

## PUBLIC RECORD

Dates: 30/03/2023 - 21/04/2023  
09/10/2023 - 10/10/2023

Medical Practitioner's name: Dr Jamal HILAL

GMC reference number: 5188777

Primary medical qualification: MB BCh 1986 Ain Shams University

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

**Summary of outcome**  
Erasure

Immediate order imposed

**Tribunal:**

Legally Qualified Chair	Mr Tim Bradbury
Lay Tribunal Member:	Ms Colette Neville
Medical Tribunal Member:	Dr Candida Borsada
Tribunal Clerk:	Mr Larry Millea

**Attendance and Representation:**

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Giles Colin, Counsel, instructed by MDU
GMC Representative:	Mr Hugh Barton, 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 - 20/04/2023

### Background

1. Dr Hilal qualified in 1986 from Ain Shams University, Egypt. His current qualifications are MBBCh, MRCPsych. He moved to the UK in 1993 and practised in the field of old age psychiatry in the Northeast of England from approximately 1997. In January 2016 Dr Hilal became a specialist doctor in addiction employed by Cumbria, Northumberland, Tyne and Wear (CNTW) NHS Foundation Trust as part of a planned progression to a substantive NHS consultant post. At the time of the events Dr Hilal was practising as a speciality doctor for Newcastle Hospitals NHS Foundation Trust ('the Trust'), providing addiction services to adult patients. He divided his time between three addiction teams: One based in XXX (one day per week), XXX (one day a week) and the XXX located at XXX (two days a week). XXX, where the alleged events are said to have occurred, provided services predominantly to patients with alcohol and drug dependency. Dr Hilal is currently employed as a speciality doctor in psychiatry at the Campus for Ageing and Vitality at the Newcastle General Hospital.

2. The allegation that has led to Dr Hilal's hearing can be summarised as that between November 2018 and August 2019, Dr Hilal behaved inappropriately and/or unprofessionally towards two XXX colleagues, Ms A and Ms B. It is alleged that his conduct towards both was sexually motivated.

3. The initial concerns were raised with the GMC by a referral from Northumbria Police pertaining to Ms B's allegations against Dr Hilal.

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

4. At the outset of proceedings, the Tribunal determined to amend paragraphs 7(ix)(1) & (2) of the Allegation, pursuant to Rule 17(6) of the General Medical Council (Fitness to

Practise Rules) 2004 as amended ('the Rules'), to correct a typographical error as shown below. This amendment was not opposed by either party.

5. The Tribunal granted the GMC's application, made pursuant to Rule 17(6) of the Rules, to amend the heads of paragraphs 6 and 7 of the Allegation. The Tribunal's written determination can be found at Annex A.

6. The Tribunal granted an application, made on behalf of Dr Hilal, pursuant to Rule 17(2)(g) of the Rules, to dismiss paragraph 7(a)(vii) of the Allegation. The Tribunal's written decision can be found at Annex B.

### The Allegation and the Doctor's Response

7. The Allegation made against Dr Hilal is as follows:

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

1. On one or more occasion during November 2018 to July 2019 whilst at work you:
  - a. placed your arm around the back of A's shoulders whilst alone with A;  
**To be determined**
  - b. hugged A. **To be determined**
2. On a date on or around 01 August 2019 whilst at work you:
  - a. squeezed into a small space in an office behind B's chair and the wall;  
**To be determined**
  - b. leant over B and placed your hand onto the computer mouse; **To be determined**
  - c. said to B 'you really suit XXX, you are a clever girl', or words to that effect; **To be determined**
  - d. asked B if she was an 'accommodating person', or words to that effect;  
**To be determined**

- e. asked how tolerant B was, or words to that effect. **To be determined**
3. On a date on or around 08 August 2019 whilst at work you:
- a. asked B and C to come to your office, but subsequently changed your mind and asked B to come alone; **To be determined**
  - b. whilst in your office alone with B, told her she was the ‘perfect woman’, or words to that effect; **To be determined**
  - c. whilst in your office alone with B, told her that she ‘looked young’ or words to that effect. **To be determined**
4. On one or more occasions during August 2019 you:
- a. on 8 August 2019 sent a WhatsApp message to B at 23:39; **Admitted and found proved**
  - b. sent B a ‘friends request’ through Facebook; **To be determined**
  - c. contacted B outside of work as set out in 4.a. and 4.b. above despite B asking you not to contact her outside of work. **To be determined**
5. On a date on or around 15 August 2019 whilst at work you:
- a. followed B into the kitchen; **To be determined**
  - b. asked B why she did not reply to your WhatsApp message as described at paragraph 4.a. sooner, or words to that effect; **To be determined**
  - c. told B you thought it was very rude that she had not replied to your WhatsApp message in paragraph 4.a. sooner, or words to that effect; **To be determined**
  - d. told B that she should reply straight away to your messages next time, or words to that effect; **To be determined**
  - e. stood next to B and:
    - i. told her that she looked tired, or words to that effect; and **To be determined**

- ii. said to B ‘I know what will wake you up’, or words to that effect; **To be determined**
  - f. massaged B’s neck and shoulders; **To be determined**
  - g. did not stop massaging B’s neck and shoulders when she said to you ‘can you not do that, I am okay’, or words to that effect. **To be determined**
6. On a further occasion on a date on or ~~around~~ **about 15 16** August 2019 whilst at work you: **Amended under Rule 17(6)**
- a. told B whilst alone with her in your office that:
    - i. you would have loved to have taken her to Sudan, but that her skin was XXX and she XXX, or words to that effect; **To be determined**
    - ii. she was very interesting to observe, as when she was uncomfortable she distracted herself, or words to that effect; **To be determined**
  - b. asked B to remain in your office when she attempted to leave and told her that she looked unwell; **To be determined**
  - c. suggested that B’s blood sugar levels were low; **Admitted and found proved**
  - d. suggested taking B’s bloods; **Admitted and found proved**
  - e. took B’s blood for testing; **To be determined**
  - f. returned to your office with B after having taken her blood and asked her questions about:
    - i. her menstrual cycle; **To be determined**
    - ii. her sex life; **To be determined**
    - iii. her XXX; **To be determined**
    - iv. whether B had experienced any pain in her breasts. **To be determined**

7. On a date on or about ~~15~~ 16 August 2019, you proceeded to conduct a physical examination of B: **Amended under Rule 17(6)**
- a. in which you:
- i. touched B’s neck; **Admitted and found proved**
  - ii. touched B’s collar bones; **Admitted and found proved**
  - iii. touched B’s armpits; **Admitted and found proved**
  - iv. did not respond when asked by B what you were doing and rolled your chair closer to her so that your legs were in between hers; **To be determined**
  - v. touched B’s breasts; **To be determined**
  - vi. stated that you could not feel properly as B had her bra on, or words to that effect; **To be determined**
  - vii. ~~asked B to remove her clothing including her bra;~~ **Deleted under Rule 17(2)(g)**
  - viii. did not stop touching B’s breasts when B asked you to do so; **To be determined**
  - ix. failed to obtain B’s consent to examine:
    1. her as set out at paragraph ~~67.a.i-67.a.iii;~~ **Amended under Rule 17(6), To be determined**
    2. her breasts as set out at paragraph ~~67.a.v and 67.a.viii;~~ **Amended under Rule 17(6), To be determined**
  - x. failed to offer B a chaperone; **To be determined**
- b. which was not clinically indicated. **To be determined**
8. On one or more occasion during August 2019 whilst at work you:
- a. repeatedly asked B to place her personal mobile telephone number into your phone; **To be determined**

- b. requested B to come to your office to help you with your English for a presentation; **To be determined**
- c. asked B to help you study outside of working hours; **To be determined**
- d. told B that she was rude when she attempted to leave your office; **To be determined**
- e. told B that if she stayed in your office, her having attempted to leave, that you would sign her proficiency booklet, or words to that effect; **To be determined**
- f. would not sign the proficiency booklet when requested to do so by B and would state that B needed to spend more time with you on a one to one basis before you would sign, or words to that effect; **To be determined**
- g. attempted to hug B; **To be determined**
- h. would prioritise B over XXX, causing delay for the whole working day process; **To be determined**
- i. stayed at work for hours after your shift had finished to talk to B; **To be determined**
- j. whilst sitting right next to B;
  - i. pressed your shoulders against B's shoulders; **To be determined**
  - ii. tapped B's leg; **To be determined**
  - iii. whispered in B's ear; **To be determined**
- k. told B that 'you had been watching her and that she was an interesting person', or words to that effect; **To be determined**
- l. asked B if she was experimental, or words to that effect; **To be determined**

- m. told B not to be so rude, or words to that effect, when asked by B not to contact her outside of work, or words to that effect; **To be determined**
  - n. asked to go to B's house; **To be determined**
  - o. asked B if her house was empty, or words to that effect, when asking to go to B's house; **To be determined**
  - p. asked B if her partner would be in, or words to that effect, when asking to go to B's house; **To be determined**
  - q. told B that you would love for her to meet your friends, as you had told them all about her, or words to that effect; **To be determined**
  - r. blew kisses to B; **To be determined**
  - s. told B she was beautiful; **To be determined**
  - t. asked B if she was free to come to your house; **To be determined**
  - u. sat very close to B when alone with her in your office; and **To be determined**
    - i. moved away from B if people walked past or came into your office. **To be determined**
9. Your conduct at paragraphs 1 to 8 inclusive was:
- a. inappropriate and/or unprofessional; **Admitted and found proved in respect of 7(a)(i)-(iii), To be determined for remainder**
  - b. sexually motivated. **To be determined**

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

### The Admitted Facts

8. At the outset of these proceedings, through his counsel, Mr Giles Colin, Dr Hilal made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in



accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

### Witness Evidence

9. The Tribunal received evidence on behalf of the GMC from the following witnesses:
- Ms A, in person, who provided a written witness statement dated 5 July 2021. The Tribunal also received her Trust investigation interview notes dated 10 October 2019 and 16 December 2019;
  - Ms B, in person, who provided a written witness statement dated 10 September 2021. The Tribunal also received her 'fact find' statement to the Trust dated 29 August 2019, written statement to the Trust dated 30 September 2019, Trust investigation interview notes dated 30 September 2019, police witness statements dated 13 October 2019, 25 March 2020 and 23 April 2020;
  - Mr D, previous partner of Ms B, in person, who provided a written witness statement dated 18 October 2022. The Tribunal also received his police witness statement dated 11 April 2020;
  - Ms F, Community Mental Health Nurse at XXX at the time of events, in person, who provided a written witness statement (undated). The Tribunal also received her Trust witness investigation interview notes dated 3 October 2019 and police witness statement dated 26 March 2020;
  - Ms G, Nurse at XXX at the time of events, in person, who provided a witness statement dated 25 October 2022. The Tribunal also received her police witness statement dated 9 July 2020;
  - Ms H, Clinical Lead Nurse/staff nurse at the Trust at the time of events, in person, who provided a written witness statement dated 12 September 2022. The Tribunal also received her Trust witness investigation interview dated 4 October 2019 and police witness statement dated 28 April 2020;
  - Ms I, Clinical Manager for Addiction Services at XXX at the time of events, in person, who provided a written witness statement dated 24 October 2022 and supplementary statement dated 27 October 2022. The Tribunal also received her police witness statement dated 17 October 2019.
10. Dr Hilal provided his own witness statements dated 9 March 2023 and 30 March 2023 and also gave oral evidence at the hearing. In addition, the Tribunal received evidence from the following witnesses on Dr Hilal's behalf:

- Ms J, Nurse at XXX, in person, who also provided a written witness statement dated 20 March 2023. The Tribunal also received her police statement dated 6 July 2020;
- Ms K, retired Nurse at Newcastle and North Tyneside Drug and Alcohol Addiction Service, by telephone, who also provided a written witness statement dated 21 March 2023;
- Mr L, Addictions Nurse at XXX, in person, who also provided a written witness statement dated 28 March 2023;
- Dr M, Registered Medical Practitioner who worked at XXX as part of their GP Specialist Training programme, in person, who also provided a written witness statement dated 28 March 2023;
- Ms N, Mental Health Nurse at XXX, in person, who also provided a written witness statement dated 30 March 2023. The Tribunal also received her police statement dated 7 July 2020;
- Mr O, Mental Health Nurse at XXX, in person, who also provided a written witness statement, undated.

11. The Tribunal also received evidence on behalf of Dr Hilal in the form of witness statement from the following witness who was not called to give oral evidence:

- Mr P, Dr Hilal’s solicitor, who provided a written witness statement dated 28 March 2023, exhibiting a number of photographs of XXX.

### **Expert Witness Evidence**

12. The Tribunal also received evidence from one expert witness, Dr Q. Dr Q was called on behalf of the GMC and gave oral evidence, as well as providing an Expert Report, updated 29 March 2022. Dr Q is a Consultant Psychiatrist and his evidence was provided to assist the Tribunal in understanding the appropriateness of the actions alleged against Dr Hilal and the professional standards to be expected of a speciality doctor in a mental health/addiction setting. Although the Tribunal had regard to this evidence, in its final analysis, it did not consider that it assisted greatly because the Tribunal considered that, in the light of the facts alleged, it was able to form its own conclusions as to whether such conduct as might be proved fell below or well below the standards to be expected of a doctor in Dr Hilal’s position.

### **Documentary Evidence**

13. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to: copy of WhatsApp messages between Dr Hilal and Ms B dated 8-11 August 2019; floor plan of XXX prepared by Ms B; email thread between Ms B and Dr Hilal dated 15/18 August 2019; photographs of XXX.

### The Tribunal's Approach

14. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Hilal 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.

15. The Tribunal considered all of the evidence adduced before making findings as to the credibility of any witness. Further, when assessing a witness's credibility, it noted it should not rely exclusively on a witness's demeanour when giving evidence as set out in *R (on the application of Dutta) v GMC [2020] EWHC 1974 (Admin)*. It was for the Tribunal to determine which evidence assisted in discharging its duties to make findings and decide the weight to be given to that evidence. The Tribunal noted that decisions must be based upon the evidence alone and the Tribunal must not speculate.

16. It was open to the Tribunal not to rule out the whole of a witness's evidence based on issues of credibility; credibility can be divisible. *Khan v The General Medical Council [2021] EWHC 374 (Admin)*.

17. The Tribunal heard that Dr Hilal was of good character. His good character must be, and was, taken into account by the Tribunal when assessing his credibility and the likelihood of him having acted in the manner alleged. His good character was not a defence to the Allegation, it was a factor to take into account when considering all of the evidence in the round. The weight to assign to his good character was a matter for the Tribunal to determine.

18. In *Basson v GMC [2018] EWHC 505 (Admin)*, the High Court defined acting with sexual motivation as conduct done either in pursuit of sexual gratification or in pursuit of a future sexual relationship.

### The Tribunal's Analysis of the Evidence and Findings

19. 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.

## Paragraph 1

### Ms A's Evidence

20. The first half of Ms A's XXX placement at XXX took place from XXX to XXX 2018, with the second half taking place from XXX to XXX 2019. Following this, Ms A qualified as a XXX and commenced employment at XXX in XXX 2019. The alleged interactions between Ms A and Dr Hilal occurred around December 2018. Ms A described that during her time at XXX and throughout her interactions with Dr Hilal there had been occasions where he had made her feel uncomfortable. Ms A had not made any complaint during her placement and her first disclosure of Dr Hilal's alleged inappropriate behaviour was in September 2019. She had made this disclosure in the context of a conversation she had with Ms B, and after Ms B had disclosed to her Dr Hilal's alleged inappropriate conduct towards Ms B.

21. In her account of events, Ms A stated that:

*"...whilst I was a XXX Dr Hilal had placed his arm around the back of my shoulders whilst no one else was around, which had made me feel uncomfortable and felt that it was weird since other colleagues did not do this. This would usually happen whilst I was walking down the first-floor corridor, Dr Hilal would come out of his office and put his arm around me. This happened approximately three times over the course of my placement, but I cannot be sure. I didn't tell Dr Hilal that he was making me feel uncomfortable or raise this with another colleague because I felt they would think I am being silly and making a big deal about nothing. I put it down to the difference in culture between me and Dr Hilal and [he] not having the same understanding about how it made me feel.*

...

