acknowledged that Ms A had been a patient at Park Medical Centre, (the ‘Practice’), where he worked as a GP, and that he had been aware of Ms A’s mental health issues, which included a history of self-harm and of threatening suicide. Dr Bailey described how Ms A had contacted him and said that she was in a crisis; he gave her his personal mobile telephone number and advised Ms A to go to A&E, but she refused, stating that the mental health team never helped her. According to Dr Bailey, Ms A insisted that Dr Bailey should visit her. He said that he did so reluctantly and that during their meeting, over the course of an evening, Ms A explained that her mental state was ‘stressed’ and that she felt suicidal because of a number of debts that she owed. According to Dr Bailey, Ms A said that if he could help her financially it would do a lot to alleviate her problems. Dr Bailey explained that he had agreed to help Ms A because, in his opinion she was suffering from a severe stress reaction to her financial situation.

18. In his letter to the GMC, Dr Bailey said that it had never been his intention to have any form of relationship with Ms A that went outside the boundaries of a professional relationship. However, he acknowledged that a sexual relationship had developed between him and Ms A. He stated that, on one occasion, Ms A had sent him a text message indicating that she wanted to 'come over', but had no money for a taxi. Dr Bailey stated that he paid for a taxi and that Ms A visited him at his home.

19. Dr Bailey described how he had 'nodded off' and awoke to find Ms A performing oral sex on him. XXX; he said that XXX and that they went on to have sexual intercourse.

20. In his letter to the GMC, Dr Bailey stated that over the course of his relationship with Ms A they exchanged text messages and met up on several occasions - sometimes at his home, sometimes at hers. In his oral evidence Dr Bailey acknowledged that when he had visited Ms A at her home he had, on occasion, XXX. He said that Ms A gave him a key for her flat and he described how they spent time together on XXX. Dr Bailey said he truly believed that Ms A was in love with him and that, against his better judgement, he reciprocated.

21. However, Dr Bailey claimed that Ms A had initiated the sexual aspect of their relationship, had driven their affair and had kept it going at her pace. He stated that Ms A had bombarded him with 52 naked images of herself and sent him love poems on an almost daily basis. In his letter to the GMC, he said it was clear in retrospect that Ms A had been motivated primarily by financial gain. Dr Bailey described how he gave Ms A money, paid Ms A's vets bill, gave her a sum of money each week towards her bills, and bought her a laptop computer.

22. Dr Bailey stated that he began feeling the strain of the relationship, and felt that he was being used by Ms A, but could not see a way out. XXX. He explained that, whilst he XXX, a friend who was visiting him saw a naked image of Ms A on Dr Bailey's telephone.

23. Dr Bailey explained that having been released from hospital, he visited Ms A and found her in bed with an ex-boyfriend. Dr Bailey stated that he found this conduct unacceptable and he told Ms A that he wanted to end their relationship. He said that, although they parted ways, they continued to communicate for a time until Dr Bailey decided to block her telephone number. Dr Bailey stated that a week or two later he was arrested on suspicion of XXX; he denied the allegation which was subsequently dropped. Dr Bailey said that his relationship with Ms A was mutually consensual. However, he described Ms A as

*'extremely manipulative'* and stated that there had been *'elements of coercion'* by her during their relationship. Dr Bailey described himself as *'easy pickings'* for Ms A and said that he had been *'extremely pliable'*, having recently XXX.

24. Dr Bailey acknowledged that Ms A suffered from mental health issues, but he claimed that she had capacity at all times during their relationship and made informed decisions. Dr Bailey acknowledged that he had prescribed medication to Ms A, but asserted that he had done so at her request. He stated that the facts relating to his relationship with Ms A were *'not as straight forward as presented'*. By way of example, he stated that he had not initiated the relationship, nor initiated sexual activity with Ms A, and he had not engaged in any sexual activity with her at the Practice. In addition, Dr Bailey disputed that he and Ms A had vaginal sex on at least 21 occasions, as stated by the Judge in his pre-sentencing remarks.

25. In his oral evidence, Dr Bailey accepted that that his role as a doctor placed him in a position of trust and that there had been a degree of power imbalance between him and Ms A, at least initially. However, he described Ms A as controlling and said that she was *'all but vulnerable'*, as evidenced by her numerous text messages to him. Dr Bailey stated that Ms A had threatened him with going public about their relationship. He stated that in light of the entire history of the relationship, Ms A's requests for money, and the evidence of their discussions on his telephone, he could not understand why he had been imprisoned following charges of sexual assault.

26. Dr Bailey stated that he was in prison not because he had committed a criminal act, but because he entrusted his defence to lawyers who were either too lazy or could not be bothered to defend him. He said that his defence team had ignored the *'mountain of evidence'* on his telephone which related to his relationship with Ms A. Dr Bailey asserted that Ms A *'had power'* and to demonstrate this, he had asked his barrister to show the court Ms A's text messages, but this was not done.

27. Dr Bailey told the Tribunal that he had been coerced by his legal representative into entering a guilty plea to the criminal charges, on the basis that it might result in a suspended sentence rather than a custodial sentence. Dr Bailey referred to a meeting with his solicitor in which the lawyer became *'very annoyed and rude'* and advised Dr Bailey that he would get 5-10 years imprisonment if he pleaded not guilty. In his letter to the GMC, Dr Bailey described an exchange with his solicitor, during their meeting as follows, *'He said she was your patient and she has a mental health disorder and so I am guilty. I said no. I disagree. People with*

*mental health disorders are every day involved in relationships of one form of another and this was a consensual relationship’.*

28. Dr Bailey expressed the view that he had been *‘brow-beaten’* into pleading guilty and that he would have been acquitted had the case proceeded to a criminal trial. In addition, Dr Bailey stated that the judge presiding over his case wanted to make an example of him, hence the sentence.

29. Dr Bailey told the Tribunal that he strongly disagreed with the suggestion in his pre-sentence report that Ms A suffers from Post Traumatic Stress Disorder as a result of their relationship. He said he was aware from Ms A’s Facebook account that she was in a new relationship, and he asserted that she was *‘upbeat’*, in a *‘happier place’*, and had enrolled on a XXX course.

30. In his oral evidence, Dr Bailey accepted that having a personal relationship with Ms A breached professional boundaries. He also accepted that his actions may have brought harm to the medical profession and damaged the image of the profession. He referred the Tribunal to a section of the pre-sentence report which acknowledged that he took responsibility for *‘breaking his professional ethics by having sex with his patient’*. However, Dr Bailey stated that he had never harmed any patients and he reiterated that his patients continued to support him, visit him and write to him in prison. In addition, he expressed the view that a member of the public aware of the full facts in the case would not regard his conduct in the same way as the GMC or the judicial system. He added that others involved had to take responsibility for their part in these matters.

