PUBLIC RECORD

Dates: 28/05/2024 - 12/06/2024

Medical Practitioner's name: Dr Johnathan SAUNDERS

GMC reference number: 7271623

Primary medical qualification: MB ChB 2013 University of Liverpool

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

Summary of outcome
Suspension, 12 months.
Review directed
Immediate order imposed

Tribunal:

Legally Qualified Chair	Mrs Claire Lindley
Lay Tribunal Member:	Mrs Amanda Webster
Medical Tribunal Member:	Mr Gurpreet Singh

Tribunal Clerk:	Mrs Jennifer Ireland

Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Chris Gillespie, Counsel, instructed by MDDUS
GMC Representative:	Ms Amy Rollings, 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 - 04/06/2024

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

Background

2. Dr Saunders qualified in 2013. He commenced his Foundation training in August 2017, concluding in August 2019. Dr Saunders then undertook a number of Locum positions in various hospitals. Dr Saunders is before the Tribunal because of an Allegation of impairment by reason of misconduct, convictions XXX.

Misconduct

3. Prior to April 2022, Dr Saunders advertised his services on a Facebook post created by Ms A, offering composite bonding, a dental treatment. Only trained and registered dental practitioners can perform this treatment. On 24 April 2022, Patient B contacted Dr Saunders in response to the advertisement made by Ms A. Between 24 April and 11 May 2022, Dr Saunders communicated with Patient B setting up an appointment for Dr Saunders to perform composite bonding on her teeth. Dr Saunders is alleged to have confirmed on one or more occasions that he was permitted to perform composite bonding as a cosmetic doctor. He is also alleged to have sent pictures to Patient B showing examples of composite bonding indicating that he could achieve similar results on her teeth. It is alleged that these actions gave the impression that Dr Saunders was qualified and/or entitled to perform composite bonding as a medical practitioner. It is alleged that his actions were dishonest as he knew that he did not have the relevant qualifications and/or experience and was not a registered dental practitioner.

4. On 11 May 2022, Patient B attended the appointment with Dr Saunders at a residential apartment. During the appointment, the composite bonding failed to adhere to her teeth and Patient B was asked to return the following day to continue the process. Patient B returned the next morning, at which point Dr Saunders applied a powder on her gums which she said caused her to scream in pain. After a short break, Dr Saunders attempted to apply the composite bonding with it again failing to adhere, with some blue adhesive material hardening and sticking to the teeth. At this stage, Patient B became upset and decided to leave. It is alleged that Dr Saunders attempted to prevent Patient B from leaving by blocking the door, shouting at her and telling her '*no you can't leave'* or words to that effect. Patient B left the apartment and, in the days following, she saw an emergency dentist. It is alleged that there were numerous clinical failings in Dr Saunders' treatment of Patient B, which are set out in the Allegation.

5. Following the failed procedure, Dr Saunders is alleged to have sent Patient B £2500 and asked her to sign a contract stating that he had not performed the procedure on her. Between 13 May 2022 and 5 June 2022, Dr Saunders is alleged to have sent abusive and threatening messages to Patient B via E-mail, text messages and WhatsApp. It is alleged that this was an attempt to conceal the fact he had performed composite bonding on her. He is also alleged to have sent a letter via E-mail entitled '*Final Demand Letter Before Legal Action*' stating that Patient B was required to pay him a further £2500 or face legal action.

6. It is alleged that Dr Saunders' conduct in trying to prevent Patient B leaving the premises after the procedure and threatening her thereafter, amounted to harassment as defined in Section 1(1) of the Protection from Harassment Act 1997, in that Dr Saunders engaged in a course of improper, oppressive and/or unreasonable conduct causing alarm and/or distress to Patient B when he knew, or ought to have known that his conduct amounted to harassment.

7. The initial concerns were raised with the GMC in May 2022 by a dentist following the emergency dental appointment with Patient B. Dr Saunders was also investigated by the General Dental Council ('GDC') and subsequently charged with performing illegal dentistry on Patient B.

Convictions

8. On 16 December 2022, at Wigan and Leigh Courthouse, Dr Saunders was convicted of unlawfully practising dentistry on Patient B on 11 and 12 May 2022, contrary to section 38 of

the Dentists Act 1984. He was also convicted of unlawfully carrying on the business of dentistry contrary to section 41 of the Dentists Act 1984. He was ordered to pay a fine of £2250.

9. On 19 December 2022, Dr Saunders appeared before Belfast Magistrates' Court, for matters that took place on 3 June 2022, and which are unrelated to the allegation of misconduct detailed above. He was convicted of having possession of five different controlled drugs, and also of failing without reasonable excuse to provide a specimen of blood when required to do so by a police officer. He was ordered to pay fines of £250 for each of the five possession charges, and a fine of £200 for the failure to provide a specimen.

XXX

10. XXX

11. XXX

The Outcome of Applications Made during the Facts Stage

12. At the outset of the hearing, Ms Rollings, on behalf of the GMC, made an application for Patient B to be granted anonymity, as permitted under Rule 35(4) of the General Medical Council (Fitness to Practise Rules) 2004, as amended ('the Rules'). This was not opposed by Mr Gillespie, on behalf of Dr Saunders. This was granted by the Tribunal, along with the anonymity of Ms A, who, although not a witness, is mentioned in the evidence and has some connection with Patient B.

13. At the end of the GMC case, the GMC made an application under Rule 17(6) of the Rules to amend paragraph 6(d) of the Allegation to read 'an assistant' instead of 'a chaperone'. The application was not opposed by Mr Gillespie, who indicated that should the amendment be made, Dr Saunders would make a formal admission. The Tribunal decided that there would be no injustice if this amendment were made, and therefore granted the application.

14. At the close of the GMC case, Mr Gillespie made an application on behalf of Dr Saunders under Rule 17(2)(g) of the Rules, that there was no case to answer in relation to paragraphs 2(c) and 6(h)(ii) of the Allegation. The Tribunal decided that there was no case to answer in relation to paragraph 6(h)(ii), and that there was a case to answer in relation to paragraph 2(c). The Tribunal's full reasoning is included at Annex A.

The Allegation and the Doctor's Response

15. The Allegation made against Dr Saunders is as follows:

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

1. Prior to April 2022, Ms A made a Facebook post which promoted cosmetic bonding at XXX by 'our in house doctor Jonathan Saunders'. You commented on the post in which you:

    a. provided a price list for cosmetic bonding; Admitted and found proved.

    b. offered a discount for XXX; Admitted and found proved.

    c. indicated your availability; Admitted and found proved.

    d. referred to your continued work for the NHS. Admitted and found proved.

2. Between 24 April and 11 May 2022, you communicated with Patient B and you:

    a. on one or more occasions confirmed to Patient B that you were permitted to perform composite bonding; Admitted and found proved.

    b. sent a message to Patient B which said, 'Yes it's just as a cosmetic doctor, I am essentially not a dentist and can only perform certain procedures. Composite bonding is permitted but anything further is classed as dentistry', or words to that effect; Admitted and found proved.

    c. sent pictures of examples of cosmetic bonding to Patient B indicating you could achieve similar results. To be determined.

3. Your actions at paragraphs 1 and 2 gave the impression that you were qualified and/or entitled to carry out cosmetic bonding as a registered medical practitioner. Admitted and found proved.

4. You knew that you:

a. did not have the relevant qualification and/or experience to undertake cosmetic bonding; To be determined.

b. were not entitled to undertake cosmetic bonding as you were not a registered dental practitioner. To be determined.

5. Your actions as set out in paragraph 1 to 3 were dishonest by reason of paragraph 4. To be determined.

6. On 11 and 12 May 2022, you undertook a cosmetic bonding procedure ('the Procedure') on Patient B and your management of Patient B was inappropriate in that you failed to:

    a. obtain the appropriate consent from Patient B in that you did not:

        i. inform her of the risks of the Procedure, including that the Procedure was irreversible; Admitted and found proved.

        ii. provide an appropriate treatment plan so Patient B could understand her treatment options; Admitted and found proved.

    b. carry out appropriate investigations to determine if Patient B was a suitable candidate for the Procedure, in that you did not:

        i. undertake an assessment of the occlusion; Admitted and found proved.

        ii. obtain recent and/or new radiographs of Patient B's teeth; Admitted and found proved.

    c. ensure the Procedure was undertaken in an appropriately clean/sterile environment; Admitted and found proved.

d. arrange for ~~a chaperone~~ an assistant to be present; Amended under Rule 17(6). Admitted and found proved.

e. ensure the appropriate equipment was available in that you did not have;

   i. adequate dental instruments; Admitted and found proved.

   ii. oral dam/cotton wool rolls; Admitted and found proved.

   iii. suction equipment; Admitted and found proved.

   iv. dental strips; Admitted and found proved.

   v. emergency equipment in the event Patient B suffered an allergic reaction; Admitted and found proved.

f. adequately undertake the Procedure, in that you:

   i. applied inappropriate material to some of the teeth; Admitted and found proved.

   ii. caused Patient B to suffer gingival and lip tissue damage; Admitted and found proved.

g. adequately address complications during the Procedure in that you did not properly wash/rinse the materials off the teeth; Admitted and found proved.

h. adequately communicate with Patient B, in that you did not:

   i. address Patient B's complaint during the Procedure; Admitted and found proved.

   ~~ii. stop the Procedure when asked to do so by Patient B;~~ Deleted following a successful application under Rule 17(2)(g)

i. make an adequate record of the procedure, in that you did not record:

i. Patient B's dental history; Admitted and found proved.

ii. discussions with Patient B; Admitted and found proved.

iii. a signed and dated consent form and/or treatment plan; Admitted and found proved.

j. refer Patient B to a dentist for the broken/carious teeth. To be determined.

7. You undertook the Procedure when you did not have the relevant qualification and/or experience to undertake cosmetic bonding. Admitted and found proved.

8. Following the Procedure, you attempted to prevent Patient B from leaving your home in that you:

a. stood in the doorway to block her exit; To be determined.

b. shouted at Patient B; To be determined.

c. said 'no you can't go', or words to that effect. To be determined.

9. On or around 19 May 2022, you:

a. transferred £2500 to Patient B; Admitted and found proved.

b. asked Patient B to sign a contract ('the Contract') indicating you had not undertaken the Procedure; Admitted and found proved.

c. told Patient B if she did not sign the Contract you would take legal action against her. Admitted and found proved.