*Before I finished the first half of my placement in the last week of XXX 2018, Dr Hilal told me it was his last week working there and he was moving jobs. Dr Hilal went to give me a hug and so I hugged him back."*

22. Ms A had also alleged that during the course of her placement, Dr Hilal, in the course of conversation(s), had made what she considered to be inappropriate remarks which had also made her feel uncomfortable. There was no allegation made by the GMC in relation to these remarks or that they were inappropriate. Whilst the Tribunal considered that the

remarks, if made as Ms A recalled, might have made Ms A feel uncomfortable, the Tribunal, having had regard to Dr Hilal's evidence as to the context of the conversation(s) with Ms A he recalled, did not consider that they were necessarily inappropriate or that they had any relevance to the allegations that the GMC had made in respect of Ms A at paragraph 1 of the Allegation.

#### Dr Hilal's Evidence

23. Dr Hilal's account was that:

*"...I had a good rapport with [Ms] A, she called me her "favourite doctor". I did not at any time place my arm around her shoulders. I may have touched her shoulder during a conversation.*

*...I had been promised a job in adult psychiatry. When I told [Ms] A she said that she was about to go on holiday and therefore would not see me again. She initiated the hug."*

24. Whereas the Tribunal considered that there might have been scope for conflicting recollections and/or perspectives of the circumstances in which there had come to be a hug between Ms A and Dr Hilal as alleged in paragraph 1(b), the Tribunal considered that there was a stark conflict between Ms A and Dr Hilal's accounts with regard to the allegation at paragraph 1(a). Ms A's evidence was that she clearly recalled that there had been a number of occasions when Dr Hilal had put his arm around her shoulders and how this had made her feel. Conversely, Dr Hilal was emphatic that he had never done so and would not have done so.

#### Paragraph 1(a)

25. The Tribunal determined that Ms A had been consistent in her account as to this allegation, which she had first made to Ms B and thereafter in a Trust investigation in October 2019. The Tribunal did not consider that there was any apparent reason for her to be mistaken in her recollection, neither did she appear to have any cause to lie about Dr Hilal's conduct towards her, or otherwise to cause him harm.

26. The Tribunal accepted Ms A's evidence that she had not initially made any complaint about Dr Hilal's conduct because she had, at the time, put it down to 'overfriendliness' borne of 'cultural differences' and also because she did not wish to be considered to be 'silly' or

‘making a big deal about nothing’. The Tribunal considered that this was illustrative of the fact that she did not bear any ill will towards Dr Hilal. Further, the Tribunal was satisfied that it was only when Ms A had been told of Ms B’s experience in September 2019 that she had been prompted to disclose her own experience of Dr Hilal’s ‘overfriendliness’ which had caused her to feel uncomfortable.

27. The Tribunal, having accepted that Dr Hilal’s conduct towards Ms A had made her feel uncomfortable during the course of her placement at XXX, considered it was unlikely that she would have regarded Dr Hilal as her ‘favourite doctor’, which she strenuously denied in her oral evidence. Much less did the Tribunal consider that she would have said this to Dr Hilal as he had stated she had.

28. In these circumstances, the Tribunal preferred the evidence of Ms A in relation to this allegation and considered it more likely to be true and found paragraph 1(a) proved.

#### Paragraph 1(b)

29. The Tribunal recognised the possibility that in relation to this allegation there could be circumstances in which such an event occurred where recollections might differ as to who had initiated a hug. However, the Tribunal, having accepted Ms A’s evidence that she had been made to feel uncomfortable with Dr Hilal’s overfamiliarity with her during the course of her placement, considered that it was inherently unlikely that she would have initiated a hug or any physical contact with him. Accordingly, the Tribunal preferred the evidence of Ms A that she had not invited a hug from Dr Hilal, she had not initiated it and it had been unwelcome. Therefore, the Tribunal found paragraph 1(b) proved.

30. In reaching its conclusions in respect of paragraphs 1(a) and 1(b), the Tribunal had regard to the fact that Ms A, in giving evidence, appeared to be genuinely affected by her experience and her recollection of Dr Hilal’s conduct towards her. This fact was not determinative of the Tribunal’s assessment of her evidence but was a factor which the Tribunal took into account together with the evidence including Dr Hilal’s account.

### **Paragraphs 2 – 8**

#### Ms B’s Evidence

31. The GMC’s case regarding these paragraphs of the Allegation was that during the period that Ms B was undertaking her first placement as XXX, Dr Hilal, over a period of time,

embarked upon a course of deliberate ‘predatory’ and ‘grooming’ type behaviour towards her.

32. This behaviour, it is alleged, started from Ms B’s first meeting with Dr Hilal, on or around 1 August 2019. Dr Hilal had squeezed into a small space in an office behind Ms B’s chair and the wall, leant over Ms B and placed his hand onto the computer mouse saying to Ms B *‘you really suit XXX, you are a clever girl’*, asking Ms B if she was an *‘accommodating person’* and how *‘tolerant’* she was, or words to that effect. Dr Hilal denied that any of this incident had occurred as alleged. He stated that he would have said *‘excuse me’* if he had needed to squeeze past. He accepted that he may have interacted with Ms B while she was working on the computer but not in the manner alleged. He was adamant that he would not have made the alleged remarks, save to the extent that he might possibly have said words to the effect of Ms B being *‘clever’*. He said that if he had used the word *‘tolerant’* it was not in the manner or context alleged by Ms B.

33. Thereafter, on or around 8 August, it is alleged that Dr Hilal asked Ms B and Ms C (XXX) to come to his office but subsequently changed his mind and asked Ms B to come alone and that whilst Ms B was in his office told her she was the *‘perfect woman’* and that she *‘looked young’*, or words to that effect. Dr Hilal denied making such an offer then rescinding it, denied saying Ms B was the perfect woman and stated that he had no recollection of saying that she looked young. It is also alleged that at this time Dr Hilal sent Ms B a WhatsApp message (at 23:39) to her personal mobile phone and that he had sent Ms B a Facebook friend request, despite Ms B having asked Dr Hilal not contact her outside of work. Dr Hilal accepted that he sent the WhatsApp message but denied sending the friend request or that he had been asked not to contact Ms B outside of work. His evidence was that Ms B had sent him the friend request on Facebook.

34. It is then alleged that on or around 15 August Dr Hilal followed Ms B into the work kitchen, asked her why she had not replied to his WhatsApp message, told her that he thought it was very rude that she had not replied and that she should reply straight away to his messages next time. It is alleged that he then stood next to Ms B, told her that she looked tired and said *‘I know what will wake you up’* before massaging Ms B’s neck and shoulders, which he did not stop doing when she said *‘can you not do that, I am okay’*, or words to that effect. Dr Hilal’s account was that Ms B followed him into the kitchen after he offered to make a cup of tea, that he did not say the things alleged and stated in his written witness statement that *‘I winced as I leaned over the counter to put on the kettle. [Ms] B asked what was wrong and I explained that I had pain in my shoulders. She took the initiative in*

*massaging my shoulders as she stood behind me. I did not ask to do so. ... I felt uncomfortable and asked her to stop.'*

35. It is alleged that on a further occasion, on or about 16 August 2019, Dr Hilal told Ms B whilst alone with her in his office that he would have loved to have taken her to Sudan but that XXX and XXX; that she was very interesting to observe as when she was uncomfortable she distracted herself, or words to that effect; and asked her to remain in his office when she attempted to leave, telling her that she looked unwell. It is alleged that Dr Hilal then suggested that Ms B's blood sugar levels were low, suggested taking and took her bloods for testing before returning to his office with Ms B and asking her questions about her menstrual cycle, her sex life, her XXX and whether she had experienced any pain in her breasts. Dr Hilal denied saying the words attributed to him by Ms B and stated that she had told him repeatedly that day that she felt unwell, stating in his written witness statement that:

*"[Ms] B told me that she was feeling faint. I said it could be that her blood sugars were low. I asked if she was experiencing pains anywhere and she said no. I asked if she had sore throat, any abdominal problems change in bowel habit or notice any change in her urine. She'd previously told me that she had thyroid problems. I asked if she felt warm. She leaned across to me and said I don't know, prompting me to touch her forehead. I detected no raised temperature. I said to her words to the effect, shall we do the routines, meaning observations. With that I took to the clinic office and asked one of the nurses to check 'her routines'. ... in the sense that I asked the routine observations which would have included a blood test. ... in the sense that B's blood was taken by one of my nursing colleagues at my instigation. I may have asked B a question about a change in her menstrual cycle. This was more likely to have been earlier before her return to the clinic. When she did return, she told me all her observations seemed to be fine. She didn't know what was happening to her. ... asked whether she was sure she had any pain anywhere. She pointed to her right breast and said she was worried it could be something sinister."*

36. Ms B went on to allege that on or about 16 August 2019, Dr Hilal proceeded to conduct a physical examination of her in which he touched her neck, collar bones and armpits, did not respond when asked what he was doing, and rolled his chair closer to her so that his legs were in between hers. Ms B alleges that Dr Hilal then touched her breasts, stated that he could not feel properly as Ms B had her bra on, or words to that effect, and did not stop touching her breasts when she asked him to do so. It is further alleged that Dr Hilal failed to obtain consent or offer a chaperone for this examination, and that the examination was not clinically indicated. Dr Hilal accepted that he did carry out an examination of her



throat, her neck, her thyroid gland and lymph-node nodes in the neck and armpits, stating that he was trying to establish whether Ms B had an inflammatory process in her head and neck. He said that at each stage he explained to Ms B what he was going to do and asked if that was okay. He accepted that he did not offer a chaperone but denied the rest of the allegations in respect of the examination, stating in his written witness statement that he:

*“..asked whether she screened herself for lumps in her breasts. She indicated she was unaware how to do so. I explained that she should put one hand under her breast and the other hand on top to see if she could detect a lump. She attempted to do this herself clumsily. She said she was useless or words to that affect. I showed her on my own body how to perform a breast examination mimicking the movement that would be used. [Ms] B again made a clumsy effort. I then said words to the effect put your hands together in the shape of a cone. Using her hands as a model of a breast I performed examination upon her outstretched hands. At this stage I was uneasy and suggested to be that she could attend the [women’s] primary health centre XXX and they could help her.”*

37. Finally, it was alleged that on one or more occasion during August 2019 whilst at work Dr Hilal: repeatedly asked Ms B to place her personal mobile telephone number into his phone; requested Ms B to come to his office to help him with his English for a presentation; asked Ms B to help him study outside of working hours; told Ms B that she was rude when she attempted to leave his office; told Ms B that if she stayed in his office, her having attempted to leave, that he would sign her proficiency booklet; would not sign the proficiency booklet when requested to do so by Ms B and stated that Ms B needed to spend more time with him on a one to one basis before he would sign it; attempted to hug Ms B; would prioritise Ms B over XXX, and stayed at work for hours after his shift had finished to talk to Ms B. It was further alleged that whilst sitting right next to Ms B: Dr Hilal pressed his shoulders against Ms B’s shoulders; tapped Ms B’s leg; whispered in Ms B’s ear; told Ms B that he ‘*had been watching her and that she was an interesting person*’; asked Ms B if she was ‘*experimental*’; told Ms B not to be so rude when asked by her not to contact her outside of work; asked to go to Ms B’s house; asked if her house was empty when asking to go there; asked if her partner would be in when asking to go to her house; told her that he would love for her to meet his friends as he had told them all about her; blew kisses to Ms B; told her she was beautiful; asked her if she was free to come to his house; sat very close to Ms B when alone with her in his office; and moved away from Ms B if people walked past or came into his office.

38. The GMC's case was that the alleged behaviour was inappropriate and/or unprofessional, and sexually motivated.

39. Dr Hilal denied that he had said the words that Ms B had attributed to him, or to the limited extent that he might have said them, that they were not in the context suggested by Ms B. He denied that he had initiated any physical contact between himself and Ms B as she had alleged, other than that which was in the context of a limited physical examination of her at a time when she had said she felt unwell and to which she had consented. Further, Dr Hilal denied that he had behaved inappropriately and/or unprofessionally, or in a sexually motivated way, towards Ms B other than to the limited extent admitted at the outset of the hearing.

40. It was Dr Hilal's case that he had had a good relationship with Ms B, she had been a bright and enthusiastic XXX with whom he had got on well. He did not accept that Ms B was, or had appeared to be, uncomfortable in his presence. On the contrary, in his oral evidence he stated that it was his belief that during the course of his contact with Ms B she had developed a sexual interest in him to the extent that during his admitted physical examination of her Ms B had sought to '*tempt*' Dr Hilal into touching her breasts. He further alleged that shortly thereafter Ms B had followed him into the kitchen where he was going to make a cup of tea and, uninvited, she had started to massage his shoulders and he had had to stop her as it was he who had been made to feel uncomfortable.

41. The Tribunal considered that the conflicts in the respective accounts given by Ms B and Dr Hilal were such that they could not be explained by a simple difference in recollections and/or perspectives of the same events. Rather, the Tribunal concluded that either Ms B or Dr Hilal had not told the truth and were seeking to mislead the Tribunal, and others, as to what had occurred between them. Accordingly, the Tribunal considered that the veracity of Ms B and Dr Hilal was a central issue that it needed to address.

42. At the outset, and before assessing the evidence of Ms B and Dr Hilal in detail, the Tribunal considered whether there was evidence capable of supporting either of their respective accounts.

43. This involved considering the evidence from other witnesses who had been working at XXX at the relevant time and who had, to varying degrees, had the opportunity to see or hear interactions between Dr Hilal and Ms B.

44. The Tribunal also considered the complaints/disclosures which Ms B had made to others at or shortly after the time of the alleged events, and the accounts given by Ms B at different times during the course of subsequent investigations. The Tribunal considered that this evidence was potentially relevant to the circumstances in which Ms B's allegations were initially made, the reasons why they were made, the extent to which Ms B's account had been consistent and/or inconsistent with her evidence to the Tribunal and her credibility generally. However, the Tribunal was mindful throughout that accounts given by Ms B on previous occasions could not be regarded as independent evidence in support of the allegations.

45. With regard to evidence given by witnesses who had observed interactions between Ms B and Dr Hilal during the relevant period, the Tribunal noted that the specific matters about which Ms B had complained were alleged to have occurred at times when she was alone with Dr Hilal and therefore they would have not been directly witnessed by others. The Tribunal did not consider this to be surprising given that it was the Tribunal's view that it would be unlikely that Dr Hilal would have said or done the things he was alleged to have done in the presence of others. Nevertheless, the Tribunal considered the evidence given by Ms F and Ms G was significant in relation to some interactions which they said they had observed.

46. Ms F's evidence was that:

*"I was a qualified nurse at the time and as such worked alongside [Ms B], who was XXX. It was sometime in 2019, I was in the staff room and [Ms B] had asked me whether she could spend the day in the XXX office with me. I remember she said words to the effect of 'I'm getting sick of him', referring to Dr Hilal. I was happy for her to spend the day in the office, and so she sat behind me.*

*Dr Hilal came into the XXX office, which wasn't an unusual occurrence given doctors and nurses interact every day. Dr Hilal sat next to [Ms B] behind me, and I was facing towards the computer. I could hear them talking quietly, and therefore I couldn't gauge what they were saying but I continued to do my work. At one point, I turned around to get a signature on paperwork from Dr Hilal and I saw [Ms B] looking uncomfortable.*

*[Ms B] was sat up almost in an awkward manner, she did not look comfortable in my opinion. Dr Hilal then turned away to sign the documents I handed over, and at that point I mouthed to [Ms B] 'are you okay?' and she indicated yes by nodding. I got the*

*document back from Dr Hilal and turned back around. I would like to clarify that the reason I asked if she was okay, and I felt she looked uncomfortable was on the basis that she made the comment of getting sick of Dr Hilal earlier in the day. As such, I thought what I happened to witness may be linked to how she was feeling about him earlier in the day.*

*Following that day, [Ms G] who was the preceptor at the time had approached me and told me that [Ms B] had raised concerns about Dr Hilal's conduct to her. [Ms G] told me that Dr Hilal tried to get [Ms B]'s contact details for research purposes, but that he also mentioned that he wished to see [Ms B]'s cats. I found this to be incredibly unusual, especially given this comment would indicate he wanted to see her after work hours. Based on this, I suggested to [Ms G] that this should be reported to a senior .....*

47. The Tribunal considered Ms F's evidence to be significant and telling. Ms F had generally spoken of Dr Hilal in positive terms and as a doctor for whom she had a professional regard. The Tribunal considered her to be independent and it accepted her evidence as being accurate in relation to what she recalled of her observations of Ms B and Dr Hilal. In particular, she recalled Ms B asking her if she could spend time away from Dr Hilal because she was getting 'sick of him'. She also observed Dr Hilal sitting himself next to Ms B and Ms B appeared to Ms F to be visibly uncomfortable, describing her as 'rigid' and 'like a rabbit in headlights'. Such was Ms F's perception of Ms B's discomfort that, when Dr Hilal had turned away, she signalled to Ms B to enquire whether she was ok. Ms F recalled that this latter incident had occurred the day before she had been approached by Ms G, who had relayed to Ms F other concerns that Ms B had raised.