31. Dr Bailey said he took responsibility for his part in his relationship with Ms A, to the extent that he should not have met with Ms A outside of the Practice, should not have driven her in his car, and should not have allowed the *‘sex thing’* to have happened. Dr Bailey also accepted that lending money to Ms A had not been appropriate, but he said he only wanted to help her and had expected nothing in return. However, Dr Bailey maintained that Ms A had capacity to make decisions, and that their relationship had been consensual. He said that he had advised her repeatedly that she did not have to be in a relationship with him, but that she understood the consequences of the relationship and that it could cause a lot of trouble for him. Dr Bailey stated that because Ms A considered that mental health agencies had done little to help her, that had led him to *‘overextend himself’* in the help that he had provided to her.



32. Dr Bailey told the Tribunal that he disputed some of the contents of the pre-sentence report, which he described as *‘very inaccurate and unprofessional’*. In particular, Dr Bailey said that he did not understand why the author of the report had assessed his risk of repetition as medium, when all the indicators demonstrated a low risk.

## Submissions

### On behalf of the GMC

33. Mr Alex Mullen, Counsel, referred the Tribunal to the relevant Rules and to Dr Bailey’s Certificate of Conviction. Mr Mullen submitted that there was no burden of proof when considering impairment, and he referred the Tribunal to relevant case law, and the guidance on impairment set out Dame Janet Smith’s Fifth Shipman Enquiry Report. Mr Mullen stated that the doctor’s past conduct will be relevant to considering whether his fitness to practise is impaired today. Mr Mullen reminded the Tribunal that an assessment of impairment should consider the risk to the public and upholding professional standards. Mr Mullen also reminded the Tribunal of the principles set out in Good Medical Practice (GMP) (2013 version) and to parts of GMP (2024 version).

34. Mr Mullen submitted that the risk to the public in this case is a serious one, in that Ms A was vulnerable due to her mental health conditions, and Dr Bailey breached professional boundaries and took advantage of her. Mr Mullen referred the Tribunal to paragraph 86 of GMP (2024 version) which refers to the guidance on Maintaining Personal and Professional Boundaries. He stated that the guidance was also included in GMP (2013 version). Mr Mullen submitted that Dr Bailey had recognised at a very early stage of the criminal investigation, that what he had done was wrong - for example, by stating that he *‘would lose my job’* and *‘this is not allowed under the Rules/Code of Practice’*. Mr Mullen reminded the Tribunal that Ms A was a mentally vulnerable patient and is described in law as mentally disordered.

35. Mr Mullen went on to describe the impact of Dr Bailey’s actions upon Ms A, as described in the pre-sentence report, namely that she was suffering from post-traumatic stress disorder, feeling extremely insecure and frightened, and struggling to trust others and socialise. Mr Mullen submitted that Dr Bailey’s actions crossed professional boundaries, that his relationship with Ms A was persistent over a number of months, and had involved sexual contact on approximately twenty-one occasions. Mr Mullen stated that whilst Dr Bailey sought to deny the number of occasions on which sexual contact took place, it was not for the Tribunal to go behind the convictions. Mr Mullen reminded the Tribunal of Dr Bailey’s

evidence that he ended the relationship when he found Ms A in bed with another man, and that had this not been the case, the relationship would have continued. Mr Mullen submitted that this showed Dr Bailey had not realised what he was doing was wrong. In addition, Mr Mullen stated that this provided a further demonstration of the risk Dr Bailey poses to the public.

36. Mr Mullen, referring to Dr Bailey's positive testimonials, submitted that this was not a case which could be equated with the behaviour of a committed and professional GP. Mr Mullen stated that whilst Dr Bailey may have felt he was on a slippery slope, he could and should have avoided crossing professional boundaries, and ultimately causing harm to Ms A. Mr Mullen went on to say that, instead, Dr Bailey had demonstrated a selfish regard for his own position and the risks posed to himself and his career.

37. In relation to maintaining high professional standards, Mr Mullen submitted that Dr Bailey's actions persistently breached professional boundaries. Mr Mullen referred the Tribunal to Judge D's sentencing remarks in which Judge D commented on the significant degree of trust between Dr Bailey and Ms A, which had been breached. Mr Mullen added that the wider public would take the same view, adding that Dr Bailey's conduct breached a fundamental tenet of GMP. Mr Mullen submitted that a member of the public would be shocked and dismayed if a finding of impairment were not made in this case, and that such a decision would amount to an endorsement of the doctor's actions.

38. Mr Mullen submitted that Dr Bailey had demonstrated a complete lack of responsibility for his actions, and there was no evidence before the Tribunal of insight or the steps he has taken to remediate his conduct. Mr Mullen stated that, instead, Dr Bailey sought to blame others for his misdeeds, and there was very little evidence to enable the Tribunal to conclude that he has developed any insight into his actions or has remediated. He added that Dr Bailey fails to see that he was the doctor in this case and, therefore, in a position of power and trust. Mr Mullen submitted that despite everything, Dr Bailey continues to maintain his innocence and take no responsibility for what he had done, or the harm caused to Ms A. Mr Mullen went on to say that the doctor's good character, as evidenced by the testimonials from patients and clinical colleagues, could not mitigate a finding of impairment.

39. In conclusion, Mr Mullen submitted that Dr Bailey's behaviour was serious and persistent, and there remains a risk today to patients and others. Mr Mullen added that Dr Bailey's actions amounted to a breach of a fundamental tenet of GMP, which has an impact on the reputation of the medical profession. Mr Mullen submitted that there was limited

insight and remediation on the part of Dr Bailey, such that only a finding of impairment could be made. Mr Mullen invited the Tribunal to find Dr Bailey's fitness to practise is impaired by reason of conviction.

From Dr Bailey

40. Dr Bailey disputed a number of the submissions made by Mr Mullen. Dr Bailey stated that he did not take advantage of a mentally disorderly person and added that many people with mental health issues are able to carry on with their daily lives and make decisions.

41. Dr Bailey said that he did not impede or impair Ms A's autonomy at any point. He stated that he was being altruistic and only wanted to help Ms A financially, morally and spiritually. Dr Bailey said that his intentions in that regard continued throughout the relationship, and even once it had ended - for example, when he paid for her to attend counselling sessions.