10. Between 13 May 2022 and 5 June 2022, on one or more occasion you:

a. sent Patient B threatening and/or abusive messages via email and/or text/Whatsapp, as set out in Schedule 1; Admitted and found proved.

b. instructed Patient B not to tell anyone you had performed the Procedure; Admitted and found proved.

11. Your conduct as set out at paragraphs 9 and 10 was an attempt to conceal that you had undertaken the Procedure on Patient B. Admitted and found proved.

12. You knew you had undertaken the Procedure on Patient B. Admitted and found proved.

13. Your conduct as set out at paragraphs 7 and 11 was dishonest by reason of paragraph 4 and 12.
Admitted and found proved in relation to paragraph 12.
To be determined in relation to paragraph 4.

14. On or around 5 June 2022, you sent Patient B a letter entitled 'Final Demand Letter Before Legal Action' in which you informed Patient B:

a. she was required to pay you £2500; Admitted and found proved.

b. you would take legal action against her if she did not pay you £2500. Admitted and found proved.

15. Your actions at paragraph 8, 9, 10 and 14 amounted to harassment as defined in Section 1(1) of the Protection from Harassment Act 1997, in that you engaged in a course of improper, oppressive and/or unreasonable conduct causing alarm and/or distress to Patient B when you knew, or ought to have known that your conduct amounted to harassment. To be determined.

Conviction

16. On 16 December 2022, at Wigan and Leigh Courthouse you were:

a. convicted of:

i. on 11 May 2022 you, who is not a registered dentist, did unlawfully practise dentistry on Patient B at [Address] contrary to section 38 of the Dentists Act 1984; **Admitted and found proved.**

ii. on 12 May 2022 you, who is not a registered dentist, did unlawfully practise dentistry on Patient B at [Address] contrary to section 38 of the Dentists Act 1984; **Admitted and found proved**.

iii. on 10 May 2022 you, who is not a registered dentist, did unlawfully carry on the business of dentistry contrary to section 41 of the Dentists Act 1984; Admitted and found proved.

b. ordered to pay a fine of £2250. **Admitted and found proved.**

17. On 19 December 2022, at Belfast Magistrates' Court:

a. you were convicted of:

i. unlawful possession of a controlled drug of Class B of Schedule 2 to the Act on 03 June 2022, namely XXX in contravention of Section 5(1) of the Misuse of Drugs Act 1971 ('the Act') contrary to Section 5(2) of the Act; **Admitted and found proved.**

ii. failing without reasonable excuse to provide a specimen of blood when required to do so in pursuance of Article 18 of the Road Traffic (Northern Ireland) Order 1995 ('the Order') on 03 June 2022, contrary to Article 18(7) of the Order; **Admitted and found proved.**

iii. unlawful possession of a controlled drug of Class B of Schedule 2 to the Act on 03 June 2022, namely XXX in contravention of Section 5(1) of the Act contrary to Section 5(2) of the Act; **Admitted and found proved.**

iv. unlawful possession of a controlled drug of Class B of Schedule 2 to the Act on 03 June 2022, namely XXX in contravention of Section 5(1) of the Act contrary to Section 5(2) of the Act; **Admitted and found proved.**

v. unlawful possession of a controlled drug of Class C of Schedule 2 to the Act on 03 June 2022, namely XXX in contravention of Section 5(1) of the Act contrary to Section 5(2) of the Act; **Admitted and found proved.**

vi. unlawful possession of a controlled drug of Class B of Schedule 2 to the Act on 03 June 2022, namely XXX in contravention of Section 5(1) of the Act contrary to Section 5(2) of the Act; **Admitted and found proved.**

b. you were ordered to pay fines of:

i. 5 x £250 in respect of the convictions as set out at paragraphs 17ai, 17aiii to 17avi; **Admitted and found proved.**

ii. £200 in respect of the conviction as set out at paragraph 17aii; **Admitted and found proved.**

c. you were disqualified from driving for one year; **Admitted and found proved.**

d. an order was made for the drugs as set out at paragraphs 17ai, 17aiii to 17avi to be forfeited and destroyed. **Admitted and found proved.**

XXX

18. XXX

19. XXX

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

a. misconduct in respect of paragraphs 1 to 15; To be determined.

b. convictions in respect of paragraphs 16 and 17; To be determined.

XXX

The Admitted Facts

16. At the outset of these proceedings, through his counsel, Mr Gillespie, Dr Saunders made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above. 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.

The Facts to be Determined

17. In light of Dr Saunders' response to the Allegation, the Tribunal is required to determine paragraphs 2(c), 4(a) and (b), 5, 6(j), 8(a), (b) and (c), 13 (in relation to paragraph 4) and 15.

Witness Evidence

18. Patient B gave oral evidence in person and by video link at the hearing. She made two statements to the GMC, dated 10 October 2022 and 21 March 2024.

19. Dr Saunders gave oral evidence in person at the hearing. He made two statements, dated 16 February 2024 and one undated.

Expert Witness Evidence

20. The Tribunal received oral evidence via video link from an expert witness, Dr E, who is a Dental Surgeon and Expert in Orthodontic, Restorative and Implant Dentistry.

21. XXX

Documentary Evidence

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

- Certificates of Conviction from Northern Ireland Magistrates Court, dated 12 January 2023;

- Certificate of Conviction from Wigan and Leigh Courthouse, dated 1 March 2023;
- Screenshots of social media and text messages between Dr Saunders and Patient B;
- Screenshots of E-mails between Dr Saunders and Patient B;
- Expert reports of Dr E, dated 9 May 2023 and 28 February 2024;
- XXX;
- XXX.

The Tribunal's Approach

23. The LQC gave legal advice to the Tribunal, which is summarised below:

- The Tribunal is reminded that the GMC brings the Allegation, and that the burden of proving each paragraph is on the GMC; there is no burden on the doctor to prove anything. There is one standard of proof and that is of the balance of probabilities, i.e., whether it is more likely than not that the events occurred as alleged. Each Allegation should be considered separately and independently.

- The Tribunal should consider carefully all the oral and written evidence adduced and submissions made (it being accepted that submissions are not evidence.) The Tribunal should note that an undisputed witness statement with a signed statement of truth is to be treated as if were given as oral evidence.

- In this case, Patient B gave her evidence behind a screen. The Tribunal is directed that this does not mean that her evidence carries any more weight, nor should it reflect on or prejudice Dr Saunders. The screen was simply to assist Patient B to give her evidence.

- The case of *R (on the application of Dutta) v GMC* [2020] EWHC1974 (Admin) sets out the approach to be taken when considering oral evidence. The Tribunal must assess oral evidence in its entirety and not just rely on the demeanour of the witness. A confident witness may give unreliable evidence. A nervous and hesitant witness may give reliable evidence. Memories can fade. The Tribunal should therefore navigate the evidence by looking at contemporaneous material as a starting point although actual corroboration of a witness account is not legally necessary.

- The Tribunal has heard from a dental expert, who has given evidence that is outside the Tribunal's general knowledge. The Tribunal should consider whether the expert

has sufficient expertise to express the opinions that he has on the topics considered. This is a matter of weight for the Tribunal to assess. Generally, a Tribunal does not have to accept expert opinion, but if it decides not to accept it, then it must set out our reasons why that is the case. This is established in the case of *Cohen v GMC* (2008) EWHC 581 (admin). XXX.

- Some of the denied paragraphs – i.e. paragraphs 5 and 13- relate to an allegation of dishonesty. The Tribunal is directed therefore to apply the test as set out by Lord Hughes at paragraph 74 of *Ivey v Genting Casinos* [2017] UKSC 67 which states:

> *' When dishonesty is in question, the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'*

- Therefore, the Tribunal must ascertain (subjectively) the actual state of Dr Saunders' knowledge or genuinely held belief as to the facts at the material time. If this is established, the Tribunal would have to decide whether this was dishonest by (objective) standards of ordinary decent people. If this is not established, then the Allegation would not be proved.

- One of the paragraphs namely paragraph 15 relates to an allegation of harassment. The definition used by the GMC is set out in the paragraph – has to be a course of conduct, i.e. more than one act.

- The Tribunal must judge Dr Saunders' evidence by precisely the same fair standards as apply to any other evidence in the case. If the Tribunal accepts the evidence from a witness, rather than the evidence of Dr Saunders, it must explain why in its reasoning.

The Tribunal's Analysis of the Evidence and Findings

24. 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 2(c)

25. The Tribunal considered whether Dr Saunders sent pictures of examples of composite bonding to Patient B indicating that he could achieve similar results.

26. The Tribunal noted that before the procedure was carried out, Dr Saunders sent two photographs of himself to Patient B, showing his teeth before and after some form of dental procedure, specifically showing a missing tooth in one photograph. The Tribunal noted that there was no message either before or after those photographs explaining why they had been sent. In reply, Patient B sent a photograph of her own teeth, and a photograph of her friend's teeth to indicate the results she would like to achieve.

27. Patient B, in her oral evidence was asked by Ms Rollings about the two photographs that Dr Saunders had sent of his own teeth. She told the Tribunal that she thought that Dr Saunders was showing her *'what he had done to himself'*. In cross examination by Mr Gillespie, she said that she was *'not sure'* why the photographs were sent but explained that during telephone conversations between the two of them, Dr Saunders had told her that he had '*done something to his teeth'*, and that she thought he might have said it was composite bonding.

28. Dr Saunders, in his evidence, told the Tribunal that he had not had composite bonding done on his own teeth, either by himself or a dental practitioner. He told the Tribunal that he had a dental implant, and that he had, in the past, undergone teeth whitening. He said that he could not recall the context of the photographs.

29. The Tribunal, in the absence of any evidence to the contrary, accepted the evidence that Dr Saunders had not undergone composite bonding on his teeth. The Tribunal noted that Patient B acknowledged she did not know the purpose of the photographs, and there was no accompanying message to assist the Tribunal in considering why they were sent. The photographs show a set of teeth with and without a tooth implant with no suggestion of composite bonding. Therefore, the Tribunal decided on the balance of probabilities that it could not be satisfied that Dr Saunders had sent photographs to Patient B demonstrating examples of composite bonding.