48. The Tribunal considered that the evidence of Ms F, which it accepted, was significant because it was independent evidence supporting Ms B's evidence that Dr Hilal's attentions towards made her feel uncomfortable, she did not welcome them and she had sought to distance herself from Dr Hilal. This was in stark contrast to Dr Hilal's suggestion that Ms B seemingly enjoyed his company and furthermore, that by 15/16 August she had developed a sexual attraction towards him.

49. The Tribunal also had regard to the evidence of Ms G. Her evidence was that:

*"In 2019, [Ms B] who was a XXX at the time, had reported to me that Dr Hilal was sending her messages outside of work hours. She expressed how she found it to be odd and felt uncomfortable. I could also tell from her body language when she explained*

*this to me that she felt uncomfortable by the situation. I advised she should report this to senior staff, namely [Ms H] at the time.*

*... a couple weeks later, [Ms B] also told me that she suffered with ongoing thyroid problems, and that she was in a room on her own with Dr Hilal when she told him. She reported that without informed consent, he began touching her and touched her breasts under the guise of a clinical examination. I remember [Ms B] looked upset when she told me and expressed how she felt violated. I told [Ms B] this needed escalating and she confirmed she had already raised it with management.*

...

*With regards to their working relationship, I used to see [Ms B] and Dr Hilal often in the office, but the door would be open, and staff would be walking in and out. I do not recall having seen her look uncomfortable around his presence, but I visibly remember how uncomfortable she was after she had told me about the messages.*

*I am unable to exactly recall everything due to the passage of time. However, I remember that I did become wary about the situation, and I did notice a change in her behaviour. To me, it appeared as if she was more anxious on a day-to-day basis, [redacted] She also disclosed to me that she was more uncomfortable since the messaging incident.”*

50. In relation to Ms G’s evidence, which the Tribunal accepted, the Tribunal considered that it was significant. Again, as with Ms F, Ms G had been a work colleague of Dr Hilal’s. She too appeared to have formed a positive professional impression of Dr Hilal and she did not appear to have any ill will towards him. She had not noticed any discomfort in Ms B prior to Ms B reporting to her that she had received WhatsApp messages from Dr Hilal outside of work. However, subsequent to this Ms G had observed Ms B as being visibly uncomfortable in Dr Hilal’s presence to the extent that she had become conscious of the situation and that she had noticed a change in Ms B’s behaviour. It appeared to Ms G that Ms B was more anxious on a day to day basis. Again, the Tribunal considered that this presented a very different picture of the relationship between Ms B and Dr Hilal than Dr Hilal had sought to present, particularly from the date that the first WhatsApp message had been sent (8 August 2019) up until the date of the physical examination on or about 16 August 2019.

51. As well as considering the direct evidence from Ms G and Ms F as to the interactions that they had observed between Ms B and Dr Hilal, the Tribunal also considered the evidence

given by other witnesses. This included witnesses called on Dr Hilal's behalf, in particular Ms H called by the GMC and Ms N, Mental Health Nurse at XXX and Ms J, Nurse and Ms B's XXX. These witnesses confirmed that they had not witnessed anything that they had regarded as untoward regarding Ms B and Dr Hilal's interactions. However, the Tribunal, having had regard to the extent to which these individuals apparently would have had to observe Ms B and Dr Hilal together did not consider that their evidence greatly assisted the Tribunal. It was evident that due to Ms H's and Ms J's work commitments/patterns/annual leave there would have been very few opportunities for them to have seen Ms B and Dr Hilal together. With regard to Ms N she recalled a single occasion when she was present in the XXX room when Ms B and Dr Hilal had an unremarkable conversation regarding learning to play the guitar.

52. The Tribunal went onto consider the complaints/disclosures made by Ms B to others during or shortly after the time at which the alleged events were said to have occurred.

53. The Tribunal heard evidence from Mr D, who had been Ms B's partner at the time of the alleged events, and with whom she was living at the time. In addition to the statement provided to the GMC, he had made a police witness statement in April 2020 in which he had described Ms B having reported to him a number of 'strange' interactions with Dr Hilal which caused her concern and which she had mentioned to Mr D during the course of her placement at XXX as and when they had occurred. He stated that he had advised Ms B how he thought that this may just be Dr Hilal's character and that perhaps he was overfriendly with other colleagues too, and he had advised Ms B to monitor the situation. Mr D described Ms B telling him about the increasing and ongoing inappropriate behaviour, culminating in the physical examination set out at paragraph 7 of the Allegation. Mr D confirmed during the course of his oral evidence that Ms B had telephoned him in great distress following the physical examination and that Ms B had reported that Dr Hilal had touched her breasts, providing him a more detailed account when she got home.

54. The Tribunal had no reason to doubt Mr D's account of that which he said Ms B had told him, or that this had occurred over a period of time during the course of Ms B's placement at XXX and which ultimately resulted in Ms B reporting to him what would have amounted to a sexual assault on the day this event had allegedly occurred.

55. The Tribunal accepted Mr D's evidence and considered that it was significant because it demonstrated that from the beginning of Ms B's placement she was periodically describing what she regarded as inappropriate and unwelcome behaviour by Dr Hilal, the seriousness of which was escalating over a short time. The Tribunal could see no reason why Ms B would have made these complaints to Mr D over the period that she did unless they were true.

Furthermore, the Tribunal considered that Mr D's account of events was consistent with the position as Ms B described it to be, i.e. that she had been initially reluctant to make a complaint about Dr Hilal's behaviour towards her on the basis that she was prepared to give Dr Hilal the benefit of the doubt and assumed that it might just be his character to be '*overly friendly*'.

56. If, as Dr Hilal maintained, Ms B enjoyed Dr Hilal's company and had developed a sexual interest in him, the Tribunal considered it inherently improbable that Ms B would have reported her concerns to Mr D.

57. As previously noted, Ms B also complained to Ms G about Dr Hilal's messaging of her on 8 August 2019. Again, the Tribunal accepted Ms G's evidence with regard to that which Ms B had told her and when she had said it. As with the Tribunal's conclusion in relation to Mr D, the Tribunal did not consider that it was likely that Ms B would have gone to Ms G when she did if Ms B's attitude towards Dr Hilal was as he had described in his evidence.

58. The Tribunal also received evidence from Ms H, who commenced her post as Clinical Lead Nurse at XXX on 19 August 2019. Her evidence was that on her return from a fortnight's leave to XXX on this day Ms B had reported her concerns about Dr Hilal's behaviour to Ms H. It was of note that whereas Ms B believed that the concerns that she had expressed to Ms H had included reference to 'an assault', but not the detail of Dr Hilal touching her breasts, Ms H did not recall that this specific matter was referred to by Ms B. It was her recollection that Ms B had essentially reported that she (Ms B) felt that Dr Hilal was being overfamiliar and that "*she felt he was being overfamiliar with her and this was making her feel awkward.*" The Tribunal did not consider that this difference in recollection was significant, partly because Ms H had made it clear from the outset that she would not be investigating the matter and that the details should be reported to the clinical manager, Ms I. It did not cause the Tribunal to doubt Ms B's veracity and/or reliability generally.

59. The Tribunal also considered the evidence of Ms I, Clinical Manager for Addiction Services at XXX. She spoke to Ms B on the telephone on 23 August 2019, after Ms H had reported Ms B's disclosure to her. On this occasion Ms I had only taken brief details from Ms B. However, on 29 August 2019 she met with Ms B and took a full statement from her.

60. The Tribunal noted that the detailed statement of 29 August 2019 was taken within a fortnight of the alleged physical examination and represented the first written record of Ms B's account regarding Dr Hilal's conduct towards her. The accounts given by Ms B to Ms H on 19 August 2019 and the account given to Ms I on 23 August 2019 were not recorded in any

way. The statement of 29 August was the most contemporaneous documentary evidence available to the Tribunal of Ms B's account at the time, and the Tribunal concluded that it was likely to be the most reliable record of Ms B's description of events.

61. The Tribunal then went on to consider the consistency of Ms B's evidence with the account she gave on 29 August 2019 and also the subsequent recorded accounts contained in statements and in a record of a trust interview which Ms B had given. These were:

- written statement to the Trust dated 30 September 2019;
- Minutes of witness investigation interview with Ms B as part of Trust investigation dated 30 September 2019;
- Three statements to police dated 13 October 2019, 25 March 2020 and 23 April 2020.

62. The Tribunal noted and had regard to the fact that there were within these statements some inconsistencies. These were either because matters were referred to in some witness statements/records but which were not included in others, or because of minor differences in the terms in which Ms B had described events. The Tribunal had close regard to these and concluded that they were of a minor character and were of the type which one might expect when a person has been required to rehearse events at different times over a lengthy period. The Tribunal also acknowledged that it was not unusual for there to be errors of recollection over time, particularly as to matters of chronology or sequence of events. None of those inconsistencies that the Tribunal was able to identify were such as to cause the Tribunal to doubt Ms B's veracity, credibility or reliability as a witness.

63. In reaching this conclusion, the Tribunal had had particular regard to two suggested inconsistencies highlighted on behalf Dr Hilal, and which it was submitted demonstrated that Ms B was either an untruthful or wholly unreliable witness.

64. The first was Ms B's description of the circumstances in which Dr Hilal had obtained her personal mobile telephone number. Secondly, as to the date upon which Ms B alleged that the physical examination had taken place and which had been the subject of an application to amend the Allegation (see Annex A).

65. As for the first matter, the allegation against Dr Hilal was that he had repeatedly asked Ms B to place her personal mobile telephone number into his phone. This allegation was based upon Ms B's assertion made in her statement to the GMC and in previous statements. She stated that after repeated requests and pressure she eventually entered it into Dr Hilal's phone. It was Dr Hilal's case that Ms B had volunteered her details to him by



writing her full name and mobile number on a post-it note. The Tribunal was provided with a copy of this post-it note, which Dr Hilal had retained. Ms B accepted that the note had been written by her. The note produced had the telephone number crossed out (but still legible). Dr Hilal had provided a copy of this same post-it note to the Trust investigation and he maintained that it had been given to him by Ms B, explaining in his oral evidence that:

*“I asked, “are you on Facebook?” and “WhatsApp?” and she said “yes, but my name is not the same. I use my middle name” and I said “there will be groups that actually provide XXX guitars and they can help you and teach you” and she said “OK, that's OK” and she wrote down her name. I said “what name you use for that”, she said “first and the middle and the third name” and I found the middle name very unusual and I said “How do you spell that?” and then she picked up the paper and wrote it down, and wrote her number for WhatsApp and she gave me that.[sic]”*

66. Ms B's evidence as to the circumstances in which she had created this note was that she had written it for Ms J, XXX, early on in her placement because she believed that Ms J might require these details so that Ms B could join XXX computer network. Ms J gave evidence that she did not recall seeing a post-it note or being given one by Ms B and stated that she would have had no need for a XXX personal mobile number.

67. In the light of Ms B's evidence given in relation to Dr Hilal's obtaining of her number, the existence of the post-it note and Ms J's evidence, it was submitted on Dr Hilal's behalf that Ms B's account in relation to the giving of her mobile number had been inconsistent with the contents of her previous police statements, was unsupported and could not be believed.

68. As to Ms B's explanation with regard to the creation of the post-it note, the Tribunal considered it to be entirely plausible. The Tribunal considered that Ms B, as a new, XXX on starting her placement would not necessarily have known what Ms J required by way of personal details. Furthermore, the Tribunal did not consider that Ms J would necessarily have recalled what, to her, would have been a minor and unremarkable event. The Tribunal also considered that there was no reason for Ms B to invent an account of Dr Hilal requiring her to put her phone number into his mobile phone when she could just have easily (falsely) alleged that he had insisted she write her name and number on a post-it note and she had reluctantly complied.

69. The Tribunal also noted that the post-it note produced by Dr Hilal had the phone number crossed out. It was Ms B's evidence that Ms J told her that she had crossed out the number as it was not required. The Tribunal considered that this was a likely explanation and

that, if Ms J had received the post-it she would have probably crossed out the phone number because as she had said, this was not something she would have required. On the other hand, the Tribunal could see no good reason why Dr Hilal would have done this himself, as he said he had, but also retained the note. The Tribunal did not consider it necessary to seek to determine how Dr Hilal had obtained the post it note except to the extent that it appeared to the Tribunal that there were a number of possible explanations as to how he might have done so.

70. Finally, as to that which had been submitted as an inconsistency within Ms B's previous police statements with regard to Dr Hilal obtaining her phone number, the Tribunal considered that Ms B's witness statements were not inconsistent with each other, but merely clarified the meaning of what had been said in an earlier police statement, where she had stated that she did not know where Dr Hilal got her mobile phone number, as follows:

*“On 23 April 2019 I provided an additional statement as requested by DC [R] clarifying how a friendship with Dr Hilal came about on Facebook. Furthermore, this statement provided clarification with regards to [earlier police statement] where I said, “I did not know how Dr Hilal obtained my mobile telephone number”. I clarified this was an explanation error and was reference to my number and personal details listed on the post-it note Dr Hilal obtained. I was stating that I did not provide my number or personal details to Dr Hilal via the post-it note but that I had inserted my mobile number in Dr Hilal's mobile phone.”*

71. Therefore, the Tribunal did not consider that the suggested inconsistency in relation to Ms B's provision of her telephone number to Dr Hilal was of significance.

72. The next inconsistency Mr Colin submitted demonstrated untruthfulness or unreliability on the part of Ms B related to the dates on which the physical examination was said by her to have occurred. In all her statements, with the exception of her first statement on 29 August 2019, Ms B had referred to the physical examination as having occurred on 15 August 2019 (which the Tribunal noted was a Thursday). It was on this basis that the GMC originally alleged that the examination had occurred on this date.

73. During her cross-examination, Ms B was shown a copy of an email which she agreed that she had sent to Dr Hilal on the evening of 15 August. It was accepted by Ms B that it was not an email that one would have expected her to have sent if she had, earlier that day, been subject to the assault which she describes as occurring during Dr Hilal's physical examination

of her. The email related to her work, was cordial in tone, and there was no hint of there having been any difficulty between her and Dr Hilal earlier that day.

74. Ms B's initial response upon being shown this email, appeared to be one of surprise because she said that she did not believe that she had sent this email on the evening of the day of the physical examination. She stated initially that she believed the email must have been delayed in sending because her recollection was that she sent the email the night before the incident. Following an adjournment, Ms B went on to say that she had realised that she had made an error as to the date and that the incident must have occurred on 16 August (the Friday) and not 15 August as she had stated in her various statements.

75. The Tribunal considered that it was likely that this had indeed been no more than a mistake. In particular because, in Ms B's original statement of 29 August 2019 (her first and earliest written account of events), her description of the day on which the physical examination had occurred was as follows: *"Whilst on placement I have not worked on a Friday, however one week I had to. JH pulled me into his office and asked if I was feeling okay..."* (She then went on to describe the physical examination). It was only in her following statements that she referred to 15 August as being the date on which the examination occurred.