42. Dr Bailey stated that if some of the text messages passing between him and Ms A were before the Tribunal, the messages would demonstrate the dynamics of the relationship, namely that Ms A was in control.

43. Dr Bailey acknowledged that those in a personal relationship might suffer from post-traumatic stress, but he submitted that during his relationship with Ms A there was no indication to suggest that she had suffered any harm because of the relationship. Dr Bailey referred the Tribunal to the statement of Ms C which described Ms A as upbeat, happier and brighter, and said that Ms A was XXX. Dr Bailey said that he had promoted these things and had improved Ms A's life.

44. Dr Bailey acknowledged that entering into a relationship with Ms A was inappropriate, and he said that he had been afraid of Ms A's threats to tell others about the relationship; as a result, he said that he had just wanted to keep Ms A happy. Dr Bailey stated that, in view of this, he was unable simply to walk away from the relationship, although a justifiable opportunity presented itself when he found Ms A in bed with another man. He added that this had not been a natural ending of a relationship in the strict sense.

45. Dr Bailey denied that he had been a persistent offender, and submitted that Mr Mullen had minimised the value of consent, and Ms A's ability to consent. Dr Bailey expressed the view that if a patient capable of making a decision wants a particular

treatment, it is the duty of the doctor to comply. He submitted that whilst Ms A had mental health issues, she had the mental capacity to make decisions for herself. Dr Bailey added that Ms A knew what she was doing and that whilst she had been vulnerable, he had also been vulnerable, given his personal circumstances. Dr Bailey said that he was entrapped in the relationship and that he found it difficult to understand why the GMC cannot see that an adult could become entrapped in this way.

46. Dr Bailey stated that he did not wish to bring the medical profession into disrepute; he described himself as a doctor who has always loved medicine and who has always stood up for the medical profession. He said that if a practitioner were incompetent or not carrying out their role properly, there was no way they could practise medicine for as long as he had without a complaint being made; Dr Bailey stated that in all the years he has practised medicine, there has not been a single complaint against him.

47. Dr Bailey submitted that his relationship with Ms A had been a single incident, and it was not a relationship that he had pursued, nor a situation in which he had tried to procure the services of an individual. He stated that he had been bombarded with images from Ms A and he had responded in kind with love poems.

48. Dr Bailey submitted that if there was the slightest risk of him repeating his actions, he would be the first to admit it. However, he denied that there was a risk of repetition, although he acknowledged that he had overstepped professional boundaries into a '*shady area*' and had become entrapped by it. He said that he had never been in a situation like that before and that one had to be in the situation to understand why he did not behave differently.

49. Dr Bailey submitted that his actions did not amount to misconduct. He said that if he had pursued Ms A and entered into a relationship with her deliberately, then he would agree with the suggestion that his actions amounted to misconduct. However he stated that the reality was the complete opposite and he described himself as the person who had been most harmed by these events. Dr Bailey submitted that in this case, it was Ms A who had been threatening him, and had accused him of causing her harm after she had secured payments for her counselling.

50. Dr Bailey acknowledged that one could argue that he was in a position of power and therefore that he had control. However, he submitted that he was vulnerable, is also human,

and that being a doctor and in a position of power did not mean that he was impermeable.  
XXX

51. Dr Bailey said that he did not seek to blame others for his relationship with Ms A and he reiterated the concerns he had about his legal team and their representation of him in the court proceedings.

52. In conclusion, Dr Bailey submitted that he presented no risk of repetition, and no risk to the public. He told the Tribunal that although he had been convicted on paper, he was innocent in reality. Dr Bailey submitted that the testimonials from his clinical colleagues and patients must mean something as they were testament to him being a good doctor who has conducted himself in a way the medical profession could be proud of. Dr Bailey submitted that his fitness to practise is not impaired and he invited the Tribunal to find the same.

### The Relevant Legal Principles

53. The Legally Qualified Chair (LQC) provided legal advice to the Tribunal in relation to the issue of impairment of fitness to practise.

54. The LQC referred to the Medical Act 1983 s35C(2) which states that a person's fitness to practise may be regarded as "impaired" for the purposes of the Act by reason of (amongst other things) a conviction or caution in the British Islands for a criminal offence.

55. The LQC also highlighted the comments of Dame Janet Smith in her 5<sup>th</sup> Report of the Shipman Inquiry, and in particular the following test in relation to the issue of impairment, namely:

*"do our findings in respect of the doctor's misconduct ... show that his / her fitness to [practise is impaired in the sense that he/ she:*

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

(d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future*”

56. The LQC also drew the Tribunal’s attention to relevant principles set out in the cases of *CHRE v NMC & Grant (2011) EWHC 927 (Admin)*, *Meadow v GMC (2006) EWCA Civ 1390*, *Council for the Regulation of Health Care Professionals v GMC & Biswas (2006) EWHC 464* and *Zygmunt v GMC (2008) EWHC 2643*.

57. In addition, the LQC highlighted the case of *Cheatle v GMC (2009) EWHC 645* in which Justice Cranston held that in considering the issue of impairment a panel must engage in a 2-step process:

1. first it must decide whether the circumstances set out in s35C Medical Act 1983 are present (for example whether the doctor has been convicted of an offence); and
2. then the panel must go on to determine whether, as a result, fitness to practise is impaired.

58. The LQC drew the Tribunal’s attention to the case of *Cohen v GMC (2008) EWHC 581* in which the Court held that the task of the panel, in considering impairment, is to take account of the practitioner’s misconduct and then consider it in light of all the other relevant factors known to them. The Court stated that it will be highly relevant in determining if fitness to practise is impaired to consider:

- whether the practitioner’s misconduct is easily remediable;
- whether the misconduct has been remedied; and
- whether the misconduct is likely to be repeated.

59. The LQC also highlighted the case of *Yeong v GMC (2009) EWHC 1923*, in which the following comments were made:

*“Where a medical practitioner violates such a fundamental rule governing the doctor/patient relationship as the rule prohibiting a doctor from engaging in a sexual relationship with a patient, his fitness to practise may be impaired ... The public’s confidence in engaging with him and with other medical practitioners may be undermined if there is a sense that such misconduct may be engaged in with impunity”.*

60. The LQC reminded the Tribunal of the need to take into account the overarching objective which is to protect the public and which includes to:

- a protect and promote the health, safety and wellbeing of the public;
  - b promote and maintain public confidence in the medical profession;
- and
- c promote and maintain proper professional standards and conduct for the members of the profession.