30. Accordingly, the Tribunal found paragraph 2(c) of the Allegation not proved.

Paragraph 4(a)and (b)

31. The Tribunal considered paragraph 4(a) and (b) together and considered whether Dr Saunders knew that he was not entitled to undertake cosmetic bonding and that he did not have the relevant qualification and/or experience.

32. The Tribunal firstly considered the evidence of Dr E. In his statement to the GMC, he stated that '*cosmetic bonding is an irreversible procedure that changes the structure of the tooth enamel and should only be carried out by a qualified dentist'.* He explained that dentists receive training in relation to composite binding in their undergraduate studies. Dr E asserted that Dr Saunders was not therefore entitled to carry out this procedure. Moreover, having considered the treatment given by Dr Saunders, Dr E noted a number of clinical failings and so also formed the view that Dr Saunders had carried out dental treatment that '*was beyond his expertise or remit.'*

33. The Tribunal noted the evidence given by Patient B. She described the communications that there had been between Dr Saunders and her before the procedure had taken place. In her statement to the GMC dated 10 October 2022 she said that Dr Saunders had reassured her that he would do '*an amazing job.*' She confirmed that Dr Saunders '*told her a few times that he was not a dentist, but he also reassured me that he was trained in composite bonding.'* In the messages that she received from Dr Saunders via Facebook, Dr Saunders said that he was not a dentist. In one, for example, on 24 April 2022, Dr Saunders messaged; *'I am essentially not a dentist and con only perform certain procedures'.*

34. The Tribunal took into consideration the GMC submission that the messages that Dr Saunders sent to Patient B after the procedure show that he must have known that he was not qualified to perform composite bonding. Dr Saunders refers in those messages to *'lawyering up'* and to the '*Massive risk'* that he took in order to help Patient B.

35. The Tribunal reviewed a list of Google results for composite bonding that had been produced by the GMC. It took into account that this list was a snapshot only and did not show what Dr Saunders himself had researched. While the list shows dental practices advertising

composite bonding, the Tribunal decided that it was not immediately apparent from the list that a practitioner *must* be a dentist to perform this procedure.

36. Dr Saunders accepted in his evidence that he recognised now that he was not entitled to carry out composite bonding because he was not a registered dental practitioner. He also accepted that he did not therefore have the relevant qualifications or experience to perform the procedure. However, he explained in his statement that *'at the time the index event took place, I did not hold the belief that composite bonding was a procedure that could only be carried out by a registered dentist.*

37. In his oral evidence, Dr Saunders reiterated this belief. He told the Tribunal that he *'didn't think or know that it was regulated procedure, and that I thought it was similar to teeth whitening because it was non-invasive.'* He explained that when he had been doing his hair transplant training, private clinics were doing a number of aesthetic procedures, such as Botox, dermal fillers, and they were all doing it without having been registered, so he assumed that he could carry out composite bonding. He accepted in his statement that *'I did not carry out the necessary due diligence by seeking confirmation from the GDC…. and this undoubtedly demonstrated a lack of integrity on my part.'*

38. Dr Saunders told the Tribunal of the efforts he had made to learn the technique of composite bonding before carrying out the procedure on Patient B. He confirmed that he sourced and bought the items and materials online through Amazon. He said that he had learned the technique from videos on YouTube and had then practised on a dental mould.

39. In his oral evidence, Dr Saunders accepted that he sent messages to Patient B after the procedure stating that he had taken a risk to carry out the procedure for her. He explained that he realised after the event that he had failed to do a good job, and that is why he sent the messages, not because he knew beforehand that he should not be carrying the procedure out.

40. The Tribunal accepted from Dr E that it was necessary to be a dentist to carry out a composite bonding procedure. Dr Saunders was not so qualified, and neither did he have the necessary experience, to carry out the procedure. However, the Tribunal noted that Dr Saunders said he did not know this to be the case at the time and thought that he had gained enough experience to carry out what he thought was a non-invasive procedure. The Tribunal noted the messages that Dr Saunders sent to Patient B before the procedure where he made

it clear that he was not a dentist. XXX. It noted that Dr Saunders accepts that he was not thinking rationally at the time of the events, and that with hindsight he now understood that he should have checked beforehand if this procedure was regulated.

41. The Tribunal therefore was not satisfied, on the balance of probabilities, that Dr Saunders knew at the time of carrying out the procedure on Patient B that he did not have the correct qualification and/or experience to do so.

42. Accordingly, the Tribunal found paragraphs 4(a) and (b) of the Allegation not proved.

Paragraph 5 and Paragraph 13 (so far as paragraph 4 is concerned)

43. Having found paragraph 4 not proved, the Tribunal subsequently found paragraphs 5 and 13 (so far as it relates to paragraph 4) of the Allegation also not proved.

Paragraph 6(j)

44. The Tribunal considered whether Dr Saunders should have referred Patient B to a dentist for the broken/carious teeth.

45. The Tribunal noted the evidence of Dr E. He stated in his oral evidence that Dr Saunders should have referred Patient B to a dentist. He had noted the pictures of Patient B's teeth and stated that it was clear that they were broken and carious and that this would have been obvious to a lay person. He explained that composite bonding should not be carried out until a proper assessment of the teeth has taken place. He said that not treating the teeth before carrying out the procedure can have adverse effects such as allowing further progression of decay and lesions. He stated that Dr Saunders should therefore have referred Patient B to a dentist, and that this could have been by letter or advice.

46. The Tribunal considered the messages that Dr Saunders and Patient B had sent each other before the procedure was carried out. Patient B had sent him a picture of her teeth, that show damage to them, and she also told him that '*I have a few bad teeth at the back and a couple will need refilling and all need cleaning as stained through smoking and damage…'*. In response, Dr Saunders had explained '*yes, it's just as a cosmetic doctor, I am essentially not a dentist and can only perform certain procedures. Composite bonding is permitted, but anything further is classed as dentistry only and I will not be able to perform any extractions etc as I am not covered by my insurance.'*

47. In his oral evidence, Dr Saunders accepted his clinical failings during the procedure, and also accepted, in hindsight, that he should have advised Patient B to see a dentist. He said that as a doctor, he did not have experience of, and would not know how to formally refer a patient to a dentist.

48. The Tribunal had regard to the definition of the word referral, which is defined in the Oxford Dictionary, as made available to the Tribunal, as: *'an act of referring someone or something for consultation, review or further action.'*

49. The Tribunal accepted Dr E's evidence that Patient B should have seen a dentist before this procedure was carried out, and that carrying out composite bonding before assessing the teeth could have adverse effects. However, the Tribunal was not satisfied on the balance of probabilities that there was sufficient evidence before it; that a doctor is under a duty to refer a patient to a dentist, nor whether there is a mechanism to do this. Considering the messages, the Tribunal noted that Dr Saunders had told Patient B he was not a dentist and could not carry out the other treatments that she required. It also accepted Dr Saunders' explanation that he did not know of a method of referral as described by Dr E. Dr E himself said that he could not remember the last occasion that he had received such a referral, stating that they were '*rare.'*

50. The Tribunal therefore was not satisfied, on the balance of probabilities, that Dr Saunders failed to refer Patient B to a dentist for the broken/carious teeth.

51. Accordingly, the Tribunal found paragraph 6(j) of the Allegation not proved.

<u>Paragraph 8(a), (b) and (c)</u>

52. The Tribunal considered paragraph 8 (a), (b), and (c) together, and considered whether Dr Saunders, following the procedure, attempted to prevent Patient B from leaving his home by standing in the doorway to block her exit, shouted at her, and said '*no you cant go'* or words to that effect.

53. The Tribunal firstly considered that evidence of Patient B and the accounts she gave. The first recorded account can be found in the notes of the emergency dentist who saw Patient B on 19 May 2022. They state:

'In the end she asked to see what he had done, he refused at first and when she finally did see the result she demanded to leave. He refused to let her leave and locked her in. In the end she rang her partner and was finally let out of the apartment…'

54. In her witness statement to the GMC dated 10 October 2022, Patient B stated:

'I left the room and told Dr Saunders, who was still in the apartment, that I was leaving, and my partner was going to pick me up. Dr Saunders tried to stop me and said, 'no you can't go, we need to sort this out' and he was shouting at me. My partner was still on the line, and I had put him on speaker. I was still crying. Dr Saunders and I were both standing in the corridor of the apartment, but he was blocking my way out, so I pushed him out of the way. As I did this, my partner told me to contact the police, but I didn't want to end the call with my partner to call the police. When I was walking out of the building, I kept telling Dr Saunders that I will be ringing the police and he said '[Patient B], just stop it'.'

55. The Tribunal also considered Patient B's oral evidence. She was asked to describe how Dr Saunders had attempted to stop her from leaving. She told the Tribunal that Dr Saunders had physically stood in front of the door with his arms out and would not let her past him. When asked to describe how he had stood, she explained that he had been stood '*strong'.* She said that she had her phone in her hand and managed to grab the door handle, and after her partner had told her to call the police, Dr Saunders had let her out. She was asked to clarify if she had pushed Dr Saunders out of the way and she explained that she '*went around him'.*

56. The Tribunal next considered the evidence of Dr Saunders. In his statement dated 16 February 2024 he stated:

'To reiterate, [Patient B] herself, having stated that the procedure did not turn out as expected on May 11th 2022, again returned to my apartment on the 12th May 2022 of her own accord and left without obstruction.'

57. In his statement to the GDC, Dr Saunders' stated:

'The claims that I got angry or shouted at [Patient B] whilst she was in my property on the 12th May and are incorrect…'

58. The Tribunal also took into account Dr Saunders' oral evidence, in which he told the Tribunal that he did not stop Patient B physically but accepted that he '*didn't want her to leave'*. On further questioning, he stated that this was because he did not want her to leave with the blue adhesive on her teeth. He told the Tribunal that he was still in the treatment room when Patient B left.

59. The Tribunal noted that this incident took place when no others person was present, and therefore the evidence was 'one persons' word against another'. It therefore considered the reliability and credibility of both Patient B and Dr Saunders.