76. The Tribunal considered that it was also significant that in the statement she gave to the GMC for these proceedings, Ms B referred to the incident as having occurred on 15 August but also said *"... I was wearing a short sleeve dress with leggings as I was not expecting to see Dr Hilal, and this was not my normal working day."*

77. Ms B had previously explained that she attended the placement four days per week Monday-Thursday, and not Friday. Having considered all of the statements that Ms B had made relating to her placement which had referred to the alleged physical examination and when it occurred, the Tribunal concluded that it was most likely that Ms B had been correct in her first recollection that the incident had occurred on a Friday, which was not her usual working day and that, subsequently, she had made the mistake that this was on 15 August rather than 16 August. The Tribunal considered that it was apparent from her statement to the GMC that Ms B had mistakenly allided 15 August 2019 with a Friday. Accordingly, the Tribunal did not conclude as had been urged on behalf Dr Hilal that Ms B had deliberately *'tailored'* her evidence so as to explain the email, which on its face appeared to be inconsistent with the type of email that would have been sent following the physical examination which Ms B had described.

78. The Tribunal concluded that Ms B had (correctly) identified the incident as having been on a Friday (i.e. 16 August) in her first statement of 29 August 2019 but had later mistakenly referred to the date as being 15 August 2019.

79. Furthermore, during the course of his oral evidence Mr D was asked about the date on which Ms B came home upset. Initially he said it was either a Thursday or Friday but then he recalled that Ms B had reported the incident to XXX after the weekend and therefore he believed the incident must have been the Friday because Ms B had reported it on a Monday. This was also consistent with Ms H's evidence to the effect that she had been on annual leave for two weeks prior to her first day in her new role which commenced Monday 19 August 2019, and that Ms B had reported the matter to her on that day. It would not have been possible for Ms B to report it to Ms H on Friday 16 August, as Ms H was not there.

80. The Tribunal considered whether there was any evidence that supported or undermined Ms B's account. It considered the possibility that Ms B was not telling the truth and whether, if she was not, there was any evidence of a reason why Ms B would choose to fabricate an allegation of this sort against Dr Hilal.

81. The Tribunal acknowledged that if it did not accept Ms B's evidence or found it to be untruthful and/or otherwise unreliable, it did not need to go on to determine any motive why she should have lied or cause for her reliability. Furthermore, with the burden of proof being upon the GMC, it was not for Dr Hilal to demonstrate any motive for Ms B to lie. In any event, he could not necessarily be expected to know whether Ms B bore him a grudge or had some other reason to make a false allegation. However, in considering whether Ms B had lied, the Tribunal considered it relevant to consider whether or not there was any obvious or apparent motive for Ms B to do so.

82. The Tribunal heard evidence from Ms B, supported by Ms J and Dr Hilal, that she was a bright and intelligent XXX who was engaged in her placement and was keen to learn. There was no apparent evidence of Ms B being otherwise troubled at the time or having any reason to wish ill of Dr Hilal much less to fabricate a series of elaborate and serious false allegations. On Dr Hilal's account, Ms B appeared to like him and was, he believed, sexually interested in him. Although Dr Hilal's evidence was that he had not responded to what he considered to be Ms B's (sexual) advances, neither had he remonstrated with her or reported her behaviour towards him to anyone else so as to cause her to resent him. At its highest, all Dr Hilal had done was ask Ms B to stop when she had started massaging his shoulders. On his account, he had remained on good terms with Ms B throughout and up until his last meeting with her on

15/16 August 2019 (Dr Hilal's case was that the physical examination had occurred on 15 August).

83. In these circumstances the Tribunal did not consider that there was any apparent reason for Ms B to make complaints to her partner, to colleagues, to the Trust and to the Police other than because they were true.

84. It was submitted on Dr Hilal's behalf that such false accusations were 'easy' to make. The Tribunal considered that there might be circumstances where this might be said to be true. However, the Tribunal considered that in the circumstances of this case it would not have been 'easy' for Ms B. She was a relatively young female XXX embarking upon her first XXX placement, in a unit new to her, and where she was working with more senior colleagues whom she had only recently met. The Tribunal accepted Ms B's evidence, supported by Mr D, that it was in these circumstances, and her uncertainty as to what to do, which had prevented her from raising her concerns about Dr Hilal, a senior doctor on the unit, sooner.

85. The Tribunal also considered Ms B's oral evidence about how she had felt at the relevant time and which led the Tribunal to conclude that she had not made her complaints with any degree of enthusiasm and was initially reluctant to raise concerns about his conduct. The Tribunal also accepted Ms B's account, supported by Mr D, that initially she had sought to persuade herself that she had misinterpreted events rather than having to make a complaint against a senior doctor when she was a junior XXX.

#### Dr Hilal's Evidence

86. Dr Hilal broadly denied the allegations in his written statement which largely consisted of denials of specific allegations and did not provide a detailed account of events. The Tribunal only had this statement dated 9 March 2023 together with a short supplemental statement dated 30 March and Dr Hilal's oral evidence. This meant that the Tribunal had to rely heavily upon evidence adduced orally.

87. In cross-examination Dr Hilal indicated for the first time that he had believed Ms B was sexually interested in him and was trying to 'tempt him' into touching her breasts. As per his written statement set out above, Dr Hilal stated that he felt uncomfortable when Ms B started massaging his neck and shoulders in the kitchen and asked her to stop. His oral evidence was that at this point it occurred to him that she had a sexual interest in him. In his oral evidence he went on to state of the physical examination that "...the examination terminated when I felt it wasn't going in the direction of an examination." When asked what

he meant by that he responded *“When I felt that Miss B was tempting me to touch her breast.”*

88. This assertion had not previously been made either in his earlier statements and neither had it been put to Ms B during her cross-examination – a cross examination that the Tribunal had noted had been skilful, detailed and thorough. The Tribunal found it surprising that Dr Hilal would suggest this for the first time during cross-examination. If this was an accurate reflection of events as Dr Hilal recalled them, the Tribunal would have expected this to be referred to in his statements and not to emerge for the first time during cross examination.

89. The Tribunal did not accept Dr Hilal’s evidence in relation to this issue and, in the light of the evidence of Ms B and others, the Tribunal did not consider it to be credible. The Tribunal did not accept that it was likely that Ms B would have made such advances to Dr Hilal in the circumstances that existed at that time and it was a suggestion made by Dr Hilal that was wholly unsupported by any other evidence. Dr Hilal accepted that at no time had he raised, or mentioned, Ms B’s alleged sexual advances towards him. The Tribunal, in rejecting Dr Hilal’s evidence in this regard, considered that its conclusion on this point had a bearing on Dr Hilal’s credibility generally.


90. Additionally, the Tribunal found it striking that on other occasions Dr Hilal made assertions that had not been foreshadowed in either his witness statements or which had been put to Ms B by his counsel or dealt with in examination in chief. Such examples were in relation to the WhatsApp text messages which he admitted sending. In his oral evidence, Dr Hilal initially stated that the reason he obtained Ms B’s personal details was in order to contact her on Facebook and WhatsApp to help her find groups in connection with guitar playing. However, his WhatsApp message did not refer to this at all. He also stated that this message, sent just before midnight, had been a message which Ms B would have been expecting because earlier that day she had told him on three occasions that she had a close friend who was travelling to China and that she was upset and going to miss them. He said that in response he had told Ms B that he would check on her later and to which he said she had replied *“ok”*. This assertion was not put to Ms B in cross-examination, and furthermore, the content of the WhatsApp message sent contained nothing in relation to his enquiring how Ms B was feeling.

91. In assessing Dr Hilal’s credibility generally, the Tribunal had regard to Dr Hilal’s previous good character and that he was without any criminal convictions or regulatory findings against him.

92. Further, the Tribunal had regard to the character evidence from colleagues called on behalf of Dr Hilal and which it accepted. This evidence did not go directly to the allegations but demonstrated that his colleagues held Dr Hilal in high regard and that they did not consider he was of a character to behave in an unprofessional way. However, a number of these witnesses did not appear to be aware of the full Allegation or that Dr Hilal had in these proceedings admitted to some matters that he accepted were inappropriate and/or unprofessional, before making their statements.

93. Furthermore, whilst the Tribunal acknowledged that Dr Hilal was a person of good character, and took this into account in his favour, the Tribunal also bore in mind that Dr Hilal had admitted in these proceedings that his conduct was inappropriate and unprofessional in regard to aspects of his physical examination of Ms B when he touched her neck, collar bones and armpits. He also accepted that he had sent Ms B a WhatsApp message at 23:39 hours on 8 August 2019. The message was:

*Hello [Ms B]*

*I guess you'll be asleep  now*

*I slept like a baby and just woke up*

*Phew*

*Will be a long night.*

*Speak to you soon*                      23:39

94. The Tribunal readily accepted that most doctors of good character in Dr Hilal's position do not act in the manner alleged in this case, and the Tribunal had regard to what might be said to be the inherent improbability of Dr Hilal having acted in the manner alleged. However, it did not consider that Dr Hilal's alleged conduct was any more improbable than the relative improbability that Ms B, XXX on her first placement, would, for no obvious reason, invent a series of elaborate lies against a senior doctor working within the department, and in circumstances where she would have only have known him from having been on duty with him during a maximum of four shifts (both parties agreed that it could not have been more) over a period of less than three weeks.

95. For the reasons outlined above, the Tribunal considered that where there were significant conflicts in the accounts of Ms B and Dr Hilal, it preferred the account of Ms B.

96. The Tribunal was cautious not to read too much into the apparent demeanour of the witnesses, but thought it right to record that it appeared that both Ms A and Ms B were visibly affected by their recollection of events, and did not detect any evidence to suggest that this was anything other than genuine or that they were seeking to exaggerate events.

97. Having outlined the Tribunal's conclusions with regard to the truthfulness and/or reliability of Ms B's and Dr Hilal's respective accounts the Tribunal's conclusions in respect of the numerous specific allegations are set out below.

## Paragraph 2

98. The Tribunal considered that it was unlikely that this was an allegation that Ms B would invent. As previously observed, her partner at the time had confirmed that Ms B had complained about Dr Hilal's *'overfriendly'* behaviour towards her at an early stage. He responded by suggesting she monitor the situation.

99. Although there was no independent evidence supporting Ms B's account, the Tribunal noted that from an early stage she was consistent in her description of these events, both in her original witness statement and also in her statements in the Trust investigation and to the Police. For the reasons previously outlined the Tribunal found Ms B's account to be more probable.

100. Accordingly, the Tribunal found this paragraph of the Allegation proved.

## Paragraph 3

### 3(a)

101. The Tribunal noted that Dr Hilal denied these events in his witness statement, stating that *"I would not have made such an offer and then rescinded it. I often made an open invitation for people to join me in my clinic ...."* and he denied what he was alleged to have said at paragraphs 3(b)&(c). In his oral evidence, Dr Hilal stated that Ms C did not attend with Ms B as, unlike Ms B, she was more interested in her other XXX duties and not the clinical aspects of Dr Hilal's work. He accepted that for this reason he had seen Ms B alone without Ms C.

102. The Tribunal did not receive evidence from Ms C, but found Dr Hilal's explanation as to why she did not attend with Ms B plausible. Ms B clearly formed the view that there was



deliberate motivation on the part of Dr Hilal, but in the Tribunal’s judgement, she may have been mistaken in this regard and Dr Hilal’s explanation was equally plausible. Therefore, it concluded that on the balance of probabilities this paragraph was not proved.

3(b)&(c)

103. For the reasons set out above, the Tribunal preferred Ms B’s evidence in this regard and determined that Dr Hilal had said words to the effect of those set out in the Allegation and found these paragraphs proved.

**Paragraph 4**

4(a)

104. Dr Hilal admitted this paragraph of the Allegation, which accordingly the Tribunal found proved.

4(b)

105. In his witness statement, Dr Hilal stated that *“I think B sent me a friend request. She did provide me with details of her Facebook account. This was in the context of a conversation about guitar music. She wished to learn the guitar but was finding it difficult because XXX. She explained that she used her middle name rather than first name for the purpose of her Facebook account. I believe she wrote down her Facebook contact and telephone number on a Post-it note at this time.”* Dr Hilal reiterated this account during his oral evidence.

106. Ms B’s witness statement references this event as *“Dr Hilal also requested my friendship through Facebook, and I found this concerning as I had not given him any of my details to find me on there.”*

107. There was no dispute that Ms B and Dr Hilal had become Facebook friends. The Tribunal did not accept Dr Hilal’s account, preferring the evidence of Ms B that at an early stage she had received a friend request which she had accepted, although she regretted having done so shortly afterwards and later deleted him as a friend. The Tribunal found Ms B’s evidence to be more credible for the reasons set out above and considered it less likely that Ms B would, given her early concerns about Dr Hilal, have suggested they become Facebook friends.

108. Accordingly, the Tribunal found this paragraph of the Allegation proved.

4(c)

109. The Tribunal considered whether Ms B had asked Dr Hilal not to contact her outside of work prior to the communications at 4(a) & (b). Dr Hilal's evidence was that he did not believe that they had a conversation of this nature, whereas the evidence of Ms B was that she had specifically told Dr Hilal that she was not comfortable with him contacting her outside of work prior to the receipt of the WhatsApp message.

110. The Tribunal heard evidence that although Ms B felt uncomfortable with Dr Hilal, she would try to be polite and amicable in her interactions with him. It was following the WhatsApp message that she began to raise the issue with other people at work. Indeed, the Tribunal accepted that she had raised her concerns with Ms G concerning Dr Hilal's messaging at a relatively early stage.

111. The Tribunal considered that Ms B was consistent on this point throughout her accounts, including in her first written statement of events, provided to the Trust investigation on 29 August 2019, where she stated: *"When I was in the corridor JH came right over to me and asked me whether I would be free for a call tonight. I told him no, and that I was not comfortable with him contacting me outside of work. I told him that I would be busy. [Dr Hilal] told me that there was no need to be rude as he only wanted to talk about his research study and I told him to just speak to me in work about it."*

112. The Tribunal concluded that in light of the near contemporaneous and consistent accounts of this conversation from Ms B and her complaint to Ms G regarding Dr Hilal's messaging, this conversation, more likely than not, did occur. Accordingly, it found this paragraph of the Allegation proved.

**Paragraph 5**

113. In light of all the evidence, the Tribunal was satisfied that the incident alleged occurred on or around 15 August 2019. The Tribunal considered that Mr D, in suggesting this occurred around 7 August 2019, was in error as to the date. The reason the Tribunal reached this conclusion was that it was undoubtedly 8 August 2019 on which Dr Hilal sent the WhatsApp message to Ms B. This was a Thursday, and he would not have worked with her again until the following Thursday (15 August) as per ordinary working patterns.

114. The first time Mr D was asked to recollect the exact date was eight months after the events and he confirmed that he made no previous notes about it.

115. Dr Hilal's account denied the entirety of this paragraph of the Allegation but asserted that following the physical examination at paragraph 7 he went into the kitchen to make tea, Ms B followed him in and she proceeded to massage his neck and shoulders, which he had told her to stop. The Tribunal did not accept this account and found Dr Hilal's explanation inherently unlikely given its conclusion that up until this time Dr Hilal's attentions towards Ms B had not been welcomed by her and she had, by this stage, begun to feel very awkward and concerned about his behaviour towards her, as she had expressed to others. All these sub-paragraphs (a-g) were referred to in Ms B's initial statement in August 2019 and were confirmed subsequently in evidence. The exact time and sequence of these events was not entirely clear. However, as previously stated, Ms F said that on an occasion, she had seen Ms B discomfited in the presence of Dr Hilal, and that Ms B asked if she could work elsewhere, as stated in her written statement:

*"I was a XXX at the time and as such worked alongside [Ms B], who was a XXX. It was sometime in 2019, I was in the staff room and [Ms B] had asked me whether she could spend the day in the XXX office with me. I remember she said words to the effect of 'I'm getting sick of him', referring to Dr Hilal. I was happy for her to spend the day in the office, and so she sat behind me."*

116. The Tribunal determined that Ms F's evidence supported the suggestion that Dr Hilal's attentions towards Ms B had discomfited her and the Tribunal considered the account given by Ms B in relation to this paragraph more likely and found it proved in its entirety.

## Paragraph 6

117. These allegations were confirmed repeatedly throughout Ms B's statements to the Trust, and police.

### 6(a)-(b)

118. For the reasons set out above, the Tribunal preferred the account of Ms B in regard to these events and accordingly found these paragraphs of the Allegation proved.