### The Tribunal's Decision

61. The Tribunal reminded itself that the question of whether or not Dr Bailey's fitness to practise is impaired is a matter for its judgment alone. The Tribunal deliberated carefully on all of the evidence and the circumstances of Dr Bailey's conviction.

62. The Tribunal had regard to Rules 34(3) and 34(5) of the Rules which state:

'34.

*(3) Production of a certificate purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas that a person has been convicted of a criminal offence or, in Scotland, an extract conviction, shall be conclusive evidence of the offence committed.*

*(5) The only evidence which may be adduced by the practitioner in rebuttal of a conviction or determination certified in the manner specified in paragraph (3) or (4) is evidence for the purposes of proving that he is not the person referred to in the certificate or extract.'*

63. The Tribunal had regard to Dr Bailey's belief that he has been wrongly convicted of the offences for which he has been imprisoned. He told the Tribunal that his relationship with Ms A had been initiated and controlled by her, that she had the capacity to make decisions and had consented to the relationship. The Tribunal also noted Dr Bailey's evidence that he was coerced by his solicitor to enter a guilty plea to the criminal charges and that he had been poorly represented by his legal advisers in the criminal proceedings. However, Rules 34(3) and (4) are clear that the Tribunal should take a certificate confirming a doctor's

conviction as conclusive evidence of the offence committed, and that the only evidence that may be adduced to rebut a conviction is evidence that the practitioner is not the person referred to in the certificate. Dr Bailey did not dispute that he was the person named in the certificate of conviction which was provided to the Tribunal. Despite his evidence, the Tribunal determined that it could not *'go behind'* the conviction or give any weight to Dr Bailey's belief in his innocence.

64. The Tribunal considered whether Dr Bailey's conviction, and his actions leading to the conviction, breached any paragraphs of GMP. Taking into account the circumstances of Dr Bailey's conviction and offending, the Tribunal determined that paragraphs 1, 53 and 65 of GMP (2013 version) were engaged in this case. These state:

*'1. Patients need good doctors. Good doctors make the care of their patients their first concern: they ...establish and maintain good relationships with patients ... and act with integrity and within the law.*

***'Show respect for patients***

*53 You must not use your professional position to pursue a sexual or improper emotional relationship with a patient or someone close to them.'*

*65. You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.'*

65. In addition, the Tribunal took into account paragraphs 4 and 5 of the 'Guidance on maintaining a professional boundary between you and your patient', which state:

*'4 You must not pursue a sexual or improper emotional relationship with a current patient.*

*5 If a patient pursues a sexual or improper emotional relationship with you, you should treat them politely and considerately and try to re-establish a professional boundary. If trust has broken down and you find it necessary to end the professional relationship, you must follow the guidance in Ending your professional relationship with a patient.'*



66. The Tribunal had regard to the following sentencing remarks made by Judge D:

*‘His XXX year-old victim came into contact with him following her discharge from a period of time she had spent in a mental health facility, XXX. He was working as a doctor at her local general practitioner’s practice. She was, effectively, discharged to his and his colleagues’ care. As such, he would’ve been fully aware of the nature and extent of her mental health issues and the resultant vulnerabilities. It appears that throughout the period of this offending he has been prescribing her the medication she required for at least some of those issues.*

*Those issues included emotional personality disorder, depression and anxiety. It is clear that those issues were sufficiently serious for her to be an inpatient at XXX and currently sufficiently serious for her to be sectioned. It is equally clear that her mental disorders had the effect of making her particularly vulnerable.*

*During one of the early appointments with her he gave her his personal mobile telephone number. She contacted him using that number and they began meeting up regularly. They began what this defendant would no doubt describe as a sexual relationship. That, the activity, engaged in during the course of this offending included vaginal and oral sex, the former on at least 21 occasions.’*

67. From the evidence before the Tribunal, it was clear that Dr Bailey had seriously departed from GMP and the Guidance on maintaining professional boundaries. Dr Bailey acknowledged that Ms A had been a patient of the Practice, that she had a history of mental health issues (including self-harm and suicidal ideation) and that he had prescribed medication to her (including during their relationship). Whilst Dr Bailey disputed the number of occasions on which he had sexual intercourse with Ms A, he admitted that their relationship had been sexual in nature and had lasted for a number of months.

68. Although Dr Bailey disputed the effect that his relationship with Ms A had upon her, the Tribunal noted the sentencing remarks of Judge D in which the judge referred to the profound emotional consequences for Ms A of Dr Bailey’s offending. Judge D described Dr Bailey’s case as being a ‘*Category 1 harm case*’. In considering the appropriate sentence, Judge D took into account that Dr Bailey’s offending was not a ‘*one-off spur of the moment single offence*’ but had involved ‘*multiple incidents of penetrative sexual behaviour over a period of about five or six months*’. The Judge stated that Dr Bailey’s offences viewed

individually and cumulatively were so serious *‘that an immediate term of imprisonment must be imposed’*.

69. The Tribunal considered that being able to trust doctors and being confident that they will act with integrity and within the law, is fundamental to ensuring public confidence in the medical profession. Dr Bailey’s actions had involved criminal behaviour over a sustained period and had breached a fundamental tenet of the medical profession, thereby undermining public confidence. The Tribunal considered that the seriousness of Dr Bailey’s offending was reflected in his custodial sentence of 26 months imprisonment, a notification requirement (to sign the sex offenders’ register) for ten years, and a restraining order not to contact Ms A and another individual for ten years.

#### Insight, remediation, and risk of repetition

70. The Tribunal considered whether Dr Bailey’s conduct and resulting conviction was remediable, whether it had been remedied and whether there was any likelihood of repetition. It also considered the level of Dr Bailey’s insight. The Tribunal considered that Dr Bailey’s conviction would be difficult to remediate, given the nature and seriousness of his offending.

71. The Tribunal was mindful that Dr Bailey pleaded guilty to the offences, albeit he felt coerced into doing so and believed that he had been wrongfully convicted. However, in his evidence to the Tribunal Dr Bailey accepted that he had crossed professional boundaries and he acknowledged that his relationship with Ms A had been improper and put at risk his registration as a doctor. The Tribunal noted that whilst in the custody holding area before his police interview on 6 June 2022, Dr Bailey is quoted as saying *‘I XXX but I will lose my job because I was in a relationship with a patient and this is not allowed under the medical codes of practice.’*

72. In his oral evidence, Dr Bailey accepted that, with the benefit of hindsight, he should not have given Ms A his personal mobile telephone number, should not have allowed her to sit in his car, should not have engaged in a personal relationship with Ms A, and should not have engaged in sexual activity with her. The Tribunal considered that this was some evidence that Dr Bailey had reflected on his offending and indicated a degree of insight on his part. However, the Tribunal balanced this evidence with other aspects of Dr Bailey’s testimony – for example, his assertions that he had not committed a criminal offence, his attempts to shift responsibility for the relationship away from himself and onto Ms A, and his

evidence that he was the real victim rather than Ms A. Dr Bailey also disputed the effects of his offending on Ms A despite the comments of Judge D and the evidence of such harm as described in the pre-sentence report. In addition, the Tribunal took the view that although Dr Bailey was aware, during the course of his relationship with Ms A, that his behaviour breached professional boundaries and standards he nevertheless persisted with the relationship for a number of months.