60. When considering the reliability and credibility of Patient B, the Tribunal decided that Patient B was a vulnerable and nervous witness, but that she had given her account at least three times and described the incident in a broadly consistent way. It noted the concerns that had been raised about her credibility surrounding the communications that she and Dr Saunders had about money and recompense after the procedure. Patient B said that she paid Dr Saunders £1000 before the procedure and only wanted her money back after it had gone wrong. She said that she did not ask for any more money over and above that. In contrast, Dr Saunders said that Patient B had only paid him £250, and after the procedure she had requested £5000 by way of compensation. Dr Saunders referred to a message to that effect, dated 17 May 2022, which stated:

> *'Hi, I've spoken to [XXX] who is a barrister, she's told me if I take you to court I'm entitled to a minimum of 9 thousand excluded legal fees, I spoke with [redacted] and i am willing to accept 5 thousand and not take it further.'*

61. Patient B told the Tribunal that this message was in response to an offer made by Dr Saunders and stated that she was accepting that offer and agreeing to not take the matter any further. The Tribunal concluded that Patient B's credibility was not affected by this issue, and that she was a reliable witness.

62. When considering the reliability and credibility of Dr Saunders, the Tribunal noted that, whilst denying that he had attempted to stop Patient B from leaving, he accepted that he was in a state of panic and that he did not want her to leave. XXX

63. The Tribunal determined that Dr Saunders' evidence in this respect was not sufficiently reliable as his recall may be affected by XXX. It therefore preferred the evidence given by Patient B.

64. The Tribunal concluded that it was more likely than not that Dr Saunders had attempted to prevent Patient B from leaving the apartment by blocking the doorway, that he had shouted at her, and said to her words to the effect of *'no you can't go'*.

65. Accordingly, the Tribunal found paragraph 8(a), (b) and (c) of the Allegation proved.

Paragraph 15

66. The Tribunal considered whether Dr Saunders' actions at paragraphs 8, 9, 10 and 14 amounted to harassment as defined in section 1(1) of the Protection from Harassment Act.

67. The Tribunal noted that the allegations of harassment included Dr Saunders' actions in attempting to prevent Patent B from leaving his home after the procedure, and shouting at her, and saying '*no you can't go',* or words to that effect. The Tribunal found those matters proved.

68. The Tribunal noted that the allegations of harassment also included asking Patient B to sign a contract, threatening her with legal action, sending her threatening and abusive messages and instructing her not to inform anyone that he had undertaken the procedure. Dr Saunders admitted these aspects of the Allegation and accepted that they were an attempt to conceal that he had undertaken the procedure.

69. Mr Gillespie confirmed that Dr Saunders accepted the conduct but said that it was *'wrong and unfair'* of the GMC to have put this paragraph in the Allegation. He said that it was alleging a criminal offence, and yet the police had not been informed, and that it was a paragraph simply pulling all the others together. Mr Gillespie was asked if he wished to make a legal argument about abuse of process in relation to this paragraph, but chose not to do so.

70. The Tribunal therefore considered the evidence in relation to this allegation. It noted that Dr Saunders accepted that his conduct in sending the messages was '*shameful'* and *'disgraceful'*.

71. The Tribunal took into consideration the volume and nature of the messages, which were sent over a prolonged period of time. It particularly noted messages sent on 1 June 2022 at 9:35pm:

> *'…I'm not just some average Wigan twat. I have the means and intelligence to ruin you of you ruin me. That's a promise. Noore games I best see that money or you accepting to wait a few days for 5free fucking grand.*
> *No more texts you'll be seeing me if this isn't sorted tonight*
> *No more texts you'll be seeing me if this isn't sorted tonight*
> *At your fucking door*
> *Call my bluff if you want but I'm way past giving a fuck about police lawyers the lot that money is MINE and you will be giving it me back'* [sic]

72. The Tribunal also noted messages sent on 2 June 2022 at 1:04am:

> *'…Pay me what you owe me. Or fucking watch that smirk get wiped off your fucking face.*
> *This isn't even going to court. I'm done gmc licence will be relinquished and I have fuck all in my name so you'll get a fiver a month but once I lose my career. Jail is where Ill be going. You should not have been so cocky this morning. Take it further h…*
> *I'll bring a nerf gone*
> *Gun*
> *And get the police to flip my place they won't find a fucking speck of ytalcolm powder love.'* [sic]

73. The Tribunal then considered the E-mails sent by Dr Saunders to Patient B, in particular one sent on 5 June 2022 at 6:41am, which states:

> *'I'm not threatening you I'm saying I'm getting my fucking money back take it as far as you want you ain't getting shit I wouldn't even piss on you if you were on fire you thriving little twat I also informed your gangster boyfriend threatened to 'get someone else' to shoot me in my kneecaps cause pussies like him always get "someone they know' fucking pussy That's a threat that's been noted love Also if that money isn't paid back FUCKING TODAY I'll take it further too Don't you worry You're a fucking thief but you've robbed the wrong guy this time I'd rather give my money, sorry I haven't got any cause you've fucking got it haven't you little trampy cunt We'll keep it warm cause*

it's back in my pocket very very shortly - police will understand my anger at being robbed and extorted you on the other hand have admitted you're streaming my money so taking it further ,whilst keeping that cash you'll be arrested as soon as I land Enjoy your last day of smirking like Mona lisa no comment on that hahaha

NOW LEAVE ME ALONE

PAY NOW OR PAY LATER IT MAKES NO ODDS TO ME BUT I WILL HAPPILY OBTAIN MY MONEY BY ANY MEANS NECESSARY YOU THINK ITS ALL JUST WORDS YOU'RE GONNA BE SORRY FOR ROBBING ME

NOW FUCK OFF'

74. The Tribunal took into consideration Patient B's oral evidence that she was scared of what Dr Saunders might do, XXX. Further, in her witness statement, dated 10 October 2022, she stated:

'Due to his threats, I couldn't leave my house for approximately 6-8 weeks because I was worried and very insecure about leaving the house alone. I was scared about having to see him whilst on my own'

75. The Tribunal also noted that Patient B had informed Dr Saunders in their earliest messages that she was XXX and it considered that she was vulnerable.

76. The Tribunal was satisfied on the balance of probabilities, that Dr Saunders' actions after the procedure were improper and unreasonable. It was also satisfied that his conduct had caused alarm and distress to Patient B. She felt threatened and harassed by Dr Saunders' behaviour. It therefore found that Dr Saunders actions amounted to harassment as defined in Section 1(1) of the Protection from Harassment Act 1997, in that he engaged in a course of improper, oppressive and/or unreasonable conduct causing alarm and/or distress to Patient B when he knew, or ought to have known that his conduct amounted to harassment.

77. Accordingly, the Tribunal found paragraph 15 of the Allegation proved.

The Tribunal's Overall Determination on the Facts

78. The Tribunal has determined the facts as follows:

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

1. Prior to April 2022, Ms A made a Facebook post which promoted cosmetic bonding at XXX by 'our in house doctor Jonathan Saunders'. You commented on the post in which you:

    a. provided a price list for cosmetic bonding; Admitted and found proved.

    b. offered a discount for XXX; Admitted and found proved.

    c. indicated your availability; Admitted and found proved.

    d. referred to your continued work for the NHS. Admitted and found proved.

2. Between 24 April and 11 May 2022, you communicated with Patient B and you:

    a. on one or more occasions confirmed to Patient B that you were permitted to perform composite bonding; Admitted and found proved.

    b. sent a message to Patient B which said, 'Yes it's just as a cosmetic doctor, I am essentially not a dentist and can only perform certain procedures. Composite bonding is permitted but anything further is classed as dentistry', or words to that effect; Admitted and found proved.

    c. sent pictures of examples of cosmetic bonding to Patient B indicating you could achieve similar results. Not proved.

3. Your actions at paragraphs 1 and 2 gave the impression that you were qualified and/or entitled to carry out cosmetic bonding as a registered medical practitioner. Admitted and found proved.

4. You knew that you:

a. did not have the relevant qualification and/or experience to undertake cosmetic bonding; Not proved.

b. were not entitled to undertake cosmetic bonding as you were not a registered dental practitioner. Not proved.

5. Your actions as set out in paragraph 1 to 3 were dishonest by reason of paragraph 4. Not proved.

6. On 11 and 12 May 2022, you undertook a cosmetic bonding procedure ('the Procedure') on Patient B and your management of Patient B was inappropriate in that you failed to:

    a. obtain the appropriate consent from Patient B in that you did not:

        i. inform her of the risks of the Procedure, including that the Procedure was irreversible; Admitted and found proved.

        ii. provide an appropriate treatment plan so Patient B could understand her treatment options; Admitted and found proved.

    b. carry out appropriate investigations to determine if Patient B was a suitable candidate for the Procedure, in that you did not:

        i. undertake an assessment of the occlusion; Admitted and found proved.

        ii. obtain recent and/or new radiographs of Patient B's teeth; Admitted and found proved.

    c. ensure the Procedure was undertaken in an appropriately clean/sterile environment; Admitted and found proved.

    d. arrange for ~~a chaperone~~ an assistant to be present; Amended under Rule 17(6). Admitted and found proved.

e. ensure the appropriate equipment was available in that you did not have;

   i. adequate dental instruments; Admitted and found proved.

   ii. oral dam/cotton wool rolls; Admitted and found proved.

   iii. suction equipment; Admitted and found proved.

   iv. dental strips; Admitted and found proved.

   v. emergency equipment in the event Patient B suffered an allergic reaction; Admitted and found proved.

f. adequately undertake the Procedure, in that you:

   i. applied inappropriate material to some of the teeth; Admitted and found proved.

   ii. caused Patient B to suffer gingival and lip tissue damage; Admitted and found proved.

g. adequately address complications during the Procedure in that you did not properly wash/rinse the materials off the teeth; Admitted and found proved.

h. adequately communicate with Patient B, in that you did not:

   i. address Patient B's complaint during the Procedure; Admitted and found proved.