### 6(c)-(d)

119. Dr Hilal admitted these sub-paragraphs of the Allegation, which the Tribunal accordingly found proved.

6(e)

120. Dr Hilal stated that he suggested that Ms B's blood sugar levels were low and that bloods should be taken, but denied the rest of this paragraph, whereas the account of Ms B is that he accompanied her and himself took the blood test.

121. The Tribunal noted that it was common ground between the parties that on the day of this incident Ms B had been feeling unwell, and this was supported by the evidence of Mr D.

122. The Tribunal concluded that Dr Hilal had clearly initiated the taking of bloods and the disputed fact was as to what Dr Hilal said and did at this time. Given the consistency of Ms B's account of these events and that the Tribunal attributed more weight and credibility to her account for the reasons set out above, the Tribunal found this paragraph of the Allegation proved.

6(f)

123. Dr Hilal accepted he had asked Ms B some questions regarding menstruation but denied asking the questions otherwise alleged. He stated that it had been Ms B who had said to him that she had experienced pain in her breast and that she was concerned that it might be something '*sinister*'. Ms B had described the questions asked by Dr Hilal in her statements of 29 August 2019 and 30 September 2019 in which she said he enquired about such sensitive matters as her '*sex drive*'. Ms B said that it had been Dr Hilal who had enquired of her as to whether she had experienced pain in her breasts prior to examining her. The Tribunal preferred Ms B's account in this regard and found paragraph 6(f) proved in its entirety.

**Paragraph 7**

124. As already stated, the Tribunal determined the date on which Dr Hilal conducted the physical examination of Ms B was likely on or about 16 August, most probably on 16 August.

7(a)(i)-(iii)

125. Dr Hilal admitted these paragraphs of the Allegation, which accordingly the Tribunal found proved.

7(a)(iv-viii)

126. The Tribunal considered Dr Hilal's account to be unclear as to why he felt it necessary or appropriate to conduct a physical examination of any sort. The Tribunal accepted Ms B's evidence that, beyond indicating to Dr Hilal that she was feeling unwell, she had not invited him to conduct any sort of examination. It found it improbable that she would ask him to do so given the circumstances at the time and her attitude towards, and concerns about, Dr Hilal's behaviour towards her. Furthermore, the Tribunal considered it unlikely, and could not understand why Dr Hilal found it necessary to conduct the examination he accepted he did which included finger prick blood test, oxygen saturation test, blood pressure, pulse, temperature (by putting his hand on her forehead), looking down Ms B's throat with a torch, feeling her neck, collarbone and armpits for enlarged nodes, and on his account, demonstrating how to perform a breast examination. Ms B stated that she had told him that she had booked an appointment to see her GP in the next few days.

127. The Tribunal found it particularly surprising that Dr Hilal apparently considered it appropriate in these circumstances to enquire about whether Ms B, a woman XXX, knew how to conduct a breast examination on herself and after, as he asserted, she had "*clumsily*" attempted to do so in front of him, he had then felt the need to demonstrate with his hands how such an examination should be conducted.

128. The Tribunal had considered Dr Hilal's suggestion that Ms B had told him that she had discomfort in her right breast and that she was concerned that it might be something '*sinister*'. However, the Tribunal did not accept that Ms B had said anything to this effect and considered that had she done so, Dr Hilal's response would most probably have been to tell her to seek a medical examination as a matter of urgency. Dr Hilal, when challenged in this regard, said that this is what he had done, and that he had told Ms B that there was a women's health centre XXX and that she should go here. The Tribunal had regard to the fact that Dr Hilal had referred to this in his statement for these proceedings, and orally in evidence, that this advice had been given to Ms B. However, it was not put to Ms B. The Tribunal considered that had this been said by Dr Hilal it would have been unnecessary either for him to conduct a breast examination himself as alleged by Ms B or for him to demonstrate to Ms B how to conduct one on herself as he said he had done.

129. Indeed, the Tribunal considered that the most likely reason for Dr Hilal’s extensive enquiry as to Ms B’s state of health and physical examination of Ms B was to engineer a situation where he could interact with her in an intimate way.

130. For these reasons and for the reasons previously set out, the Tribunal preferred the account of Ms B and found these paragraphs of the Allegation proved.

131. Paragraph 7(a)(vii) had been dismissed following a successful application at the conclusion of the GMC’s case, pursuant to Rule 17(2)(g), for the reasons set out in Annex B.

7(ix)

132. The Tribunal was satisfied that given her attitude towards Dr Hilal at the relevant time, Ms B would not have, and did not consent to Dr Hilal touching her for the purposes of any physical examination. The Tribunal accepted, as Ms B had described in her evidence, that she had felt uncomfortable with what Dr Hilal was doing and, at the time of the breast examination she was *‘frozen in fear’*. It accepted that that she may not have articulated at this time that she did not consent to the examination. However, the Tribunal accepted Ms B’s description of the examination and considered that it demonstrated that, taken at its highest, she had acquiesced in it. This is not consent, which Dr Hilal should have obtained before conducting any examination of her. She was clear in her evidence that she had said that there was no need to touch her breasts and she had done nothing to invite such an examination. In these circumstances, the Tribunal found that she did not consent and did not give Dr Hilal any reason to believe that she had given informed consent to any physical examination.

7(x)

133. The Tribunal noted that whilst Dr Hilal, in his written statement, acknowledged that he had not offered Ms B a chaperone, this did not constitute an admission of a *‘failure’* to offer a chaperone. Had the examination been as limited to that advanced by Dr Hilal, i.e. one which did not involve examination of Ms B’s breasts, then this would not have been a failure, because there would have been no *‘intimate’* examination which pursuant to GMP required him to offer a chaperone. However, given its findings in relation to paragraph 7(v) – (viii) above, it determined that Dr Hilal had conducted an examination that was intimate and therefore he should have offered a chaperone. Accordingly, the Tribunal found this paragraph proved.

7(b)

134. The Tribunal concluded that the physical examination which Dr Hilal admitted or that the Tribunal ultimately found proved had not been requested, was not necessary and therefore was not clinically indicated. Dr Hilal had been told that Ms B already had an appointment to see her GP. However, if Dr Hilal believed there was a need for Ms B to be seen sooner either by her GP or the Primary Health Centre for Women XXX, then he would have advised her in those terms and there would be no point in him conducting the examination which he did, and she would need to be seen by other healthcare professionals in any event.

135. Accordingly, the Tribunal found this paragraph of the Allegation proved.

#### Paragraph 8

##### 8(a)

136. There was a dispute between parties as to how Dr Hilal got Ms B's mobile number, as set out above. The Tribunal accepted Ms B's account that at or around the time of her starting her placement it was necessary for her to be added to the computer network at XXX and she thought Ms J might need her mobile number, so she wrote it down. Ms B emphatically denied that she had written the note for Dr Hilal or given it to him; she stated that she had left it in Ms J's office.

137. Again, as set out above, the Tribunal found her account that, on Dr Hilal's insistence, she had put her number into Dr Hilal's phone more likely. Furthermore, because the number on the post-it note had been crossed out, the Tribunal considered Dr Hilal's account less likely as it could not identify a reason why he would cross out the number she had just given him, while still retaining the note. Ms B's evidence was that she had believed that Ms J might need her mobile number, but in fact Ms J had not and had crossed the number out. Ms J did not recall this incident but stated that she would never need a XXX personal mobile number. However, the Tribunal did not consider this particularly significant as there was no reason why she would remember such an event given the passage of time, whereas Ms B had more cause to remember.

138. The Tribunal further noted that Ms B had consistently maintained her account that she was not happy about giving her mobile number to Dr Hilal which he had said he wanted so that he could contact her in relation to research that he was conducting. He denied this

and said that he was not conducting any research at that time. He stated that the obtaining of her personal details was to help her in respect of guitar playing XXX.

139. In her written statement to the Trust, Ms B stated that *“He continued to insist that I enter my number, I felt very pressured but did not want to cause any conflicts as I was aware that I had to spend a number of weeks there for the duration of my placement.”*

140. Furthermore, the Tribunal considered that this would have been an unnecessary allegation for Ms B to make if untrue, as she could equally have said that Dr Hilal insisted she write it down on a post-it note. Conversely, the Tribunal considered that if Ms B’s explanation as to the circumstances of how Dr Hilal obtained her number were true, it would have been memorable to her.

141. Whilst the Tribunal accepted that Dr Hilal had not been conducting research this time, it considered it more likely that he gave this reason to Ms B as a means of obtaining her telephone number, which the Tribunal considered, as Dr Hilal would have known, she would have otherwise been unwilling to give. He did contact her on that number that same day and the message was neither about guitars or research.

142. Accordingly, the Tribunal found this paragraph of the Allegation proved.

#### 8(b)-(f)

143. These paragraphs of the Allegation describe a number of the types of things Ms B described Dr Hilal saying to her, which were described in different terms on different occasions, but were all of similar nature and entirely in keeping with the manner in which Ms B describes Dr Hilal’s interactions with her. The Tribunal was satisfied that on the balance of probabilities Dr Hilal had said the words alleged, or words to that effect and preferred Ms B’s evidence in this regard.

144. The Tribunal considered that some of the things said, when taken in isolation, might be considered innocuous and there was no obvious reason why Ms B should invent these statements. Unless, of course, Ms B was constructing a series of lies, with a view to presenting an entirely false and malicious allegation against Dr Hilal. The Tribunal considered such a scenario as being highly unlikely.

145. The Tribunal found these paragraphs of the Allegation proved.



8(g)

146. The Tribunal preferred the account of Ms B as set out in her first statement, statement of 29 August 2019:

*“The following week I found Dr Hilal to be over friendly as he attempted to hug me and told me that I would be going to his room quite a lot as he had a lot to discuss with me. At the time I thought that would be great as it was an opportunity to learn more and that he was a professional.”*

147. The Tribunal therefore found this paragraph proved.

8(h)

148. The Tribunal did not doubt that Ms B’s perception was that Dr Hilal would prioritise her over XXX, and that this had caused delay, but the Tribunal had insufficient evidence or insight into the workings of XXX to state that such a delay had in fact been caused as alleged in the Allegation. The Tribunal heard evidence from Ms B that there had been comment by XXX to the effect that Ms B was being over prioritised by Dr Hilal and that this was having an impact on other people’s work within the unit. However, the Tribunal was not satisfied that Ms B’s perception, or that of anyone else at the unit necessarily reflected the reality, and it had heard no direct evidence that the working processes at XXX were delayed or any evidence from which this could be inferred.

149. Accordingly, the Tribunal found this paragraph of the Allegation not proved.

8(i)

150. The Tribunal accepted Ms B’s evidence that Dr Hilal was in the habit of staying at XXX beyond the end of his shift and at these times he would pay her attention and talk to her. However, it was not satisfied that the evidence demonstrated that the sole reason for Dr Hilal staying beyond his shift was to talk to Ms B and that it was not for the purposes of work which he would often, as he explained in evidence, have at the end of the working day.

151. Accordingly, the Tribunal found this paragraph of the Allegation not proved.

8(i)

152. For the reasons previously set out, the Tribunal preferred the evidence of Ms B in relation to these disputed events, and accordingly found this paragraph of the Allegation proved.

8(k)-(u)

153. The events set out in these paragraphs, as described by Ms B, were not directly corroborated by anyone else. The Tribunal considered, as with a number of other allegations under paragraph 8, that they relied almost entirely on the evidence of Ms B and the Tribunal's decisions would follow the view that they took as to the credibility and/or reliability of Ms B's evidence, as compared to that of Dr Hilal. In this regard the Tribunal again preferred the evidence of Ms B as it considered that the allegations she made were entirely in keeping with Dr Hilal's behaviour as described by Ms B generally. The Tribunal noted that it had been advanced by Dr Hilal that his alleged statements and behaviour were likely to have been made in the presence and hearing of other members of staff or otherwise would not have escaped their attention had they occurred. The Tribunal did not accept this position. It determined that many of the incidents alleged by Ms B occurred when others were not present or were said out of earshot. Furthermore, the Tribunal considered that some of the allegations of Ms B, when taken in isolation, would not have necessarily been regarded as remarkable or out of place had they been seen and/or overheard.

154. Accordingly, the Tribunal found these paragraphs of the Allegation proved.

**Paragraph 9**

Ms A (Paragraph 1)

9(a)

155. Whilst the Tribunal acknowledged that there might be circumstances in which the proven behaviour might be regarded as not inappropriate between close colleagues, it bore in mind that Ms A was a XXX on her first placement at XXX and Dr Hilal was an older, senior male doctor aged 57. The Tribunal was satisfied that there had been no indication by Ms A that his proven physical contact would be welcomed. They were not close as colleagues, had not worked together for very long, and the Tribunal considered that Ms A presented as a somewhat shy and diffident person in giving evidence. It had no reason to suppose that she would have been any less so in 2019 when still a XXX.

156. The Tribunal determined that such unsolicited physical contact was likely to make Ms A feel uncomfortable and awkward, as stated throughout her evidence. The Tribunal was of the opinion that a reasonably competent medical practitioner in Dr Hilal's position should have been aware and sensitive as to the way in which his actions would potentially impact on someone in Ms A's position. The Tribunal therefore concluded that Dr Hilal's actions at paragraphs 1(a) & (b) were both inappropriate and unprofessional.

9(b)

157. The Tribunal found no evidence of a sexual motive to Dr Hilal's actions as found proved at paragraphs 1(a)&(b), and nothing he did in relation to Ms A according to her description of Dr Hilal's physical contact with her could be regarded as intrinsically sexual. Dr Hilal may have made Ms A feel awkward or uncomfortable but there was no evidence to suggest that their interactions were carried out in the pursuit of sexual gratification or the pursuit of a sexual relationship by Dr Hilal.

158. Furthermore, the Tribunal noted that Ms A's concerns about Dr Hilal's behaviour were heightened upon hearing the account of Ms B, but, at the time of the events, she had not been sufficiently concerned to make any formal complaint. Neither had her experience discouraged her from returning to XXX for the second part of her placement, or again when she qualified.

159. In respect of Dr Hilal's interpretation of their relationship, the Tribunal considered it possible that a friendly or complimentary comment made in passing by Ms A might have been misread by Dr Hilal and this had led him to become overfamiliar with her. In these circumstances the Tribunal concluded that Dr Hilal's actions were insensitive but not sexually motivated.

160. The Tribunal therefore found paragraph 9(b) not proved in respect of paragraph 1.

Ms B (Paragraphs 2-8)

161. The Tribunal considered the submission made on behalf of the GMC that Dr Hilal's pattern of conduct had the characteristic of being plausibly deniable, but when taken as a whole could be seen as being inappropriate and/or unprofessional and sexually motivated. The GMC case was that from the outset, Dr Hilal set about a deliberate course of predatory behaviour towards Ms B for a sexual motive. It was submitted that this behaviour demonstrated an attempt to wear Ms B down and take advantage of her vulnerability and

her desire to do well in her placement, exploiting the hierarchical distance between them. It was in terms submitted that at an early stage of meeting, Ms B would have appeared to Dr Hilal to be shy, or potentially malleable, lacking in confidence, and therefore unlikely to be assertive.

162. The Tribunal found proved that the majority of the proven allegations relating to Ms B were inappropriate/unprofessional and sexually motivated as set out below. However, the Tribunal did not consider that the GMC's overall characterisation of Dr Hilal's behaviour as being '*predatory*' and '*grooming*' from the very outset had been established on the evidence. The Tribunal considered it just as likely that Dr Hilal, from an early stage, had been sexually attracted to Ms B and had consequently pursued Ms B in a crass and insensitive way but which had ultimately escalated to the point in which he had, under the pretext of performing a medical examination, felt her breasts in circumstances that amounted to a sexual assault.

163. The Tribunal's determination in respect of each of the relevant paragraphs concerning paragraph 9 of the Allegation were as follows;

#### Paragraph 2

164. In respect of paragraphs 2(a)&(b), the Tribunal determined that the circumstances appeared to be that Dr Hilal was looking at a computer screen together with Ms B and it would not have been unreasonable for him to be in very close proximity to her. The Tribunal accepted that Ms B perceived this to be an invasion of her personal space and may have been made to feel uncomfortable as a result. However, in the circumstances the Tribunal did not consider that Dr Hilal's actions at this time were necessarily as a result of a desire to be close to Ms B, or to '*invade*' her personal space. Therefore the Tribunal was not satisfied, on the balance of probabilities, that his conduct was inappropriate and/or unprofessional, or sexually motivated.