73. The Tribunal was also concerned by Dr Bailey's evidence about Ms A's capacity, his assertion that she had consented to their relationship and, indeed, had initiated and driven the sexual aspect of the relationship. In that regard the Tribunal noted the following comments that Dr Bailey had made in a letter to his solicitor (and which Dr Bailey had included within his defence bundle):

*'Having a mental health diagnosis does not automatically entitle you to be labelled as mentally disabled. [Ms A] does not suffer from Down's Syndrome or any mental disorder that automatically causes you to be mentally disabled'.*

74. Whilst Dr Bailey made those comments prior to his conviction, they were consistent with his evidence to the Tribunal in which Dr Bailey sought to justify his relationship with Ms A on the basis that she had capacity and had consented to the relationship. For example, in his letter to the GMC, Dr Bailey stated, *'People with mental health disorders are every day involved in relationships of one form or another and this was a consensual relationship'.*

75. The Tribunal took the view that this was evidence of a fundamental lack of understanding by Dr Bailey of the vulnerability of Ms A, the power imbalance between them, the very significant degree of trust that exists between doctor and patient, and the provisions of GMP which preclude sexual or improper emotional relationships between doctors and their patients.

76. The Tribunal also took the view that Dr Bailey had downplayed the sexual nature of his relationship with Ms A by referring to it in evidence, on a number of occasions, as *'the sex thing'*. Whilst Dr Bailey maintained that Ms A had initiated the sexual activity between them, Dr Bailey acknowledged that he had taken XXX to Ms A's flat, which was evidence that he was a proactive and willing participant in their sexual relationship.

77. The Tribunal concluded that whilst there was some evidence of reflection by Dr Bailey and an acceptance that his relationship with Ms A had been improper, he failed to take

responsibility for his actions and blamed others, including Ms A and his legal representatives. Far from understanding the impact of his actions and displaying empathy for Ms A, he sought to characterise her as manipulative, as a blackmailer and the driving force in their relationship. He also claimed in evidence that, rather than causing Ms A harm, he had improved her life. The Tribunal concluded that Dr Bailey's insight was, at best, extremely limited. The Tribunal has not received any evidence of steps taken by Dr Bailey to develop any further insight or any attempts at all of any remediation.

78. The Tribunal received a significant quantity of testimonial evidence in support of Dr Bailey. The testimonials spoke of Dr Bailey's competence as a doctor and of his caring and empathetic nature. Evidence was also provided to the Tribunal of work that Dr Bailey had undertaken, in his own time, within the charitable sector. The Tribunal noted that Judge D had taken into account positive references about Dr Bailey (and Dr Bailey's services to individuals and the wider community) when passing sentence. The Tribunal considered that whilst the testimonials it had received were to Dr Bailey's credit, they were of limited relevance to the issue of Dr Bailey's fitness to practise. The fact that Dr Bailey may be well regarded by his patients and others within the community, did not detract from the serious nature of his criminal conduct, its impact upon public confidence in the profession and the need to uphold proper professional standards. As a result, the Tribunal gave the testimonials limited weight.

79. The Tribunal went on to consider the risk of repetition by Dr Bailey. The Tribunal had regard to Dr Bailey's pre-sentence report which stated that:

- *'Dr Bailey's likelihood of general reoffending at was low (7%) based on the Offender Grouping Reconviction Scale Version 3 (OGRS 3), which is a tool which predicts a person's risk of general reoffending over the next 2 years, based on static factors.*
- *Dr Bailey's likelihood of serious reoffending was low (0.36%) based on the Risk of Serious Recidivism (RSR) tool, which looks at the likelihood of a person committing a new, seriously harmful offence within the next 2 years, based on static and dynamic factors.*
- *Under the OASys Sexual Reoffending Predictor (OSP) tool, Dr Bailey was assessed as:*
  - *'Low' for further offending for a sexual/sexually motivated contact; and*
  - *'Low' for reoffending involving indecent images.*

- *The report author's clinical assessment was that Dr Bailey's likelihood of further offending is in the 'Low' to 'Medium' range. This conclusion was based on information gathered in the preparation of the pre-sentence report and the fact that this was Dr Bailey's first offence.*
- *Based on the index offence, Dr Bailey has the potential to cause serious psychological distress to Ms A in future from unwanted contact and his risk of serious harm to Ms A is 'Medium'.*
- *Based on the index offence, Dr Bailey presents a risk of sexual exploitation and abuse to vulnerable females that he has a position of professional care for.*
- *while Dr Bailey deliberately engaged in sexual activity with a mentally disordered behaviour, in my view the harm he caused was most likely a result of self-centred and reckless decision-making rather than malicious decision-making with intent to cause serious harm. This lack of intent to cause serious harm lowers the risk that he will cause serious harm to vulnerable females from similar behaviour in future.'*

80. The pre-sentence report also noted the following:

*'I understand that Dr Bailey has been deregistered and will not be able to practice as a doctor in future. This closes one set of opportunities for him to exploit a position of authority over the care of vulnerable females. However, from his current voluntary work, it is clear that Dr Bailey continues to place himself in environments where he has a position of authority over vulnerable individuals, which may include females; and in our interview he expressed a very flexible attitude towards professional boundaries, which is a concern should he make the same selfish and reckless decisions he made during his offences. The weight of evidence from character references that Dr Bailey provided me with, and the fact that this is the first allegation (as far as I am aware) of Dr Bailey exploiting his position for sexual gratification, suggests that he extends the boundaries of his professional responsibility for altruistic reasons in the main. However, the potential that part of him could be seeking to exploit his position can not be entirely dismissed in view of the index offence.'*

81. The Tribunal considered that the reference, in the above quote, to Dr Bailey's deregistration as a doctor was likely to have been a misunderstanding on the part of the report author.