   ~~ii. stop the Procedure when asked to do so by Patient B;~~ Deleted following a successful application under Rule 17(2)(g)

i. make an adequate record of the procedure, in that you did not record:

i. Patient B's dental history; **Admitted and found proved.**

ii. discussions with Patient B; **Admitted and found proved.**

iii. a signed and dated consent form and/or treatment plan; **Admitted and found proved.**

j. refer Patient B to a dentist for the broken/carious teeth. **Not proved.**

7. You undertook the Procedure when you did not have the relevant qualification and/or experience to undertake cosmetic bonding. **Admitted and found proved.**

8. Following the Procedure, you attempted to prevent Patient B from leaving your home in that you:

a. stood in the doorway to block her exit; **Determined and found proved.**

b. shouted at Patient B; **Determined and found proved.**

c. said 'no you can't go', or words to that effect. **Determined and found proved.**

9. On or around 19 May 2022, you:

a. transferred £2500 to Patient B; **Admitted and found proved.**

b. asked Patient B to sign a contract ('the Contract') indicating you had not undertaken the Procedure; **Admitted and found proved.**

c. told Patient B if she did not sign the Contract you would take legal action against her. **Admitted and found proved.**

10. Between 13 May 2022 and 5 June 2022, on one or more occasion you:

a. sent Patient B threatening and/or abusive messages via email and/or text/Whatsapp, as set out in Schedule 1; **Admitted and found proved.**

b. instructed Patient B not to tell anyone you had performed the Procedure; **Admitted and found proved**.

11. Your conduct as set out at paragraphs 9 and 10 was an attempt to conceal that you had undertaken the Procedure on Patient B. **Admitted and found proved.**

12. You knew you had undertaken the Procedure on Patient B. **Admitted and found proved.**

13. Your conduct as set out at paragraphs 7 and 11 was dishonest by reason of paragraph 4 and 12.
Admitted and found proved in relation to paragraph 12.
Not proved in relation to paragraph 4.

14. On or around 5 June 2022, you sent Patient B a letter entitled 'Final Demand Letter Before Legal Action' in which you informed Patient B:

a. she was required to pay you £2500; **Admitted and found proved.**

b. you would take legal action against her if she did not pay you £2500. **Admitted and found proved.**

15. Your actions at paragraph 8, 9, 10 and 14 amounted to harassment as defined in Section 1(1) of the Protection from Harassment Act 1997, in that you engaged in a course of improper, oppressive and/or unreasonable conduct causing alarm and/or distress to Patient B when you knew, or ought to have known that your conduct amounted to harassment. **Determined and found proved.**

Conviction

16. On 16 December 2022, at Wigan and Leigh Courthouse you were:

a. convicted of:

i. on 11 May 2022 you, who is not a registered dentist, did unlawfully practise dentistry on Patient B at [Address] contrary

to section 38 of the Dentists Act 1984; **Admitted and found proved.**

ii. on 12 May 2022 you, who is not a registered dentist, did unlawfully practise dentistry on Patient B at [Address] contrary to section 38 of the Dentists Act 1984; **Admitted and found proved**.

iii. on 10 May 2022 you, who is not a registered dentist, did unlawfully carry on the business of dentistry contrary to section 41 of the Dentists Act 1984; Admitted and found proved.

b. ordered to pay a fine of £2250. **Admitted and found proved.**

17. On 19 December 2022, at Belfast Magistrates' Court:

a. you were convicted of:

i. unlawful possession of a controlled drug of Class B of Schedule 2 to the Act on 03 June 2022, namely XXX in contravention of Section 5(1) of the Misuse of Drugs Act 1971 ('the Act') contrary to Section 5(2) of the Act; **Admitted and found proved.**

ii. failing without reasonable excuse to provide a specimen of blood when required to do so in pursuance of Article 18 of the Road Traffic (Northern Ireland) Order 1995 ('the Order') on 03 June 2022, contrary to Article 18(7) of the Order; **Admitted and found proved.**

iii. unlawful possession of a controlled drug of Class B of Schedule 2 to the Act on 03 June 2022, namely XXX in contravention of Section 5(1) of the Act contrary to Section 5(2) of the Act; **Admitted and found proved.**

iv. unlawful possession of a controlled drug of Class B of Schedule 2 to the Act on 03 June 2022, namely XXX in contravention of

Section 5(1) of the Act contrary to Section 5(2) of the Act; **Admitted and found proved.**

v. unlawful possession of a controlled drug of Class C of Schedule 2 to the Act on 03 June 2022, namely XXX in contravention of Section 5(1) of the Act contrary to Section 5(2) of the Act; **Admitted and found proved.**

vi. unlawful possession of a controlled drug of Class B of Schedule 2 to the Act on 03 June 2022, namely XXX in contravention of Section 5(1) of the Act contrary to Section 5(2) of the Act; **Admitted and found proved.**

b. you were ordered to pay fines of:

i. 5 x £250 in respect of the convictions as set out at paragraphs 17ai, 17aiii to 17avi; **Admitted and found proved.**

ii. £200 in respect of the conviction as set out at paragraph 17aii; **Admitted and found proved.**

c. you were disqualified from driving for one year; **Admitted and found proved.**

d. an order was made for the drugs as set out at paragraphs 17ai, 17aiii to 17avi to be forfeited and destroyed. **Admitted and found proved.**

XXX

18. XXX

19. XXX

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

a. misconduct in respect of paragraphs 1 to 15; **To be determined.**

b. convictions in respect of paragraphs 16 and 17; To be determined.

XXX

Determination on Impairment - 06/06/2024

79. This determination will be handed down in private. However, as this case concerns Dr Saunders' misconduct and convictions, a redacted version will be published at the close of the hearing.

80. 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 Saunders' fitness to practise is impaired by reason of misconduct and his convictions.

The Evidence

81. 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 from the GMC. This evidence disclosed that Dr Saunders had a previous conviction for drink driving in 2007, for which he was given a custodial sentence of 12 months imprisonment.

Submissions

82. The Tribunal heard submissions from both Ms Rollings and Mr Gillespie, and they are summarised below.

On behalf of the GMC

83. Ms Rollings submitted that Dr Saunders' fitness to practice is impaired by reason of misconduct, XXX and conviction. She said that the nature of the misconduct and in particular the dishonesty, in addition to XXX and two separate criminal convictions (plus a historic criminal conviction) constitute serious misconduct.

84. Ms Rollings addressed the Tribunal in relation to the misconduct aspect first. She reminded the Tribunal that they should adopt a two-stage process, firstly, whether the facts found proved amount to misconduct and secondly whether that misconduct could lead to a finding of impairment.

85. Ms Rollings stated that misconduct has no statutory definition and reminded the Tribunal that it is a matter for their own judgment and experience. She referred the Tribunal to the caselaw and s35 (C) of the Medical Act 1983 to assist it, and summarised that the paragraphs in the Allegation, when take separately or together amount to serious misconduct.

86. Ms Rollings then directed the Tribunal's attention to Good Medical Practice (2013) ('GMP'), and specifically referred to paragraphs 1,14,15,19,21,31,45,46, and 47. She described what they relate to, and how Dr Saunders had fallen below the standards described by them as far as his clinical performance, record keeping, and communication with the patient were concerned. She also referred the Tribunal to paragraphs 65 and 66 which state that a doctor should act with honesty and integrity. She said that Dr Saunders had breached all these paragraphs of GMP.

87. Ms Rollings then addressed the Tribunal on impairment. She reminded the Tribunal of the overarching objective in the Medical Act 1983, which is;

> *'(a) to protect, promote and maintain the health, safety and well-being of the public*
> *(b) to promote and maintain public confidence in the medical profession and*
> *(c) to promote and maintain proper professional standards and conduct for members of that profession'*

88. Ms Rollings submitted that the GMC relies particularly on limbs (b) and (c) of the overarching objective and that, in particular, Dr Saunders' dishonesty was serious, and could lead to a loss of confidence in the medical profession by both patients and the general public. She said that a finding of impairment is also necessary to promote and maintain the standards of the profession.

89. Ms Rollings submitted that limb (a) above is also of relevance. She said that Dr Saunders assaulted Patient B when he performed dental surgery on her teeth, when he was not qualified to do so, and caused permanent and long-lasting damage He then prevented her from leaving his apartment and sent her a series of threatening and aggressive text messages. He therefore failed to protect, promote and maintain the health, safety and well-being of the public.

90. Ms Rollings also addressed the Tribunal in relation to dishonesty, and relied on the case of *Nwachuku,* (mentioned in detail below in the LQC advice.) She explained that the case states that it would be unusual where there is dishonesty for there not to be a finding of impaired fitness to practise.

91. Ms Rollings submitted that Dr Saunders has produced no evidence of remediation or insight, and the Tribunal cannot properly consider that his misconduct will not be repeated in the future.

92. The Tribunal was asked by Ms Rollings to consider XXX that Dr Saunders is facing. XXX

93. XXX

94. XXX. Ms Rollings pointed out that the Tribunal had determined that Patient B was a vulnerable witness. She submitted that Dr Saunders therefore abused his position of trust by taking advantage of her. In addition to this, his conduct towards her during and after the procedure was 'abhorrent' and 'truly awful'.

95. Ms Rollings addressed the Tribunal about the convictions that Dr Saunders has. She referred the Tribunal to the evidence received at this stage of the proceedings, which sets out the details of Dr Saunders' previous conviction in relation to drink driving. She pointed out that he had been 2.5 times over the legal limit when he was drink driving. He caused serious injuries to three other people in a car that he collided with. His subsequent appeal against his custodial sentence was refused. She submitted that Dr Saunders had not learned his lesson from this previous conviction because he has since been prosecuted for failing to provide a blood specimen when he was found with drugs in his vehicle.

96. Ms Rollings summarised by stating that this is a serious case of persistent and repeated misconduct, with no evidence of remediation or insight. She said there is no reason to depart from the usual finding of impairment following a finding of dishonesty. In addition, she submitted that this is a grave and serious case in respect of the multitude of convictions that the doctor has faced and the similarity of the previous conviction with the present one. She submitted that a finding of impairment should follow those convictions.

On behalf of Dr Saunders

97. Mr Gillespie submitted that there is no dispute that Dr Saunders current fitness to practice is impaired on all three grounds. He submitted that his admissions, and acceptance at this stage are in themselves indicators of insight. He said that Dr Saunders will give evidence at the next stage of these proceedings and will submit further evidence for the Tribunal to consider.