165. In respect of paragraphs 2(c)-(e), the Tribunal noted the opinion of the expert witness, Dr Q, that this was inappropriate. The Tribunal agreed with Dr Q and would have concluded that this behaviour was inappropriate and unprofessional in any event, in particular, because of the power/hierarchical imbalance between Dr Hilal and Ms B, a young XXX. The remarks were wholly inappropriate whether in the workplace or elsewhere. In the light of the Tribunal's conclusions in relation to other paragraphs, it considered Dr Hilal's enquiry as to whether Ms B was '*accommodating*' or how '*tolerant*' she was might well have been sexually motivated. Although it considered this as a possibility, in the absence of more detailed evidence of the context in which this had been said, it was unable to satisfy itself

that there was, on the balance of probabilities, a sexual motivation, and accordingly it found these paragraphs of the Allegation not proved with regard to paragraph 9(b).

### Paragraph 3

166. Having found paragraph 3(a) of the Allegation not proved, the Tribunal considered inappropriateness/unprofessionalism and sexual motivation in respect of paragraphs 3(b)&(c).

167. It considered that the sort of words used by Dr Hilal were clearly inappropriate and unprofessional, particularly given the circumstances and power differential between the two.

168. The Tribunal accepted that Ms B's perception was that these were sexually motivated, particularly in light of her ongoing concerns and how she probably viewed these actions in hindsight, but the Tribunal was not satisfied that there was sufficient evidence to demonstrate that they were necessarily sexually motivated. Accordingly it found paragraph 9(b) not proved in respect of paragraph 3.

### Paragraph 4

#### 4(a)

169. The Tribunal considered that the WhatsApp message sent by Dr Hilal was not work-related and both the time and contents of the message, sent shortly before midnight, were inappropriate and unprofessional.

170. In regard to the motivation for sending this message, Dr Hilal gave two reasons why he wanted Ms B's number/sent her a message. Firstly he stated this was in relation to guitar lessons, then because Ms B had expressed distress, on at least three occasions the same day, at the prospect of a close friend moving to China. The contents of the message did not relate in any way to either of those reasons. The Tribunal rejected Dr Hilal's evidence in this respect. The Tribunal inferred that given the time the message was sent and its content, there was no reasonable explanation as to why he sent it other than a desire on Dr Hilal's to initiate a level of intimacy with Ms B with a view to pursuing a sexual relationship with her in the future. Mr Barton characterised the contents of this text as being '*creepy*', a sentiment with which the Tribunal agreed.

#### 4(b)

171. The Tribunal heard evidence that there were social media/Facebook interactions between Dr Hilal and other colleagues at XXX. The Tribunal also further noted that initially at least, when Ms B received the friend request she accepted it (although regretted this subsequently). In these circumstances, the Tribunal was not satisfied that on the balance of probabilities the friend request was inappropriate or unprofessional, nor that Dr Hilal's actions were sexually motivated in this respect.

#### 4(c)

172. The Tribunal was satisfied that Dr Hilal contacting Ms B outside of work when, as it had accepted, he had been specifically asked by her not to do so was inappropriate and unprofessional. It also concluded that his motivation for doing so was his desire to pursue an intimate and sexual relationship with Ms B. The Tribunal considered that there was a real distinction between being Facebook '*friends*' and contact via messaging, when having been specifically asked not to.

#### Paragraph 5

173. The Tribunal determined that the allegations found proved in respect of paragraph 5 were inappropriate and/or unprofessional.

174. The Tribunal were satisfied as to sexual motivation with regard to paragraphs 5(e), (f) and (g). The Tribunal did not consider that there were any circumstances in which it would have been appropriate for Dr Hilal to seek to have physical contact with Ms B by massaging her and, in the absence any other reasonable explanation for his conduct, inferred that it was sexually motivated and was with a view either for sexual gratification or the pursuit of a sexual relationship in the future.

175. Whilst the Tribunal considered that the matters at 5(a)-(d) were not overtly sexual, it concluded that they demonstrated deliberate behaviour towards Ms B intended to put pressure on Ms B and with a view to advancing Dr Hilal's pursuit of an intimate and sexual relationship with her.

176. Accordingly, the Tribunal found paragraphs 9(a)&(b) proved in respect of paragraph 5.

#### Paragraph 6

6(a)(i)

177. The Tribunal considered that Dr Hilal’s personal comments about the XXX and his mention of taking her to Sudan, in the absence of any further evidence of context, might very well have been entirely innocuous remark by Dr Hilal and there was nothing intrinsically sexual about it. In these circumstances the Tribunal determined that it was not satisfied that this paragraph had been proved.

6(a)(ii)-6(f)

178. The Tribunal considered that Dr Hilal’s actions at these paragraphs demonstrated that Dr Hilal was engineering a situation whereby he conducted an unnecessary and inappropriate physical examination and investigation of Ms B when she had not invited such investigation or examination beyond stating that she felt unwell. Having considered the events found proved in their totality, the Tribunal concluded that they were not an innocuous or genuine attempt on Dr Hilal’s part to assist a colleague in relation to a health concern. Rather they demonstrated his ongoing sexual interest in her at that time, and resulted in him ultimately touching her in circumstances that amounted to a sexual assault. Dr Hilal accepts that this was not an urgent medical issue and the Tribunal could find no other likely reason why he examined Ms B in the way that he did other than a sexually motivated one, especially with Ms B’s pending GP appointment and, as Dr Hilal suggested, the presence of a women’s health centre XXX. Further, when Ms B’s blood and other tests did not show any issues or particular health concerns, urgent or otherwise, Dr Hilal went on to ask further unnecessary intimate questions and examinations.

179. Accordingly, the Tribunal found paragraphs 9(a)&(b) proved in respect of paragraph 6.

Paragraph 7

180. For the same reasons as set out above, the Tribunal found that for those sub-paragraphs of paragraph 7 which it found proved, Dr Hilal’s actions were inappropriate, unprofessional and sexually motivated.

Paragraph 8

181. The Tribunal found the entirety of the proven conduct at paragraph 8 to be inappropriate and unprofessional, save for 8(b). With regard to 8(b) the Tribunal did not

consider on the evidence that this was proven to be either inappropriate/unprofessional, or sexually motivated.

182. The Tribunal went on to consider whether any or all of these paragraphs were sexually motivated. The Tribunal considered that some of the matters alleged in paragraph 8, when considered in isolation, might be regarded as innocuous. However, the Tribunal determined that those matters at paragraph 8 which it had found proved, were, when taken as a whole, evidence of, and illustrated, a pattern of behaviour, the purpose of which was so that Dr Hilal could develop an intimate and future sexual relationship with Ms B.

183. The Tribunal concluded that over a relatively short period of time, Dr Hilal subjected Ms B to unwanted attention in pursuit of a sexual relationship with her and, in relation to the incidents in which he had respectively massaged her and touched her breasts the Tribunal concluded that this was for the purpose of sexual gratification.

184. Accordingly, the Tribunal found paragraph 9(a) and (b) proved in respect of paragraph 8 except in relation to paragraph 8(b).

### The Tribunal's Overall Determination on the Facts

185. The Tribunal has determined the facts as follows:

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

1. On one or more occasion during November 2018 to July 2019 whilst at work you:
  - a. placed your arm around the back of A's shoulders whilst alone with A;  
**Determined and found proved**
  - b. hugged A. **Determined and found proved**
2. On a date on or around 01 August 2019 whilst at work you:
  - a. squeezed into a small space in an office behind B's chair and the wall;  
**Determined and found proved**
  - b. leant over B and placed your hand onto the computer mouse;  
**Determined and found proved**



- c. said to B ‘you really suit XXX, you are a clever girl’, or words to that effect; **Determined and found proved**
  - d. asked B if she was an ‘accommodating person’, or words to that effect; **Determined and found proved**
  - e. asked how tolerant B was, or words to that effect. **Determined and found proved**
3. On a date on or around 08 August 2019 whilst at work you:
- a. asked B and C to come to your office, but subsequently changed your mind and asked B to come alone; **Not proved**
  - b. whilst in your office alone with B, told her she was the ‘perfect woman’, or words to that effect; **Determined and found proved**
  - c. whilst in your office alone with B, told her that she ‘looked young’ or words to that effect. **Determined and found proved**
4. On one or more occasions during August 2019 you:
- a. on 8 August 2019 sent a WhatsApp message to B at 23:39; **Admitted and found proved**
  - b. sent B a ‘friends request’ through Facebook; **Determined and found proved**
  - c. contacted B outside of work as set out in 4.a. and 4.b. above despite B asking you not to contact her outside of work. **Determined and found proved**
5. On a date on or around 15 August 2019 whilst at work you:
- a. followed B into the kitchen; **Determined and found proved**
  - b. asked B why she did not reply to your WhatsApp message as described at paragraph 4.a. sooner, or words to that effect; **Determined and found proved**

- c. told B you thought it was very rude that she had not replied to your WhatsApp message in paragraph 4.a. sooner, or words to that effect; **Determined and found proved**
  - d. told B that she should reply straight away to your messages next time, or words to that effect; **Determined and found proved**
  - e. stood next to B and:
    - i. told her that she looked tired, or words to that effect; and **Determined and found proved**
    - ii. said to B ‘I know what will wake you up’, or words to that effect; **Determined and found proved**
  - f. massaged B’s neck and shoulders; **Determined and found proved**
  - g. did not stop massaging B’s neck and shoulders when she said to you ‘can you not do that, I am okay’, or words to that effect. **Determined and found proved**
6. On a further occasion on a date on or ~~around~~ **about 15 16** August 2019 whilst at work you: **Amended under Rule 17(6)**
- a. told B whilst alone with her in your office that:
    - i. you would have loved to have taken her to Sudan, but that her XXX, or words to that effect; **Determined and found proved**
    - ii. she was very interesting to observe, as when she was uncomfortable she distracted herself, or words to that effect; **Determined and found proved**
  - b. asked B to remain in your office when she attempted to leave and told her that she looked unwell; **Determined and found proved**
  - c. suggested that B’s blood sugar levels were low; **Admitted and found proved**
  - d. suggested taking B’s bloods; **Admitted and found proved**
  - e. took B’s blood for testing; **Determined and found proved**

- f. returned to your office with B after having taken her blood and asked her questions about:
- i. her menstrual cycle; **Determined and found proved**
  - ii. her sex life; **Determined and found proved**
  - iii. her XXX; **Determined and found proved**
  - iv. whether B had experienced any pain in her breasts.  
**Determined and found proved**
7. On a ~~date on or about 15~~ **16** August 2019, you proceeded to conduct a physical examination of B: **Amended under Rule 17(6)**
- a. in which you:
- i. touched B’s neck; **Admitted and found proved**
  - ii. touched B’s collar bones; **Admitted and found proved**
  - iii. touched B’s armpits; **Admitted and found proved**
  - iv. did not respond when asked by B what you were doing and rolled your chair closer to her so that your legs were in between hers; **Determined and found proved**
  - v. touched B’s breasts; **Determined and found proved**
  - vi. stated that you could not feel properly as B had her bra on, or words to that effect; **Determined and found proved**
  - vii. ~~asked B to remove her clothing including her bra;~~ **Deleted under Rule 17(2)(g)**
  - viii. did not stop touching B’s breasts when B asked you to do so; **Determined and found proved**
  - ix. failed to obtain B’s consent to examine:
    - 1. her as set out at paragraph ~~67.a.i-67.a.iii~~; **Amended under Rule 17(6), Determined and found proved**

2. her breasts as set out at paragraph 6 7.a.v and 6 7.a.viii;  
**Amended under Rule 17(6), Determined and found proved**
- x. failed to offer B a chaperone; **Determined and found proved**
- b. which was not clinically indicated. **Determined and found proved**
8. On one or more occasion during August 2019 whilst at work you:
  - a. repeatedly asked B to place her personal mobile telephone number into your phone; **Determined and found proved**
  - b. requested B to come to your office to help you with your English for a presentation; **Determined and found proved**
  - c. asked B to help you study outside of working hours; **Determined and found proved**
  - d. told B that she was rude when she attempted to leave your office; **Determined and found proved**
  - e. told B that if she stayed in your office, her having attempted to leave, that you would sign her proficiency booklet, or words to that effect; **Determined and found proved**
  - f. would not sign the proficiency booklet when requested to do so by B and would state that B needed to spend more time with you on a one to one basis before you would sign, or words to that effect; **Determined and found proved**
  - g. attempted to hug B; **Determined and found proved**
  - h. would prioritise B over XXX, causing delay for the whole working day process; **Not proved**
  - i. stayed at work for hours after your shift had finished to talk to B; **Not proved**
  - j. whilst sitting right next to B;

- i. pressed your shoulders against B’s shoulders; **Determined and found proved**
  - ii. tapped B’s leg; **Determined and found proved**
  - iii. whispered in B’s ear; **Determined and found proved**
  - k. told B that ‘you had been watching her and that she was an interesting person’, or words to that effect; **Determined and found proved**
  - l. asked B if she was experimental, or words to that effect; **Determined and found proved**
  - m. told B not to be so rude, or words to that effect, when asked by B not to contact her outside of work, or words to that effect; **Determined and found proved**
  - n. asked to go to B’s house; **Determined and found proved**
  - o. asked B if her house was empty, or words to that effect, when asking to go to B’s house; **Determined and found proved**
  - p. asked B if her partner would be in, or words to that effect, when asking to go to B’s house; **Determined and found proved**
  - q. told B that you would love for her to meet your friends, as you had told them all about her, or words to that effect; **Determined and found proved**
  - r. blew kisses to B; **Determined and found proved**
  - s. told B she was beautiful; **Determined and found proved**
  - t. asked B if she was free to come to your house; **Determined and found proved**
  - u. sat very close to B when alone with her in your office; and **Determined and found proved**
    - i. moved away from B if people walked past or came into your office. **Determined and found proved**
9. Your conduct at paragraphs 1 to 8 inclusive was:

- a. inappropriate and/or unprofessional; **Admitted and found proved in respect of 7(a)(i)-(iii), Not proved in respect of paragraphs 2(a), 2(b), 3(a), 4(b), 6(a)(i), 8(b). Determined and found proved for all remaining paragraphs**
- b. sexually motivated. **Not proved in respect of paragraphs 1, 2, 3, 4(b), 6(a)(i), 8(b). Determined and found proved for all remaining paragraphs**

#### Determination on Impairment - 09/10/2023

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

#### The Evidence

187. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received further evidence as follows.

188. Dr Hilal provided a '*Reflective Statement*', dated 2 April 2023, and a '*Development & Restoration Plan*', dated 26 March 2023.

#### Submissions

189. On behalf of the GMC, Mr Barton submitted that the Tribunal's findings on facts reflect serious departures from fundamental tenets of the profession and paragraphs 36 and 65 of *Good Medical Practice* (2013 edition) ('GMP'), as set out below. He also drew the Tribunal's attention to paragraph 150 of the *Sanctions Guidance* (November 2020) ('SG') which states:

*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...*

190. Mr Barton submitted that the Tribunal found that Dr Hilal engaged in a campaign of inappropriate behaviour towards two different female XXX on work placements. He submitted that in relation to Ms A Dr Hilal's behaviour was found to be inappropriate and unprofessional, and that in relation to Ms B it was found to also be a pattern of sexually motivated behaviour which may have begun as merely inappropriate and unprofessional, but very quickly escalated into persistent and determined sexual harassment.

191. Mr Barton submitted that the target of this behaviour was a young woman who had just started her first work placement and not only was she vulnerable as a result of those circumstances, but also the obvious power imbalance between her and Dr Hilal. He submitted that the Tribunal may conclude that Dr Hilal targeted her after he identified her as someone who appeared quiet and passive, and who was without support from the other XXX and staff, noting that her XXX/supervisor was away on leave at the time and so she was more isolated. He submitted that this was predatory behaviour comprising sexually motivated communications and interactions, both inside and outside the workplace.