82. Dr Bailey disputed a number of conclusions set out in the pre-sentence report. However, the Tribunal took the view that the report had been carefully prepared in light of relevant information regarding the index offence, character references from patients, a Victim Statement, and following an interview between the report author and Dr Bailey. The Tribunal noted that the report's assessments about Dr Bailey's risk of re-offending had been reached using a number of Home Office diagnostic tools. The Tribunal accepted the conclusions set out in the pre-sentence report in relation to Dr Bailey's risk of reoffending and of sexual exploitation and abuse to vulnerable females.

83. In view of the findings in the pre-sentence report and Dr Bailey's lack of insight, the Tribunal concluded that the following risks remain:

- a risk (albeit low or low to medium) that Dr Bailey may repeat his offending; and
- that Dr Bailey would pose a risk to vulnerable females in his professional care, whether he returned to clinical practise or as part of his voluntary work.

#### Impairment

84. The Tribunal reminded itself of the purpose of the overarching objective, which is to protect, promote and maintain the health, safety, and wellbeing of the public; to maintain public confidence in the profession; and to promote and maintain proper professional standards and conduct for members of the profession.

85. The Tribunal considered that all three limbs of the overarching objective are engaged in this case. Despite Dr Bailey's assertions to the contrary, the Tribunal took the view that he had caused harm to Ms A who was a vulnerable patient in his care, with mental health issues. The Tribunal reached this conclusion based on the pre-sentence report, the sentencing remarks of Judge D and the sentence imposed on Dr Bailey (which included a period of imprisonment for 26 months, being on the sex offenders' register for ten years and restraining orders in relation to Ms A and another for ten years). In view of Dr Bailey's lack of insight and the risks identified in the pre-sentence report, the Tribunal determined that a finding of impairment of fitness to practise is required to protect, promote and maintain the health, safety, and wellbeing of the public.

86. The Tribunal considered that a finding of impairment is also required to maintain public confidence in the profession and to uphold proper professional standards. Public confidence in the profession would be undermined if a finding of impairment were not made in this case.

87. The Tribunal therefore determined that Dr Bailey's fitness to practise is impaired by reason of his conviction.

#### **Determination on Sanction - 12/11/2024**

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

#### **The Evidence**

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

90. At the sanction stage of proceedings the Tribunal also received a letter from Dr Bailey dated 10 November 2024, indicating that he had appealed his criminal conviction and setting out a number of reasons why he believes that he was wrongly convicted.

#### **The Outcome of Applications Made during the Sanction Stage**

91. On the first day of the sanctions stage, Dr Bailey requested an adjournment XXX. A short adjournment was granted but, upon resuming the hearing, a member of Prison Service staff indicated that Dr Bailey would not be rejoining the hearing for the rest of the day. As a result, the hearing was adjourned until the following day. On the second day of the sanctions stage, Dr Bailey did not join the virtual hearing. A further adjournment took place in order that MPTS staff could enquire with the Prison Service as to Dr Bailey's whereabouts, and so that Mr Tom Phillips, Counsel for the GMC, could take instructions as to whether or not the GMC had heard from Dr Bailey or the Prison Service. Later in the morning, a member of Prison Service staff sent an email to the Tribunal Assistant, stating that Dr Bailey had declined to attend the remainder of the hearing.

92. The Tribunal granted an application made by Mr Phillips to proceed with this hearing in Dr Bailey's absence, pursuant to Rule 31 of the General Medical Council (Fitness to Practise) Rules 2004 as amended ('The Rules').

93. The Tribunal took the view that Dr Bailey is fully aware of the hearing, has voluntarily absented himself from the hearing, and the Tribunal considered that it is in the public interest for the hearing to proceed today. In reaching this decision the Tribunal took into account the stage that the hearing had reached, the importance of the efficient disposal of the Allegation, Dr Bailey's obligation to engage with his regulator and fairness to the GMC. The Tribunal balanced these factors with any potential unfairness to Dr Bailey in proceeding in his absence. However, the Tribunal noted that it had received no formal application from Dr Bailey for an adjournment nor any medical evidence.

94. The Tribunal also considered Dr Bailey's letter, dated 10 November 2024, where he states:

*'I have submitted an appeal to the Courts and I am currently awaiting the outcome of that appeal and so I feel that further clarity should be provided to the Medical Tribunal in order for you to postpone any decisions with respect to my continuance on the Medical Register pending the outcome of this active appeal.'*

95. The Tribunal noted that no formal application had been made by Dr Bailey to postpone or stay the hearing, pending the outcome of his criminal appeal. He was afforded the opportunity to do so and declined to attend or provide any submissions. The Tribunal considered whether in all the circumstances it would be fair and proportionate to order a postponement or stay.

96. The Tribunal noted that there was no evidence, aside from the comment in Dr Bailey's letter, that any appeal had been lodged or accepted. It was unclear whether permission to appeal has been granted, what stage any such appeal has reached or over what time scale the appeal may be determined. The Tribunal further considered that this hearing is at a very late stage and it noted that Dr Bailey could have applied for a postponement at an earlier stage of proceedings (for example if he was planning to appeal) but had failed to do so.

97. The Tribunal took the view that as Dr Bailey has absented himself from proceedings at this stage, he is not unable to explain whether or not he wishes to make any formal



application for a stay and, if so, on what grounds. Accordingly, it decided that the hearing would not be stayed or postponed.

### Submissions of Mr Tom Phillips, on behalf of the GMC

98. On behalf of the GMC, Mr Phillips submitted that the GMC are seeking a sanction of erasure in Dr Bailey's case.

99. Mr Phillips outlined the aggravating features of this case and he drew the Tribunal's attention to the relevant paragraphs of the Sanctions Guidance (SG). He submitted that Dr Bailey's insight is at best extremely limited and he noted that Dr Bailey has taken no steps to remediate his conduct.

100. Mr Phillips submitted that when considering the 'Circumstances Surrounding the Event' (paragraph 55 of the SG), multiple sub-paragraphs are engaged in this case including abuse of a professional position, sexual misconduct and sexual offences.

101. In regard to mitigating factors, Mr Phillips noted the testimonials advanced by Dr Bailey. However, he submitted that as identified by the Tribunal, in this sort of case, testimonials have limited relevance and weight attached to them.

102. Mr Phillips submitted that due to the nature of Dr Bailey's offending, neither taking no action nor conditions are appropriate outcomes in this case.

103. In regard to suspension, Mr Phillips submitted that in the GMC's view, Dr Bailey's offending is fundamentally incompatible with continued registration.