98. Mr Gillespie submitted that there were a few factual matters which he would like to address at this stage. He stated that the Tribunal should not be relying on the details of the 2007 previous conviction that it has received but should rely just on the fact that there is a conviction. He disputed the use of the word 'assault' in the GMC submission when referring to Dr Saunders procedure on Patient B's teeth. He pointed out that there is no allegation of assault. He also disputed the submission of the GMC that Patient B was vulnerable at the time of the procedure, as there had been no evidence put forward to show this. The fact that Patient B was deemed as a vulnerable witness is not the same thing.

The Relevant Legal Principles

99. The LQC gave advice to the Tribunal which is summarised below;

- The Tribunal is considering whether Dr Saunders' fitness to practice is impaired due to misconduct, XXX and convictions. It is reminded that there is no burden or standard of proof to adopt at this stage and that the decision as to impairment is a matter for the Tribunal's judgement alone.

- So far as the conduct is concerned, the Tribunal is reminded that there are two parts to the impairment stage of the process. Firstly, the Tribunal must decide whether the facts as found proved amount to misconduct, and then whether the finding of that misconduct leads to a finding of current impairment.

- 'Misconduct' has no statutory definition. It is a matter for the judgement and experience of the tribunal. However, in the case of *Roylance v GMC [No 2]* [2000] 1 AC 311 it was said that 'misconduct' should be 'serious misconduct' before the Tribunal should move to consider fitness to practise. The word 'serious' should be given its ordinary meaning. This case stated that misconduct is:

  'some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the

rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances.'

- The Tribunal should therefore take into account whether Dr Saunders has departed from the standards sets out in Good Medical Practice 2013. The Tribunal has received evidence from an expert, Dr E and his opinion should be taken into account at this stage so far as the clinical issues are concerned. The Tribunal should consider whether the expert has sufficient expertise to express the opinions that he has on the topics that he has. A Tribunal does not have to accept expert opinion, but if it decides not to accept it, then it must set out our reasons why that is the case.

- In the case of *Nandi v GMC* [2004] EWHC, Collins J said that misconduct is conduct which would be regarded as '*deplorable*' by fellow practitioners. And in the case of *R (Remedy UK Limited) v GMC* [2010] EWHC 1245 (admin) it states that misconduct;

  'can involve misconduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur outwith the course of professional practice itself, but which brings disgrace upon the doctor, and thereby prejudices the reputation of the profession.'

- The Tribunal is reminded that part of the Allegation relates to dishonesty. In the case of *GMC v Nwachuka* [2017] EWHC 2085 (Admin) it was confirmed that it is unusual for dishonesty not to result in impairment. Also, the case of *Nkomo v GMC* [2019] EWHC 2625 (admin) states that dishonesty is generally held to be difficult to remediate. This is because, unlike with clinical errors, where further practice and/or teaching would likely show a practitioner the correct method of practice, the nature of dishonest behaviour goes more to the practitioner's *character* than learning. Clinical and personal mitigation therefore hold less weight in such cases.

- If, having decided that there is misconduct as defined, then the Tribunal should go onto impairment. The misconduct, if found, XXX and the facts of his convictions must be considered. It is not necessarily the case that if misconduct is found, impairment must follow.

- 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 & Grant* [2011] EWHC 927 (Admin) ('*Grant*'). Dame Smith

sets out some features that are likely to be present when impairment is found. These are where a doctor has in the past or is liable in the future to:

a. act so as to put a patient or patients at unwarranted risk of harm.

b. bring the medical profession into disrepute.

c. breach one of the fundamental tenets of the medical profession; and/or

d. have acted dishonestly and or is liable to do so in the future.

- The Tribunal must determine whether Dr Saunders' fitness to practise is impaired as of today, taking into account his conduct at the time of the events, XXX, the criminal convictions and any relevant factors such as whether the matters are remediable, have been remedied, and any likelihood of repetition.

- To assist it in this decision, a Tribunal must determine whether a doctor has demonstrated insight, and if so to what extent.

- The Tribunal should note that Dr Saunders admitted to some of the acts alleged and denied others, and some of those that he denied the Tribunal found proved and some not. So far as the matters found proved are concerned the Tribunal has rejected Dr Saunders' defence. It is advised, however, that it should not necessarily equate the maintenance of innocence with a lack of insight. The recent case of *Sawati v GMC* [2022] EWHC (admin) deals specifically with rejected defence cases and how they should be treated at the impairment and sanction stage. A Tribunal should not punish a doctor for defending himself, as he is entitled to do so, but it can weigh up what happened at stage one when assessing insight. The Tribunal should look to see what other evidence there is about the doctor's insight and understanding of the conduct. It is possible that a doctor who maintains his innocence can still demonstrate that he fully appreciates the gravity of the matters alleged and it is proper to take into account a doctor's understanding of, and attitude toward the underlying allegation.

- The Tribunal must consider the offences that Dr Saunders has been convicted of. He has admitted this section of the Allegation, and the Tribunal should not go behind the fact of the conviction in any event. It can also take into account the previous convictions arising out of an offence of drink driving in 2006.

- XXX

- XXX

- The Tribunal must note, however, that each case is on its facts. The Tribunal should look at the circumstances of the case, the need to uphold public confidence, and what has been done to remediate actions XXX.

- The Tribunal must also determine whether the need to uphold professional standards and maintain public confidence would be undermined if a finding of impairment were not found. The case of *Grant* makes it clear that protecting the public and upholding proper standards and public confidence in the profession is a fundamental consideration. In the case of *Cheatle v GMC* [2009] EWHC 645 (admin) it was stated that a doctor's behaviour at a particular time maybe *'so egregious'* that, looking forward, a Tribunal may be persuaded that a doctor is not fit to practise. It is crucial that the Tribunal is mindful at all times of the overarching objective set out in s1 of the Medical Act 1983 which requires the Tribunal to:

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

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

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

The Tribunal's Determination on Impairment

Misconduct

100. The Tribunal considered whether the facts which have been admitted and found proved amount to misconduct.

101. The Tribunal firstly considered Dr Saunders' actions before 11 May 2024. The Tribunal noted that Dr Saunders admitted paragraphs 1, 2 and 3 of the Allegation (not paragraph 2(c)). They set out that he had given the impression that he was qualified and/or entitled to carry out cosmetic bonding as a registered medical practitioner. Also, that he had provided a price list on a Facebook post, had given his availability, offered a discount, and referenced himself

working for the NHS. He then communicated with Patient B stating that he was a cosmetic doctor and that he was permitted to perform cosmetic bonding.

102. The Tribunal considered the messages that had been sent to Patient B before the procedure was carried out. They were not formal or professional. The Tribunal accepted the statement of the expert, Dr E. He said;

> *'It is my opinion that Facebook messaging is an inappropriate form of communication and of obtaining informed consent from the patient (GDC)*

103. Dr Saunders accepted that he had made the contact alleged and explained in his oral evidence that he *'made an assumption'* that he could do the procedure in what is a grey area of aesthetic procedures. In his statement, to the GMC he said;

> *'I accept that I did not carry out the necessary due diligence by seeking confirmation from the GDC, or any other appropriate channel and that this undoubtedly demonstrated a lack of integrity on my part. At this time, I would like to highlight to the tribunal that I was [XXX].'*

104. The Tribunal has accepted that there was insufficient evidence to show that Dr Saunders was acting dishonestly when he communicated with Patient B. It nevertheless decided that the method of advertising and communicating with Patient B fell short of the standards required of a competent practitioner. Dr Saunders was offering cosmetic bonding, which was not within his area of expertise, and which was outside his scope of practice.

105. The Tribunal considered GMP. Taking into Dr Saunders' admissions, and the available evidence, the Tribunal concluded that the following paragraphs had been breached:

> ***'1*** *Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.*
>
> ...
>
> ***14*** *You must recognise and work within the limits of your competence.*

…

68 *You must … make reasonable checks to make sure any information you give is accurate.'*

106. The Tribunal determined therefore that Dr Saunders' conduct before the procedure fell so far short of the standards of conduct reasonably expected of a doctor so as to amount to serious misconduct. It decided that Dr Saunders' actions would undermine public confidence and that he had breached GMP.

107. The Tribunal then went onto consider the procedure that Dr Saunders undertook on 11 and 12 May 2024. He admitted that he undertook the procedure with hindsight he understood that he was not entitled or qualified to do.

108. The Tribunal considered the statements made by Dr E. His report sets out a number of clinical failings that correspond with the allegations made in paragraph 6. He expressed concern about the communications with Patient B, and the record keeping in terms of lack of consent, risk management and absence of dental records and a treatment plan. He also noted that Dr Saunders did not check the state of Patient B's teeth beforehand, and he pointed out the seriousness of the failure to do that. He was also concerned about the clinical environment, and the equipment used. He stated that there were a number of failings during the procedure itself. In summary Dr E said:

'9.9 It is my opinion that had a dentist carried out the same procedure in a nondental environment, he or she would be setting an overall standard that would fall seriously below that of their peers

9.10 From the poor communication, lack of consent, harmful environment, lack of emergency care, lack of records, lack of materials and instruments, allowing a patient to stop the procedure and harming the patient etc, JS fell seriously below the standards expected of a dentist (GDC)

…

9.12 JS placed his interests before that of (GDC)'

109. Dr Saunders, in his statement to the GDC, accepted twice that he recognised at the time that '*the procedure was not going well.'* In his oral evidence, he accepted that he should have '*done due diligence,'* that the procedure was '*more complex than he thought.'* that he thought that it was similar to teeth whitening and that *'I now know how wrong I was.'* He accepted that the procedure went wrong but said that he was '*not in right mind'* at the time.

110. Patient B described the procedure and the pain that she experienced. The pictures of her teeth afterward show the damage caused. She attended an emergency dental appointment on 17 May when the dentist noted:

> *'this lady had some treatment attempted by a doctor a week ago, and was seen at [XXX] out of hours to try and repair some of the damage done she had blue gel and composite stuck to her teeth and gums and since that time her gums have been very painful and she is struggling to eat and brush. '*

111. The Tribunal accepted the opinion of Dr E that Dr Saunders' conduct during the procedure fell seriously below the standard expected of a reasonably competent practitioner. It decided his clinical performance constituted deficient professional performance and was unacceptably low.