192. Mr Barton submitted that this behaviour culminated in a serious sexual assault in the course of an unwanted, unnecessary and inappropriate 'medical' examination, and he reminded the Tribunal of the distress that this caused to Ms B, and the evidence it had heard as to the state Ms B was in on the night when she told her partner about what had happened. He submitted that these actions breached the special position of trust that Dr Hilal occupied.

193. Mr Barton submitted that despite the documents relied on by Dr Hilal at the impairment stage, but which pre-dated the Tribunal's facts determination, in reality he has not demonstrated insight into his behaviour and that during his evidence he engaged in victim blaming, suggesting that Ms B was effectively a woman scorned, that she had engineered the examination in order to tempt him to touch her breasts and that she had then made a malicious complaint against him because he stopped her when Ms B had attempted to massage him. He submitted that the two documents provided not only pre-date the hearing, they do not reflect Dr Hilal's evidence to the Tribunal. He submitted that while Dr Hilal's reflective statement refers to developing insight, there is no reference to any acknowledgement of his sexually motivated behaviour.

194. Mr Barton submitted that Dr Hilal's fitness to practise is currently impaired by reason of misconduct and that in this case all three limbs of the overarching objective are engaged.

195. On behalf of Dr Hilal, Mr Colin submitted that the Tribunal has heard some evidence from Dr Hilal during the course of his oral evidence as to his insight, including references to a long period of reflection and also some acknowledgement of the impact on Ms A and Ms B. He submitted that the Tribunal has also been provided with Dr Hilal's reflective statement and development & restoration plan, which he accepted both pre-date the Tribunal's determination on the facts.

### The Relevant Legal Principles

196. 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.

197. 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 that the misconduct was serious and then whether the finding of that misconduct which was serious could lead to a finding of impairment.

198. The Tribunal must determine whether Dr Hilal's fitness to practise is impaired today, taking into account Dr Hilal's 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.

199. Whilst there is no statutory definition of impairment, the Tribunal is assisted by the guidance provided by Dame Janet Smith in the Fifth Shipman Report, as adopted by the High Court in *CHRE v NMC and Paula Grant [2011] EWHC 297 Admin*. The Tribunal noted that any of the following features are likely to be present when a doctor's fitness to practise is found to be impaired:

- 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 and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. *Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*



d. ...'

## The Tribunal's Determination on Impairment

### Misconduct

#### Ms A

200. The Tribunal first considered whether the facts which it found proved amounted to serious misconduct in relation to Ms A. In doing so it reminded itself of its findings that Dr Hilal's actions in respect of Ms A were both inappropriate and unprofessional, but not sexually motivated.

201. In doing so, the Tribunal also bore in mind GMP and the submission on behalf of the GMC that Dr Hilal's actions were in breach of paragraphs 36 and 65 of GMP, which state:

*36 You must treat colleagues fairly and with respect.*

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

202. The Tribunal considered that Dr Hilal's actions fell short of the standards expected of a practitioner, breaching the above paragraphs of GMP, and that as an experienced doctor it should have been obvious to Dr Hilal that such behaviour was likely to make colleagues, particularly junior colleagues, feel uncomfortable and awkward. Such behaviour is unacceptable and should not be repeated, and is conduct which Dr Hilal should reflect upon.

203. However, the Tribunal concluded that despite the crass and inappropriate nature of Dr Hilal's actions in respect of Ms A, when considered in isolation they fall short of the seriousness required to amount to a finding of serious misconduct or to bring Dr Hilal's fitness to practise into question.

#### Ms B

204. The Tribunal then went on to consider whether Dr Hilal's actions in respect of Ms B amounted to misconduct.

205. In doing so, the Tribunal first considered those actions which it found to be inappropriate and unprofessional, but not sexually motivated.

206. As was the case in respect of Ms A, the Tribunal concluded that Dr Hilal's actions were crass and insensitive and fell short of the standards expected, particularly given Dr Hilal's seniority and that Ms B was a XXX, in a new post and vulnerable for these reasons. Similarly, the Tribunal concluded that whilst Dr Hilal's behaviour did breach the paragraphs of GMP set out above, his inappropriate and unprofessional behaviour in respect of the paragraphs of the Allegation where it did not find sexually motivated behaviour were not sufficient to amount to serious misconduct.

207. The Tribunal then considered those actions which it had found to be sexually motivated. It concluded that these actions were of an entirely different category and order than those set out above as they constituted, within a clinical context, a pattern of behaviour where Dr Hilal directed his unwanted attention towards a vulnerable junior colleague in pursuit of either sexual gratification or a future sexual relationship.

208. This course of sexually motivated behaviour ultimately culminated in touching Ms B's breasts in circumstances amounting to sexual assault. He had done so under the guise of a medical examination which was not being conducted for any legitimate reason, rather it was because of Dr Hilal's sexual interest in her. The Tribunal determined that not only did these actions breach the paragraphs of GMP, as set out above, but was also conduct that would be considered as deplorable by both members of the public and members of the profession alike.

209. Accordingly, the Tribunal determined that Dr Hilal's conduct, in respect of those paragraphs where his behaviour was found to be sexually motivated, fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.

### Impairment

210. The Tribunal having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr Hilal's fitness to practise is currently impaired.

211. The Tribunal concluded that misconduct of this nature is difficult to remediate, given its sexual nature and breach of fundamental tenets of the profession.

212. The Tribunal then considered whether Dr Hilal has demonstrated insight into his behaviour. In doing so it bore in mind his evidence at the earlier stage, and the evidence provided on his behalf for the impairment stage and the submissions made on his behalf.

213. The Tribunal noted that the reflective statement and Development & Restoration Plan pre-dated its findings of facts in this case and that Dr Hilal has therefore provided no evidence following the serious findings made against him of any reflection on the Tribunal's determination on the facts or any recent reflection on those matters admitted by Dr Hilal at the outset of the hearing, despite there having been a significant period of time for him to have done so. The Tribunal considered that Dr Hilal's reflections speak in general terms about behaviour but do not directly relate to the serious nature of the allegations, nor do they go any way to demonstrating that since the Tribunal's determination he understands the seriousness of the findings or appreciates the impact of such findings on public confidence in the profession. In his reflective statement, drafted prior to the determination on facts, Dr Hilal stated:

*“The impact of the incident: The last three and a half years were a continuum of ripples affecting many people like the butterfly effect. The complainant, myself, my family, my work team, the Trust, staff from the MDU, BMA, and the GMC. All stemmed from a simple action that now worth considering in the future.*

...

*I have developed a good insight to develop and maintain good performance and observe the professional boundaries at work. I have been able to identify factors in myself, my work environment and my personal life that can directly affect my conduct.”*

214. The Tribunal noted that Dr Hilal had attended a professional boundaries course before the hearing commenced but that neither his reflective statement or Development & Restoration Plan elaborated on what he had learned applied to the specific, serious Allegation in this case. Nor has he demonstrated to the Tribunal that his insight has developed, that he has meaningfully remediated, or that the risk of repetition is low. During his oral evidence Dr Hilal sought to blame Ms B for the events, claiming that Ms B was sexually attracted to him and had engineered the physical examination to 'tempt' him to touch her breasts, a claim which the Tribunal strongly rejected.

215. Whilst a practitioner is entitled to deny allegations and findings against them, Dr Hilal has not demonstrated any meaningful attempts to evidence that he understands the seriousness of the findings made against him or the impact to Ms B or the wider profession and public.

216. In light of these factors, the Tribunal concluded that there was no evidence before it which reflected any determination or endeavour on the part of Dr Hilal to develop further insight since its findings of facts. It determined that Dr Hilal currently has only very limited insight.

217. The Tribunal concluded that in the absence of any meaningful insight, Dr Hilal has not demonstrated that he has remediated his misconduct, and that in the light of this there remains a clear risk of repetition.

218. The Tribunal also considered the test for impairment proposed by Dame Janet Smith, as set out above. It determined that Dr Hilal has in the past and is liable in the future to put patients at unwarranted risk of harm. In doing so it noted that whilst Ms B was a colleague and not a patient, she was in the position of a patient during the medical examination Dr Hilal purported to be conducting on her. The Tribunal considered that the future risk would not necessarily be limited to colleagues in similar circumstances but could also extend to patients under his care.

219. The Tribunal also determined that Dr Hilal has in the past and is liable in the future to bring the medical profession into disrepute and breach fundamental tenets of the medical profession.

220. The Tribunal concluded that given its findings, particularly in relation to the medical examination which it has found amounted to a sexual assault of Ms B, the reputation of the profession was inevitably brought into disrepute. This is particularly the case given that this sexual assault was committed against a person who was junior to Dr Hilal and on a new placement, at a time when she was relatively isolated. The Tribunal heard, and accepted that Ms B, as a result of her junior position, felt at a loss as to what to do in relation to the unwanted attentions of Dr Hilal, a senior doctor, who was pursuing a course of sexually motivated conduct towards her.

221. In light of the circumstances of the case and its findings as set out above, the Tribunal determined that a finding of impairment was necessary in this case in order to uphold all

three limbs of the overarching objective and that public confidence in the profession would be undermined were a finding of impairment not made.

222. The Tribunal has therefore determined that Dr Hilal's fitness to practise is impaired by reason of misconduct.

#### **Determination on Sanction - 10/10/2023**

223. Having determined that Dr Hilal's fitness to practise is impaired by reason of misconduct, 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**

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

#### **Submissions**

##### On behalf of the GMC

225. On behalf of the GMC, Mr Barton submitted that the following are mitigating factors in this case: Dr Hilal has practised for many years without any GMC history and is therefore a man of hitherto good character; the testimonial evidence demonstrates that Dr Hilal was held in high regard as a well-liked and respected colleague and clinician who was approachable, conscientious and competent in his field; he made some limited admissions in relation to his misconduct at the outset of proceedings, though those admissions came in the face of uncontradicted expert evidence to that effect; Dr Hilal has completed a boundaries course and has submitted a reflective statement, which was prepared before the hearing.

226. Mr Barton submitted that the serious misconduct found in this case involved a single individual. However, it is the GMC's case that this conduct cannot be considered a complete one-off and wholly out of character, as the Tribunal also found similar, albeit much less serious behaviour towards Ms A.

227. Mr Barton submitted that in terms of aggravating features, the fact is that two different XXX faced unwanted attention and contact from Dr Hilal while on their work placement. He submitted that the following should be considered aggravating factors in this

case: in the case of Ms B this was a sustained pattern of sexual harassment towards a junior and vulnerable female colleague and the similar but less serious conduct towards Ms A means that it cannot realistically be argued that his behaviour towards Ms B was a complete aberration; both Ms A and Ms B were caused considerable distress by Dr Hilal's behaviour; Dr Hilal's actions represented a grave departure from the standards expected of a practitioner and amounted to a clear breach of GMP; there is no evidence of meaningful remediation and that accordingly there remains the risk of repetition.

228. Mr Barton, referring the Tribunal to the relevant paragraphs of the Sanctions Guidance (November 2020) ('SG'), submitted that to take no action in this case would be inconsistent with the Tribunal's finding of impairment and that Dr Hilal's misconduct not only brought the profession into disrepute but would be regarded as deplorable.

229. Mr Barton submitted that a period of conditions would not be appropriate, adequate or workable in this case, particularly given the serious, deliberate and predatory nature of the misconduct. He submitted that these incidents were not the result of deficiencies in Dr Hilal's clinical skill or knowledge, but rather deficiencies in his judgement, personality and character, that remediation is inherently difficult and that Dr Hilal has shown no willingness to begin the process of remediation.

230. Mr Barton submitted that given the Tribunal has found grave breaches of GMP and that this was persistent behaviour where Dr Hilal has shown no insight or remediation and a risk of repetition remains, the SG indicates that a period of suspension would not be appropriate in this case.

231. Mr Barton submitted that in light of the Tribunal's findings, the aggravating factors in this case and the applicable paragraphs of the SG, the sanction of erasure is indicated in this case. He submitted that the key question is whether the misconduct is fundamentally incompatible with continued registration and that if the Tribunal determines that it is, then erasure is not only the appropriate sanction, but the only sanction that must be imposed in order to uphold the statutory overarching objective.

#### On behalf of Dr Hilal

232. On behalf of Dr Hilal, Mr Colin submitted that in reaching its decision, the Tribunal should consider that Dr Hilal is otherwise of good character, is a valuable member of the medical profession and has made an important contribution to addiction services, in particular in the North East of England, since coming to the UK in 1993. He submitted that

this is supported by the testimonial evidence provided on Dr Hilal’s behalf, which spoke highly of him and his practice and this was borne out by the evidence given at the facts stage by a number of colleagues.

233. Mr Colin submitted that there has been a considerable lapse of time since the events with no repetition and that the misconduct in this case falls short of being fundamentally incompatible with continued registration, such that a period of suspension with review is the appropriate and proportionate response.

234. Mr Colin submitted that it is quite clear that this was a developing situation over a limited period of time which started off, as the Tribunal had found, as a pursuit of Ms B in a crass and insensitive way initially, but which had escalated. He submitted that the relevant paragraphs of the SG indicate suspension as being the appropriate and proportionate response in this case. He submitted that a period of suspension with a review directed would give Dr Hilal the opportunity to remediate, to rehabilitate and to develop insight, which the Tribunal found is lacking at this time.

235. Mr Colin submitted that Dr Hilal has been keeping his work skills and knowledge up to date, and reminded the Tribunal that up until April 2023, Dr Hilal was working at the Trust as a specialty doctor in Psychiatry. He submitted that this necessarily brought Dr Hilal into contact with the most vulnerable members of society, and that this is an important consideration in this case. He submitted that in all the circumstances of the case, the Tribunal should seek to impose the least restrictive sanction possible as is consistent with its duty to the public, and with the statutory overarching objective.

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

236. The Tribunal’s decision as to the appropriate sanction, if any, to impose on Dr Hilal’s registration was a matter for the Tribunal exercising its independent judgment. In reaching its decision, the Tribunal had taken account of the SG and the overarching objective.

237. In making its decision, the Tribunal had regard to the principle of proportionality, and it had weighed Dr Hilal’s interests with those of the public. Throughout its deliberations the Tribunal had borne in mind that the purpose of sanctions was not to punish the doctor, but to protect the public. It had also taken into account the overarching objective which is to protect the health, safety and wellbeing of the public, maintain public confidence in the profession, and promote and maintain proper professional standards and conduct for the members of the profession.

Aggravating & Mitigating Factors

238. In reaching its decision, the Tribunal first considered the aggravating and then mitigating factors in this case.

Aggravating

239. It considered the following features to be aggravating factors.

240. The medical examination carried out on Ms B by Dr Hilal amounted to a sexual assault committed in a clinical context and under the guise of a medical examination, Dr Hilal was a senior clinician psychiatrist, Ms B was a junior colleague, a XXX. For these reasons, in the Tribunal's judgement Ms B was a vulnerable person and someone whose vulnerability Dr Hilal should have appreciated.

241. Despite adjourning for approximately five months between the facts and impairment stages of the hearing, Dr Hilal has provided no significant or additional evidence of reflection or insight into the events or the Tribunal's findings. For the reasons set out in its impairment determination, it concluded that Dr Hilal's insight is very limited, and he has provided no evidence of any expression of remorse for the events or acknowledgement of the potential impact of his behaviour on Ms B and/or public confidence in the profession.

242. The Tribunal was satisfied on the evidence and having heard from Ms B that this incident had a profound and distressing effect upon her.

243. The Tribunal determined that Dr Hilal's actions towards Ms B amounted to a serious abuse of his position of trust. In considering this, the Tribunal was mindful of paragraphs 55(d)(i)&(ii) and 55(e) of the SG, and paragraph 65 of GMP, as set out below.

*55 Aggravating factors that are likely to lead the tribunal to consider taking more serious action include:*

...

*d abuse of professional position, particularly where this involves:*

*i vulnerable patients*



*ii predatory behaviour*

*e sexual misconduct*

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

Mitigating

244. The Tribunal considered the following features to be mitigating factors.

245. Dr Hila's good character: the Tribunal was provided evidence, in the form of testimonials from colleagues, which attested to the fact that he is an otherwise conscientious, approachable and respected practitioner. Dr Hilal has had a long career practising psychiatry in the UK without a previous fitness to practise history.