104. Mr Phillips submitted that Dr Bailey has been convicted of a sexual offence involving a patient, as a result of which he received an immediate custodial sentence, was sentenced to sign the sex offenders register and a restraining order was imposed upon him. Mr Phillips went on to submit that clearly that constitutes a serious departure from the principles set out in GMP. He stated that Dr Bailey's conviction is incompatible with continued registration as a doctor.

105. Mr Phillips reminded the Tribunal of paragraph 83 of its impairment determination, which states that there is a risk remaining that Dr Bailey will repeat his offending and/or pose a risk to vulnerable females in his professional care if he was to return to clinical practice.

106. Mr Phillips concluded that given the circumstances, erasure is the proportionate and appropriate sanction in this case.

### **The Tribunal's Determination on Sanction**

107. The Tribunal, in reaching its decision, had regard to relevant paragraphs of the SG. It has borne in mind that the purpose of a sanction is not to be punitive, although it may have a punitive effect.

### **Aggravating Factors**

108. The Tribunal consider the following to be aggravating features of Dr Bailey's case:

- Dr Bailey's persistent lack of insight;
- Dr Bailey's attempts to blame Ms A;
- The impact of Dr Bailey's offending on Ms A;
- Dr Bailey's abuse of professional position;
- That the criminal conduct occurred in Dr Bailey's personal life;
- Dr Bailey's conviction is of a sexual nature;
- The length of the period of offending.

### **Mitigating Factors**

109. The Tribunal noted Dr Bailey's lengthy medical career which was, until these proceedings, unblemished. It did not identify any other mitigating features and did not regard Dr Bailey's testimonials as capable of mitigating his offending.

110. The Tribunal balanced those aggravating features against what it considered to be the mitigating feature in this case. It took the view that this was an extremely serious case involving the commission of sexual offences by Dr Bailey, over a number of months, against a vulnerable patient. Dr Bailey's lack of insight, failure to take responsibility, 'victim blaming' and risk of repetition, were all very concerning aspects of the case.

### **The Tribunal's Decision**

#### **No action**

111. The Tribunal first considered whether to conclude Dr Bailey’s case by taking no action. The Tribunal noted that following a finding of impairment, taking no action is only considered appropriate where there are exceptional reasons for doing so. The Tribunal determined that there were no exceptional circumstances which would justify such a decision. It therefore determined that taking no action would not be appropriate, proportionate or in the public interest.

### Conditions

112. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Bailey’s registration. The Tribunal bore in mind that any conditions imposed would need to be appropriate, proportionate, workable, and measurable.

113. The Tribunal determined that no measurable or workable conditions could be formulated in this case. Further, the Tribunal did not consider that a period of conditional registration would be sufficient to mark the seriousness of the findings against Dr Bailey and would not satisfy the overarching objective, public interest nor uphold public confidence in the profession.

### Suspension

114. In giving weight to the aggravating and mitigating factors previously identified, the Tribunal was satisfied that action must be taken to mark the seriousness of the findings against Dr Bailey and to maintain public confidence in the profession. The Tribunal considered whether it should impose a period of suspension on Dr Bailey’s registration.

115. The Tribunal had regard to paragraphs 91 and 92 of the SG which state:

*‘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).’*

116. The Tribunal noted paragraphs 97e, f and g of the SG:

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

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

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

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

117. The Tribunal considered that it has no evidence before it as to whether or not remediation may be successful as Dr Bailey continues to deny committing a criminal offence and holds Ms A primarily responsible for initiating and continuing their relationship. In addition, Dr Bailey accused his legal team of poorly representing him during the criminal proceedings and said that his solicitor had coerced him to enter a guilty plea.

118. In relation to paragraph 97f, the Tribunal has already determined that there remains an ongoing risk in this case and in relation to paragraph 97g, the Tribunal has already identified that Dr Bailey has a very low level of insight into his conviction.

119. Therefore, the Tribunal concluded that a period of suspension would not be appropriate to sufficiently maintain and uphold proper professional standards and protect the public confidence in the profession.

## Erasure

120. In the circumstances, the Tribunal determined that the only appropriate sanction in this case was one of erasure. In reaching its determination, the Tribunal considered the following paragraphs of the SG:

*'108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.'*

121. The Tribunal also considered paragraph 109 of the SG:

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

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

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

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

*d Abuse of position/trust*

*e Violation of a patient's rights/exploiting vulnerable people*

*f Offences of a sexual nature...*

*i Putting their own interests before those of their patients*

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

122. The Tribunal considered that all of the above paragraphs of the SG are engaged in this case.

123. The Tribunal also had regard to the paragraphs of the SG under the heading ‘Abuse of professional position’. It noted paragraphs 142, 143, 145 and 146

*‘142 Trust is the foundation of the doctor-patient partnership. Doctors’ duties are set out in paragraph 86 of Good medical practice and in the more detailed guidance Maintaining personal and professional boundaries 31 and Ending your professional relationship with a patient.*

*143 Doctors must not use their professional position to pursue a sexual or improper emotional relationship with a patient or someone close to them.*

...

*145 Where a patient is particularly vulnerable, there is an even greater duty on the doctor to safeguard the patient. Some patients are likely to be more vulnerable than others because of certain characteristics or circumstances, such as:*

*a presence of mental health issues*

*146 Using their professional position to pursue a sexual or improper emotional relationship with a vulnerable patient is an aggravating factor that increases the gravity of the concern and is likely to require more serious action against a doctor.’*

124. In the SG under the headings of ‘Predatory Behaviour’ and ‘Sexual Misconduct’, the Tribunal also had regard to paragraphs 148 and 150:

*‘148 More serious action, such as erasure, is likely to be appropriate where a doctor has abused their professional position and their conduct involves predatory behaviour or a vulnerable patient, or constitutes a criminal offence.*

...

*150 Sexual misconduct seriously undermines public trust in the profession. The misconduct is particularly serious where there is an abuse of the special position of*

*trust a doctor occupies, or where a doctor has been required to register as a sex offender. More serious action, such as erasure, is likely to be appropriate in such cases.'*

125. Given the guidance above and the circumstances of the case, the Tribunal was of the view that it was being pointed firmly in the direction of erasure.

126. The Tribunal found that Dr Bailey's conviction is a serious breach of GMP and breached fundamental tenets of the medical profession.

127. In all the circumstances, the Tribunal determined that no lesser sanction than erasure would adequately promote and maintain public confidence in the medical profession and promote and maintain proper professional standards and conduct for members of that profession. The only proportionate sanction is one of erasure.