112. The Tribunal again considered GMP and decided that Dr Saunders had shown a clear departure from paragraph 14 (as set out above) and paragraph 15,19 and 21 which state;

> *'15 You must provide a good standard of practice and care. If you assess, diagnose or treat patients, you must:*
>
> *a adequately assess the patient's conditions, taking account of their history (including the symptoms and psychological, spiritual, social and cultural factors), their views and values; where necessary, examine the patient*
>
> *b promptly provide or arrange suitable advice, investigations or treatment where necessary …*
>
> *…*

> *19* *You must treat patients fairly. You must not discriminate against them or allow your personal views to affect your relationship with them, or the treatment you provide or arrange. You must not refuse or delay treatment because you believe that a patient's actions or choices contributed to their condition.*
>
> …
>
> *21* *If you have a conscientious objection to a particular procedure, you must make sure that the way you manage this doesn't act as a barrier to a patient's access to appropriate care to meet their needs. You must follow the guidance in paragraph 87 and our more detailed guidance on Personal beliefs and medical practice*.'

113. In summary, the Tribunal determined that Dr Saunders' conduct during the procedure was serious misconduct. His actions had fallen short of what would be expected of a competent dentist or doctor, and he had put his own interests above that of his patient. The Tribunal decided that such conduct would be considered 'deplorable' by fellow members of the medical profession, and that Dr Saunders had not maintianed proper professional standards for members of the profession.

114. The Tribunal went onto to consider Dr Saunders' actions after the procedure and noted firstly that paragraph 15 of the Allegation states that they amount to harrassment. The Tribunal found that Dr Saunders had stood in the doorway to block Patient B's exit, and had shouted at her and told her that she could not leave. Dr Saunders admitted that he sent Patient B money, asked her to sign a contract, and said that he would take legal action if she did not. He later sent Patient B a Final Demand letter. Between 13 May and 5 June 2022 Dr Saunders sent Patient B threatening and abusive messages via social media and text. Dr Saunders denied some aspects of this conduct. The Tribunal accepted that this should not be held against him, as he is entitled to maintain his innocence and defend himself.

115. The Tribunal noted the evidence of Patient B, and accepted that she was scared and had been caused alarm and/or distress by Dr Saunders' behaviour. The Tribunal noted that Dr Saunders accepted that his behvaiour in sending the messages was *'disgraceful'* and'*shameful'.*

116. The Tribunal decided Dr Saunders' behaviour toward Patient B after the procedure taken both separately, and collectively as a harassment allegation, was conduct that was unacceptable, and such that fellow practitioners would find 'deplorable.'

117. The Tribunal considered GMP, and decided that Dr Saunders had breached the following paragraphs;

> *'45 You must be open and honest with patients if things go wrong. If a patient under your care has suffered harm or distress, you must follow our guidance on Openness and honesty when things go wrong: the professional duty of candour, and you should:*
>
> *a put matters right, if possible*
>
> *b apologise (apologising does not, of itself, mean that you are admitting legal liability for what's happened)*
>
> *c explain fully and promptly what has happened and the likely short-term and long-term effects*
>
> *d report the incident in line with your organisation's policy so it can be reviewed or investigated as appropriate – and lessons can be learnt and patients protected from harm in the future*
>
> *46 You must respond promptly, fully and honestly to complaints. You must not allow a patient's complaint to adversely affect the care or treatment you provide or arrange.*
>
> *47 You should only end a professional relationship with a patient when the breakdown of trust between you and the patient means you can't continue to provide good clinical care to them. You must follow our more detailed guidance on Ending your professional relationship with a patient'*

118. The Tribunal also considered Dr Saunders' dishonesty after the procedure had taken place. Dr Saunders admitted that the contact that he made with Patient B after the procedure, and the money that was paid to her was done in order to conceal the fact that he had conducted the procedure on her. He accepts that this was a dishonest thing to do.

119. The Tribunal noted that acts of dishonesty are by their nature serious. The Tribunal determined that trying to conceal his actions by coercing Patient B in this way was unacceptable behaviour and went to his honesty and integrity. The Tribunal considered that Dr Saunders had therefore breached GMP which states:

> *'65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*
>
> *66 You must always be honest about your experience, qualifications and current role.'*

120. The Tribunal concluded that Dr Saunders' conduct described in the Allegation amounts to serious misconduct. It decided that Dr Saunders had failed to protect, promote, and maintain the health, safety and well-being of the public, promote and maintain public confidence in the medical profession, and promote and maintain proper professional standards and conduct of members of that profession.

Impairment by reason of misconduct

121. Having determined that the facts found proved amounted to serious misconduct, the Tribunal went on to consider whether, as a result of that misconduct, Dr Saunders' fitness to practise is currently impaired.

122. The Tribunal considered whether Dr Saunders' conduct was capable of being remedied, has been remediated, and any likelihood of repetition. In so doing, the Tribunal looked for evidence of remorse, remediation, and insight.

123. The Tribunal considered that the misconduct in this case was capable of remediation. However, Dr Saunders has not provided any evidence of remediation. The Tribunal noted that Dr Saunders does not dispute that his fitness to practise is impaired by reason of his misconduct. The Tribunal accepted that was demonstrative of insight, albeit to a very limited degree. The Tribunal also noted that Dr Saunders' admitted the majority of the Allegation and apologised through his counsel to Patient B. He expressed remorse for his actions. However, at this stage, the Tribunal has not been provided with any other evidence of insight. The Tribunal noted also that there is no evidence before it of reduction of the risk of repetition at the current time.

124. In applying Dr Saunders' conduct against the test as set out in *Grant,* the Tribunal was satisfied that all limbs of the test were engaged. His behaviour put Patient B at risk of harm, in that he caused permanent damage to her teeth and necessitated emergency dental treatment and antibiotics. His conduct brought the medical profession into disrepute and breached a fundamental tenet of the profession. Dr Saunders has also admitted to acting dishonestly in attempting to conceal his actions. In the absence of any evidence of remediation or sufficient insight, and with the remaining risk of repetition, the Tribunal considered that these limbs currently remain engaged.

125. The Tribunal considered and had regard to the statutory overarching objective. It was satisfied that Dr Saunders' conduct had the potential to damage public confidence in the medical profession and undermine proper professional standards and conduct for the members of the profession. Dr Saunders' conduct comprised a number of clinical failings during a procedure he was neither qualified nor permitted to perform, in addition to dishonest and threatening attempts to conceal his actions. It considered that a member of the public in full knowledge of the facts of the case would be concerned about a doctor acting in the way Dr Saunders did. The Tribunal was also of the view that given the dishonesty and harassment in this case, public confidence in the profession would be seriously undermined if a finding of impaired fitness to practise were not made.

126. The Tribunal also considered that a finding of impaired fitness to practise was required to declare and uphold proper standards of behaviour and to maintain public confidence in the profession.

127. The Tribunal has therefore determined that Dr Saunders' fitness to practise is currently impaired by reason of his misconduct.

<u>Impaired by reason of convictions</u>

128. The Tribunal took into account that Dr Saunders was convicted in December 2022 of three offences relating to practising dentistry. These convictions arose out of the procedure carried out on Patient B.

129. The Tribunal also took into account that Dr Saunders was subsequently convicted in December 2022 for five drug offences, and for failing to provide a specimen of blood when requested to do so by a police officer.

130. The Tribunal considered that any conviction brings the profession into disrepute. It also had regard to paragraph 65 of GMP which provides:

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

131. The Tribunal noted that Dr Saunders accepts that his fitness to practise is impaired by reason of his convictions. The Tribunal agreed that this was demonstrative of insight, albeit to a very limited degree. The Tribunal considered that the conduct that was the subject of the conviction was capable of remediation. However, it noted that Dr Saunders has not provided any evidence of remediation such as to demonstrate that he has developed sufficient insight into his behaviour.

132. The Tribunal noted that there is no evidence before it that Dr Saunders has repeated his conduct since his conviction in 2022, but that Dr Saunders has a previous conviction from 2007 for drink driving, for which he received a term of imprisonment. The Tribunal considered that the offence is of a similar nature and was therefore relevant to the risk of repetition.

133. In the absence of evidence of insight and remediation, and the fact that Dr Saunders received convictions for two separate incidents, the Tribunal concluded that there is no evidence of reduction of the risk of repetition at the current time.

134. The Tribunal concluded that behaviour such as this breached a fundamental tenet of the profession, namely that doctors should act with integrity and within the law. The Tribunal further concluded by his convictions Dr Saunders has brought the profession into disrepute.

135. In applying Dr Saunders' convictions against the test as set out in *Grant,* the Tribunal was satisfied that limbs (b) and (c) of the test were engaged in that his conviction brought the medical profession into disrepute and breached a fundamental tenet of the profession. In the absence of any evidence of sufficient remediation or insight, and with the assessed risk of repetition, the Tribunal considered that these limbs currently remain engaged.

136. The Tribunal considered and had regard to the statutory overarching objective. It was satisfied that Dr Saunders' convictions had the potential to damage public confidence in the

medical profession and undermine proper professional standards and conduct for the members of the profession. The Tribunal was of the view that given the serious nature of Dr Saunders' convictions, public confidence in the profession would be seriously undermined if a finding of impaired fitness to practise were not made.

137. The Tribunal also considered that a finding of impaired fitness to practise was required to declare and uphold proper standards of behaviour and to maintain public confidence in the profession.

138. The Tribunal has therefore determined that Dr Saunders' fitness to practise is currently impaired by reason of his convictions.

XXX

139. XXX

140. XXX

141. XXX

142. XXX

143. XXX

144. XXX

145. XXX

146. XXX

Determination on Sanction - 12/06/2024

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

148. As with its previous determinations earlier in the proceedings, this determination will be handed down in private, XXX. However, as this case also concerns misconduct, and convictions, a redacted version will be published at the close of the hearing.

The Evidence

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

150. Dr Saunders provided a detailed reflective statement to the Tribunal and also gave additional oral evidence at this stage of the hearing.

151. The Tribunal received further documentary evidence on behalf of Dr Saunders including:

- Dr Saunders' 2022/23 Appraisal documents;
- Multi-source colleague feedback;
- XXX;
- Supervising reports from Dr F;
- XXX; and
- Testimonials in support of Dr Saunders from colleagues.