246. At the outset of proceedings Dr Hilal made admissions to some paragraphs of the Allegation, demonstrating some, albeit limited, acknowledgement of unprofessional and inappropriate behaviour. In consequence of those admissions he had, prior to the hearing, prepared a reflective statement and attended a boundaries course.

247. The events relating to Ms B, which led to the Tribunal's finding of impairment, represented a single episode in relation to one individual. The Tribunal also considered, however, that there was another individual, Ms A, with whom he acted in an inappropriate and unprofessional way, albeit, as the Tribunal has found, falling short of serious misconduct. The Tribunal also did not accept that the episode relating to Ms B was a 'single incident' as it involved, albeit over a relatively short period of time, a course of conduct culminating in a sexual assault under the guise of a medical examination. In considering this as a mitigating factor the Tribunal reminded itself of its finding at the facts stage that:

*"The Tribunal found proved that the majority of the proven allegations relating to Ms B were inappropriate/unprofessional and sexually motivated..."*

*However, the Tribunal did not consider that the GMC's overall characterisation of Dr Hilal's behaviour as being 'predatory' and 'grooming' from the very outset had been established on the evidence. The Tribunal considered it just as likely that Dr Hilal, from an early stage, had been sexually attracted to Ms B and had consequently pursued Ms B in a crass and insensitive way but which had ultimately escalated to the point in which he had,*

*under the pretext of performing a medical examination, felt her breasts in circumstances that amounted to a sexual assault.”*

### No action

248. The Tribunal considered that there were no exceptional circumstances in this case which could justify it taking no action. It was satisfied that to take no action would not be appropriate nor proportionate given the serious nature of its findings and would fail to uphold the statutory overarching objective.

### Conditions

249. The Tribunal considered that a period of conditional registration would not sufficiently reflect the seriousness of its findings and that therefore an order of conditions would not be appropriate or proportionate in the circumstances of this case. Furthermore, the proven misconduct demonstrated deficits in judgement, personality and character which would not be readily amenable to conditions.

### Suspension

250. The Tribunal then went on to consider whether to impose a period of suspension on Dr Hilal’s registration. In doing so it bore in mind the relevant paragraphs of the SG, particularly paragraphs 92 and 93, as set out below.

*92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).*

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

251. The Tribunal reminded itself of its finding at the impairment stage that all three limbs of the overarching objective were applicable in this case. It considered that Dr Hilal’s actions, particularly in respect of sexually assaulting Ms B under the guise of a medical examination, represented behaviour which was fundamentally incompatible with continued registration. It also bore in mind the further aggravating factor in that Dr Hilal abused his position of trust.

252. The Tribunal also considered its findings that there is limited insight and no meaningful remediation by Dr Hilal and that, in the absence of such, a risk of repetition remains.

253. In reaching its determination, the Tribunal also considered paragraphs 97(a), (e), (f) and (g) of the SG, as set out below.

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

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

...

*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.*

254. In addition to considering the misconduct to be fundamentally incompatible with continued registration, the Tribunal concluded that whilst there was no evidence of repetition (as referenced at paragraph 97(f)), for the reasons already set out in terms of the

lack of insight and remediation, it considered that there remains a risk of repetition (as referenced at paragraph 97(g)).

255. The Tribunal considered that misconduct of the nature found is difficult to remediate, and that given the very limited insight, there was little realistic prospect of Dr Hilal remediating in the future. The Tribunal noted the submissions made on behalf of Dr Hilal that a period of suspension would allow him the opportunity to remediate but did not accept that, having regard to the serious nature of the proven misconduct, this was a sufficient reason to impose a suspension order. Further, the Tribunal noted that despite Dr Hilal having been subject to an interim suspension order for approximately five months between the facts and impairment stages of this hearing, he has not demonstrated any inclination to develop further insight or remediate, even in respect of those matters which he had admitted.

256. Weighing all the relevant circumstances against the overarching objective and SG, the Tribunal determined that a period of suspension would be insufficient to reflect the seriousness of its findings and the aggravating factors in this case.

### Erasure

257. In considering whether to erase Dr Hilal's name from the Medical Register, the Tribunal bore in mind paragraphs 108 and 109(a), (b), (d), (f) & (j) of the SG, as set out below.

*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.*

*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.*

...

*d Abuse of position/trust (see Good medical practice, paragraph 65: ‘You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession’).*

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

*f Offences of a sexual nature, including involvement in child sex abuse materials.*

...

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

258. The Tribunal concluded that the above paragraphs were applicable in this case. In respect of paragraph 109(e) the Tribunal reiterated its finding that, owing to the context of the offence and the power differential and dynamic at play, Ms B was a vulnerable person and that this was exploited by Dr Hilal.

259. The Tribunal also considered paragraph 150 of the SG, as set out below, and concluded that this paragraph of the guidance was also applicable in the circumstances of this case.

*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.*

260. In reaching its determination, the Tribunal reminded itself that Dr Hilal has otherwise been a valuable member of the medical profession and has contributed to mental health care in the UK over many years. It balanced this consideration against the overarching objective and the public interest in reaching its decision on sanction. The Tribunal had regard to the impact which erasure would have on Dr Hilal and the fact that there is a general public interest in allowing medical practitioners to return to safe practice. However, for the reasons

set out above it determined that given the nature of the misconduct and the specific circumstances of this case, erasure was necessary to uphold all three limbs of the overarching objective and was the only appropriate order to impose.

261. Accordingly, the Tribunal determined to erase Dr Hilal's name from the Medical Register.

#### Determination on Immediate Order - 10/10/2023

262. Having determined that Dr Hilal's name be erased from the Medical Register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Hilal's registration should be subject to an immediate order.

#### Submissions

263. On behalf of the GMC, Mr Barton submitted that the relevant paragraphs of the SG indicate that an immediate order may be particularly appropriate where a doctor has 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. He submitted that this guidance is applicable and that an immediate order should be imposed in this case.

264. On behalf of Dr Hilal, Mr Colin submitted that he had no observations to make in respect of an immediate order.

#### The Tribunal's Determination

265. The Tribunal has taken account of the relevant paragraphs of the SG, in particular paragraphs 172, 173, and 178 which state:

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

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

*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.*

266. In reaching its determination, the Tribunal considered the submissions of both parties and the relevant paragraphs of the SG.

267. The Tribunal concluded that it would be inappropriate not to impose an immediate order in this case, in light of its earlier findings. The Tribunal found that the misconduct in this case was so serious that the only appropriate sanction was that of erasure, and that a risk of repetition remained.

268. The Tribunal determined that public confidence in the profession would be undermined and that it would be failing to uphold the statutory overarching objective if an immediate order were not imposed in this case.

269. Accordingly, the Tribunal determined that an immediate order of suspension was required in the public interest.

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

271. The interim order is hereby revoked.

ANNEX A – 21/04/2023

### Application to Amend the Allegation - Rule 17(6)

272. On behalf of the GMC, Mr Barton, counsel, made an application under Rule 17(6) of the General Medical Council (Fitness to Practise) Rules 2004, as amended, ('the Rules'), to amend Paragraphs 6 and 7 of the Allegation from:

6 *On a further occasion on date on or around 15 August 2019 whilst at work you [...]*

7 *On 15 August 2019, you proceeded to conduct a physical examination of B:*

*[...]*

to:

6 *On a further occasion on **a date on or around about 15 16 August 2019** whilst at work you [...]*

7 *On **a date on or about 15 August 2019 16 August 2019**, you proceeded to conduct a physical examination of B:*

*[...]*

### Submissions

273. On behalf of the GMC, Mr Barton submitted that it had become clear over the course of the hearing that there had been some confusion over when the incident in question occurred. He submitted that Ms B had been very clear in her evidence that she had made a mistake about the date on which this had happened.



274. Mr Barton submitted that it had been an honest mistake on Ms B's part as to what day 15 August had been. He submitted that this was not something that had emerged simply in the course of this hearing, but that there had been an evident confusion about the date of the incident throughout, apparent from Ms B's various witness statements and/or the record of the Investigation Interviews, exhibited to her witness statement produced for this hearing. For example, in a statement of 29 August 2019 (the first statement by Ms B), Ms B described the incident as having occurred on a Friday. This was a day on which she did not usually work and which she recalled she had been wearing clothes that she did not usually wear at work. However, during the course of her Investigation Interview (30 September 2019) it was recorded that Ms B had said the incident had occurred on 15 August 2019 (this was a Thursday and 16 August was a Friday). He submitted that, in the particular circumstances of this case, there would be no injustice to Dr Hilal in making this amendment and he submitted that the amendment as to the date was not a material amendment to the Allegation.

275. On behalf of Dr Hilal, Mr Colin, counsel, opposed the GMC's application to amend the Allegation. He submitted that the matter of the date of the alleged assault was a material difference and the proposed amendment would represent an injustice to Dr Hilal.

276. Mr Colin submitted that Ms B's suggestion that she had been wrong about the date of the incident had only come about as a result of her being challenged about an email sent by Ms B to Dr Hilal on the evening of 15 August 2019 and which, no doubt it would be submitted, was inconsistent with Ms B having been sexually assaulted by Dr Hilal earlier that day. He submitted that Ms B had '*tailored*' her evidence. He submitted that, with the exception of Ms B's first statement of 29 August 2019, she had consistently stated in all her subsequent accounts that the incident had occurred on 15 August.

277. Mr Colin submitted that Dr Hilal is entitled to know the case he has to meet and is entitled to produce evidence to meet that case. He submitted that there had been extensive Trust and police investigations all focused on 15 August and that the GMC has clearly prepared this case on the basis of 15 August being the date of the alleged sexual assault. Mr Colin submitted that this was the case which Dr Hilal was brought here to meet and that in all the circumstances it would be unfair to allow the application sought by the GMC, which should therefore be refused.

### The Decision of the Tribunal

278. The Tribunal took account of paragraph 17(6) of the Rules which states:

*‘17(6) Where, at any time, it appears to the Medical Practitioners Tribunal that—*  
*(a) the allegation or the facts upon which it is based and of which the*  
*practitioner has been notified under rule 15, should be amended; and*  
  
*(b) the amendment can be made without injustice,*  
  
*it may, after hearing the parties, amend the allegation in appropriate terms.’*

279. The Tribunal considered that there was an obvious ambiguity within the various statements provided by Ms B over the course of time and the Investigation Interviews with her as to the date on which the alleged incident occurred. This ambiguity was apparent on the face of the papers served upon Dr Hilal and his representatives at an early stage. On the one hand Ms B’s earliest statement suggested that the incident had occurred on a Friday, a day which she did not usually work (16 August). On the other hand, in her subsequent statements she referred to the incident having occurred on 15 August (a Thursday, a day on which she normally worked). In her most recent witness statement, dated 10 September 2021, she stated that *“on 15 August 2019 I was wearing a short-sleeve dress with leggings as I was not expecting to see Dr Hilal, and this was not my normal working day...”*

280. The Tribunal accepted that the email produced on behalf of Dr Hilal appeared to result in Ms B concluding that she had previously made a mistake when she had referred to the incident having occurred on 15 August. However, the Tribunal did not consider that this was a reason, in and of itself, not to allow the proposed amendment or, much less, did it give rise to a risk of injustice to Dr Hilal. The Tribunal took the view that, whether or not it allowed the amendment, it would need to consider, in due course, whether Ms B’s assertion that it was 16 August rather than 15 August, was because she had realised her genuine mistake upon being shown the email of 15 August (Ms B acknowledged the email was not one that she would have sent following the incident she had described), or, whether she had sought to *‘tailor’* her evidence because she had no credible explanation for sending the email to Dr Hilal if her allegations concerning the incident were true.

281. Furthermore, the Tribunal noted that there was no dispute between the parties that an incident had occurred (either on 15 or 16 August) in which Dr Hilal admitted he had physically examined Ms B. The issue between the parties was what had happened during the course of this examination. In these circumstances, the Tribunal did not consider that the date on which the examination took place was material. Accordingly, the Tribunal concluded that the proposed amendment could be made without injustice.

282. The Tribunal therefore determined to grant the application to amend the Allegation.

#### ANNEX B – 21/04/2023

#### Rule 17(2)(g) Application

283. At the conclusion of the GMC's case, Mr Colin, counsel, on behalf of Dr Hilal, made an application under Rule 17(2)(g) of the Rules, which states:

*“the practitioner may make submissions as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed no further as a result, and the Medical Practitioners Tribunal shall consider any such submissions and announce its decision as to whether they should be upheld”.*

284. This application related to paragraph 7(a)(vii) of the Allegation:

7. On a **date on or about ~~15~~ 16** August 2019, you proceeded to conduct a physical examination of B: **Amended under Rule 17(6)**

a. in which you:

...

vii. asked B to remove her clothing including her bra;

#### Submissions

285. On behalf of Dr Hilal, Mr Colin submitted that the evidence was quite clear, including Ms B's oral evidence, that there was no such request for Ms B to remove her clothing. He submitted that the Tribunal should consider the wording of the Allegation, which specifically states that Dr Hilal asked her to remove her clothing, including her bra, and that simply had not been borne out by the evidence and so the Tribunal should dismiss this paragraph.

286. On behalf of the GMC, Mr Barton, counsel, submitted that the decision was a matter for the Tribunal but that the GMC did not seek to withdraw this paragraph.

287. Mr Barton submitted that in her handwritten witness statement to the Trust, her Trust witness investigation interview and her police statements, in Ms B stated that Dr Hilal told her the examination would be easier if she removed her bra and asked her to remove it.

288. Mr Barton submitted that there was, therefore, some evidence supporting this charge and the paragraph should proceed to be considered as part of the Tribunal's determination on the facts.

### The Relevant Legal Principles

289. The Tribunal reminded itself that at this stage of the proceedings it was not considering whether it would or would not find this paragraph proved but whether sufficient evidence had been adduced for there to be a case for Dr Hilal to answer. In considering whether or not sufficient evidence has been adduced to find some or all of the facts proved, the test to be applied by the Tribunal is as set out in *R v Galbraith [1981] 2 All ER 1060* which states (with adapted wording for the Tribunal)

*“How then should the Tribunal approach a submission of ‘no case’?*

*(1) If there is no evidence that the fact alleged has been committed by the medical practitioner, there is no difficulty. The Tribunal will of course stop the case.*

*(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence.*

*(a) Where the Tribunal comes to the conclusion that the GMC evidence, taken at its highest, is such that a properly directed Tribunal could not properly find the fact proved upon that evidence, it is the Tribunal's duty, upon a submission being made, to stop the case in relation to that alleged fact.*

*(b) Where however the GMC evidence is such that its strength or weakness depends on the view to be taken of a witness' reliability, or other matters which are generally speaking within the province of the Tribunal, and where on one possible view of the facts there is evidence upon which a Tribunal could properly find the fact proved, then the Tribunal should not make a direction of no case to answer.”*

### Tribunal's Decision

290. In reaching its decision, the Tribunal first considered the evidence to support this paragraph of the Allegation.

291. In her handwritten statement to the Trust, dated 30 September 2019, Ms B stated of this incident:

*“He also said he would be able to feel better if I didn’t have a bra on and could I take it off.”*

292. In her Trust witness investigation interview dated 30 September 2019 Ms B stated that in relation to this incident Dr Hilal said to her:

*“it would be easier if you did not have a bra on” and “it would be easier if you take your bra off”.*

293. In her police statement dated 25 March 2020 Ms B stated that:

*“He then stated it would be a lot easier for him to examine me fully if I took my bra off and asked me to take it off. Of course I said No and repeatedly told him to stop touching me, which he ignored.”*

294. The Tribunal considered that there was no evidence before it which demonstrated that Dr Hilal had asked her to remove any of her clothing other than her bra. In her oral evidence Ms B stated that Dr Hilal asked her to remove her bra, as per her written accounts above.

295. The Tribunal also considered whether the preceding paragraph of the Allegation, 7(a)(vi), incorporates a similar element of this allegation, namely that Dr Hilal *“stated that [he] could not feel properly as B had her bra on, or words to that effect”*.

296. The Tribunal concluded that the evidence before it, when taken at its highest, was insufficient to find the specific wording of this sub-paragraph of the Allegation proved.

297. Accordingly, the Tribunal determined to dismiss paragraph 7(a)(vii) of the Allegation.

XXX