128. Therefore, the Tribunal determined to erase Dr Bailey's name from the Medical Register.

#### **Determination on Immediate Order - 12/11/2024**

129. Having determined to erase Dr Bailey's name from the register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Bailey's registration should be subject to an immediate order.

#### **Submissions**

130. On behalf of the GMC, Mr Phillips submitted that given the facts found proved in this case and the sanction imposed, an immediate order is in the public interest in the case of Dr Bailey.

#### **The Tribunal's Determination**

131. In reaching its decision, the Tribunal has exercised its own judgement, and has taken account of the principle of proportionality. The Tribunal has borne in mind that it may impose an immediate order where it is satisfied that it is necessary for the protection of members of the public or otherwise in the public interest or is in the best interests of the practitioner.

132. It has also borne in mind the guidance given in paragraphs 110, 111, 172, 173, and 178 of the SG, which states:

**110** *If the tribunal decides that a doctor should be erased from the medical register, it must also consider whether to make an order to immediately suspend the doctor's registration, as required by rule 17(2)(o). The tribunal must take into account any evidence it has received and any submissions made by the parties before making and announcing its decision. Further guidance on when an immediate order might be appropriate is set out at paragraphs 172–178.*

**111** *A doctor who has been erased cannot apply to be restored to the medical register until five years have elapsed. At that stage the tribunal will have to decide whether the doctor is fit to resume unrestricted practice. Further guidance on doctors' restoration to the medical register is provided in the Guidance for doctors on restoration following erasure by a medical practitioners tribunal.*

...

**172** *The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.*

**173** *An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.*

**178** *Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive*



*direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.*

133. The Tribunal bore in mind the above paragraphs of the SG and took account of the specific basis upon which the Tribunal reached its determination on impairment and sanction. The Tribunal determined that an immediate order of suspension is necessary to protect members of the public, to protect confidence in the medical profession and is in the wider public interest.

134. Furthermore, the Tribunal noted that it cannot be sure when Dr Bailey will be released from prison and therefore it determined that an immediate order is necessary to ensure the doctor cannot resume unrestricted practice in the event of his release.

135. This means that Dr Bailey's registration will be suspended from the date on which notification of this decision is deemed to have been served upon him. The substantive direction, as already announced, will take effect 28 days from that date, 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.

136. The interim order will be revoked when the immediate order takes effect.

137. That concludes the case.

ANNEX A – 27/08/2024

**Rule 34(1) Application - Admission of Evidence**

**Rule 35 (4) Application - Anonymity of a witness**

1. On 27 August 2024 (Day 1), prior to the case opening, Mr Alex Mullen, Counsel for the GMC, made two applications.
2. The first application was made under Rule 34(1) of the General Medical Council ('GMC') (Fitness to Practise) Rules 2004, as amended ('the Rules'), to have admitted into evidence, a number of documents within a supplemental hearing bundle, including a pre-sentencing report, and a number of testimonials received by the GMC in respect of Dr Bailey.
3. The second application was made under Rule 35(4) of the Rules in relation to the anonymity of a witness.

**Submissions – Rule 34(1)**

The GMC

4. For the GMC, Mr Mullen referred the Tribunal to the relevant rules when considering the admission of late evidence. He submitted that some of the documentary evidence which the GMC now sought to admit was requested from Bedfordshire Police on 5 June 2024 but no response was received until 16 August 2024. Mr Mullen said that the late receipt of these documents was outside of the GMC's control and therefore the GMC had not attempted to manipulate the procedures of this hearing or deliberately disrupt the proceedings by reason of late service.

5. Mr Mullen submitted that the documentary evidence provided reasonable background to the matters before this Tribunal, and that not all of it was new evidence because the doctor had already referred to one of the documents in his defence bundle. Mr Mullen submitted that it was fair to both parties and paramount to the proceedings for the evidence to be admitted, and that the evidence could be admitted without prejudice to both parties.

Dr Bailey

6. Dr Bailey submitted that he had no objection to the testimonials being admitted into evidence. However, he said that he had not seen the other documents albeit that he had been sent some documents which might be in his cell.

**The Relevant Legal Principles**

7. The Legally Qualified Chair (LQC) drew attention to relevant legal principles, and Rule 34(1) of the Rules which states:

*‘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.’*

### **Tribunal’s Decision**

8. The Tribunal accepted the LQC’s advice and considered the submissions made by the GMC and Dr Bailey. It was mindful that Dr Bailey was unrepresented at the hearing. It noted that he did not object to the testimonials being admitted into evidence.

9. The Tribunal considered that the testimonial evidence in support of Dr Bailey might be helpful to Dr Bailey, particularly given his response to the Allegation, as set out in his statement. The Tribunal therefore determined that it was fair to Dr Bailey to admit the testimonial evidence.

10. The Tribunal considered the other classes of documentation which the GMC sought to admit into evidence. The Tribunal considered that this evidence was likely to provide useful background to the case and the matters which it needed to consider. It was of the view that the police interviews, pre-sentencing report and Dr Bailey’s response to the criminal charges against him, were relevant documents and therefore should be admitted into evidence, and could be admitted without any prejudice to Dr Bailey.

11. In the circumstances, the Tribunal determined that the documentary evidence was relevant and that it would be fair to admit this evidence using its powers under Rule 34(1) of the Rules.

### **Submissions – Rule 35**

#### The GMC

12. For the GMC, Mr Mullen submitted that it was highly appropriate that the name of the complainant, who was involved in the criminal proceedings, is not mentioned. He told the Tribunal that due to the nature of the concerns in this case, which involved sexual activity, the complainant had been given lifelong anonymity during the criminal proceedings. He added that the complainant was a witness in the criminal proceedings and should be afforded anonymity.

#### Dr Bailey

13. Dr Bailey submitted that he had no objection to the application.

### **The Relevant Legal Principles**

14. The Legally Qualified Chair (LQC) drew attention to relevant legal principles, and Rule 35(4) of the Rules which states:

*‘The Committee or Tribunal may, upon the application of a party, agree that the identity of a witness should not be revealed in public.’*

#### **Tribunal’s Decision**

15. The Tribunal took into account that the matters which led to the criminal proceedings (subsequently to these proceedings) involved allegations of sexual activity between Dr Bailey and a female complainant who was described as ‘mentally disordered’. In addition, it was mindful of Mr Mullen’s submission that the court had given the complainant lifelong anonymity. The Tribunal noted that Dr Bailey did not object to the application. The Tribunal considered that, in the light of the above, it was therefore appropriate for the identity of the claimant to be anonymised throughout these proceedings. It determined to grant the application.