Dr Saunders' Evidence

152. Dr Saunders, in oral evidence, told the Tribunal that XXX.

153. XXX

154. XXX

155. XXX

156. XXX

157. Dr Saunders said that his conviction for drink driving in 2007 had been an isolated incident. He stated that he had not intended to drink drive that night, but after an argument with his then girlfriend which others were becoming involved in, he had got into his car as he was feeling intimidated. He told the Tribunal that the people in the vehicle he had hit suffered injuries, with one passenger breaking her leg in two places and requiring surgery. He

described the decision to drive as a '*terrible error of judgment'* and *'wrong'.* He said that his conviction, and his custodial sentence, had an impact on his education. He told the Tribunal that he had commenced his education in 2004 and was only able to restart his third year of university in September 2008, after the university had completed its investigation into his fitness to practise. XXX.

158. Dr Saunders told the Tribunal that after his graduation in 2013, he had been unable to obtain provisional registration with the GMC. XXX. He said that it had taken until 2015 for him to get his registration, after issues obtaining documents from the university. He then had delays obtaining an FY1 post, which then meant he had to undertake an exam to demonstrate his knowledge as two years had passed since his graduation. This exam was only run annually. He stated that he had failed his first attempt but had passed the second time. He told the Tribunal that it had taken 13 years in total from starting his degree to commencing practise.

159. Dr Saunders told the Tribunal that because of this loss of time he felt he had a knowledge gap and needed to catch up with his contemporaries. He took on extra shifts and tried to immerse himself in medicine. He was working over the period of the COVID-19 pandemic. XXX

160. Dr Saunders explained to the Tribunal that he has spent a lot of time putting coping mechanisms in place so that, XXX he would have things in place to support him. He explained that now, whenever he feels stressed or overwhelmed, he arranges to take time off. He also explained that he had developed a lot of tools XXX including following strict self-care routines, practising meditation, listening to relaxing music, and having additional support available should he need it. He told the Tribunal that he has used these tools over the last few years to help him through the two prosecutions, the ongoing GMC investigation, starting a new job while under conditions after lots of rejections, many challenges at work, and XXX.

161. Dr Saunders stated that he was '*disgusted in himself*' for sending the messages to Patient B. He acknowledged that Patient B's vulnerability did not have an impact on his thinking at the time. He accepted now that it was very obvious that, XXX the impact of the messages on Patient B was significantly more damaging. He told the Tribunal that:

> *'It was hard to face up to how I had messaged her. [XXX] it came from me and she didn't deserve that. Its hard to read. I think Patient B would have been scared receiving*

them from anyone but to get them from a doctor, with the profession behind them, made it a million times worse.'

162. Dr Saunders admitted to acting dishonestly in trying to cover up what he had done to Patient B. He told the Tribunal that he accepted the responsibility of acting dishonestly but did not believe that he was a dishonest person. He told the Tribunal that:

'Rather than taking responsibility for messing up, I tried to turn it on [Patient B] rather than face up. I wanted to apportion responsibility to Patient B and that was totally wrong.'

163. Dr Saunders explained that although he had pleaded guilty to five drug possession charges, he had only had two drugs in his possession that day – XXX. He told the Tribunal that subsequent testing of the drugs had shown that the XXX was contaminated with other substances, and the police had charged the XXX twice under its brand name and the generic drug name. He explained that he had not been stopped while driving under the influence of drugs or alcohol that day, but the police had noticed him after he had pulled over XXX and then he had fallen asleep at the wheel whilst stationary. He accepted that he had refused to provide a specimen of blood to police, XXX.

164. Dr Saunders told the Tribunal that his future ambition was to become a GP. He explained that this would give him more autonomy over his time management and work life balance, XXX. He also explained that it would allow him to be a first point of contact for patients, which was a primary reason for him becoming a doctor. He told the Tribunal that he had become a doctor because he wanted to help people, which was why he had not given up after his 2007 conviction. In answer to a question from the Tribunal, he accepted that he has a lot of support and supervision in the hospital setting, and that as becoming a GP would take a number of years due to the training involved, this support would continue. He said that he had not completely made his mind up and that he would '*weigh up the risks'*, and that he was mindful of it, and this was speculative at the moment.

165. XXX

Submissions

166. The Tribunal received written and oral submissions from both Counsel, summarises of which are set out below.

Submissions on behalf of the GMC

167. On behalf of the GMC, Ms Rollings stated that the decision as to sanction was matter for the judgment of the Tribunal, but it must base its decisions on the standards of good practice established in GMP and on the advice given within the Sanctions Guidance (2024) ('the SG').

168. Ms Rollings reminded the Tribunal of the Overarching Objective and took it through the relevant sections of the SG which sets out its role, and the purpose of imposing a sanction on a doctor. She mentioned case law which, in summary confirmed that it must consider the reputation and standing of the profession.

169. Ms Rollings submitted that the Tribunal should be proportionate and should consider and balance any mitigating and aggravating factors against the aim of sanctions. She submitted that on account of the severity of Dr Saunders' actions and the fact that serious misconduct has been found, the Tribunal is less able to take his mitigating factors into account. She submitted that the Tribunal has found that Dr Saunders put his own interests above that of his patient and committed conduct which fellow members of the medical profession would consider *'deplorable'*. In addition, she stated that the dishonesty that has been found proven takes this case into the upper banding of serious misconduct.

170. In respect of aggravating factors, Ms Rollings reminded the Tribunal of Dr Saunders' 2007 conviction for drink driving, in which he caused '*grave*' injuries to a passenger in the other vehicle. She submitted that Dr Saunders did not learn his lesson from this offence because he has since been convicted for a similar offence. She submitted that the repetition of similar offences raises serious questions as to the extent of Dr Saunders' previous insight into his behaviour.

171. Due to the seriousness of the dishonesty and the offences involving harassment of a patient and the criminal offences, Ms Rollings began her submissions at consideration of suspension. She submitted that suspension was not appropriate in this case as Dr Saunders' conduct represented a serious departure from GMP. She reminded the Tribunal of its findings at the impairment stage, as well as Dr Saunders' acknowledgement of his *'shameful'* and *'disgraceful'* actions towards Patient B in sending the aggressive messages to her. She stated that consideration needs to be given to the volume and nature of the allegations

against Dr Saunders. She submitted that the Tribunal should consider carefully the risk of repetition identified in this case.

172. Ms Rollings submitted that the appropriate sanction in this case was one of erasure. She submitted that Dr Saunders has shown a blatant disregard for the safeguards designed to protect members of the public and therefore his conduct was incompatible with continued registration. She stated that the Tribunal should consider the nature, seriousness and the repeated departure from the required professional standards. Ms Rollings reminded the Tribunal that the reputation of the profession as a whole is more important than the interests of any individual doctor.

173. Ms Rollings submitted that erasure was the only sanction sufficient to protect, promote and maintain the health, safety and wellbeing of the public and to promote and maintain public confidence in the medical profession. She submitted that this is the most serious of cases and the sanction should properly reflect the gravity of the misconduct which has been found proven.

Submissions on behalf of Dr Saunders

174. On behalf of Dr Saunders, Mr Gillespie submitted that, notwithstanding the egregious nature of the misconduct that has been both admitted and found proved, and the convictions, this Tribunal can satisfy all aspects of the public interest by imposing an order of suspension with a review.

175. Mr Gillespie submitted that the misconduct and the conviction allegations took place during a relatively short space of time. He reminded the Tribunal that XXX, with the misconduct and conviction matters taking place between April and June 2022. He submitted that XXX came to the conclusion that there was a causal link between XXX, and the misconduct and convictions.

176. Mr Gillespie said that Dr Saunders accepts that whilst XXX may explain his behaviour, it did not justify it. XXX. Mr Gillespie submitted that, in all the circumstances of the case, the Tribunal can be satisfied that XXX, is directly linked to his poor decision making and wholly unacceptable conduct between April and June 2022. He submitted that Dr Saunders accepts that his conduct has reached a high level of seriousness.

177. Mr Gillespie submitted that XXX. He submitted that Dr Saunders has worked at the hospital at a consistently high level with no repetition of the behaviours that brought him before this Tribunal, XXX. He stated that, although there is a previous conviction for drink driving, which the Tribunal may consider an aggravating feature, XXX. Mr Gillespie reminded the Tribunal of the circumstances of the conviction, and that when Dr Saunders resumed his studies in 2008, he was XXX which did not raise any issues. XXX. However, he stated that Patient B had made no reference to Dr Saunders being potentially under the influence of alcohol, and the roadside test in June 2022 performed by police was negative for alcohol. It is admitted that Dr Saunders refused that blood test XXX

178. Mr Gillespie submitted, in regard to insight, that the Tribunal now has the benefit of Dr Saunders' detailed reflective statement, which it has been able to test in oral evidence. He stated that it was apparent that Dr Saunders fully understands and is genuinely remorseful for the effect of the totality of his actions towards Patient B. He submitted that Dr Saunders understands the impact of this behaviour on public confidence in the profession and that he has failed through his conduct to uphold professional standards. He said that Dr Saunders has accepted full responsibility for his actions and that he has reflected appropriately and diligently on the relevant areas of GMP. He submitted that it was clear that Dr Saunders has highly developed and sophisticated insight into what he has done and the effect that it has had on individuals, the public and the profession.

179. Mr Gillespie submitted that there has been no repetition of the conduct in this case. He reminded the Tribunal of the positive appraisals that Dr Saunders has received and of the focused, relevant Continuing Professional Development ('CPD') courses which Dr Saunders has undertaken and reflected on in his appraisal. He submitted that Dr Saunders is otherwise a good, kind and compassionate doctor, and his patients and colleagues support this view. He stated that there was a public interest in allowing good doctors to continue to practise medicine.

180. Mr Gillespie in summary submitted that Dr Saunders has never sought to downplay the seriousness of his conduct. He submitted that there is a clear link between Dr Saunders' misconduct, the convictions XXX. He stated that the quality of Dr Saunders' insight and remediation can properly be described as excellent and there is compelling evidence of his qualities as a doctor. He submitted that, in the circumstances of this case, suspension is the appropriate sanction, and that the seriousness of Dr Saunders' conduct can be reflected in the length of the period of suspension.

The Relevant Legal Principles

181. The LQC gave the Tribunal legal advice, which is summarised below:

- The Tribunal is reminded that the decision as to the appropriate sanction, if any, is a matter for the tribunal's own judgement, which must be made independently.

- The Tribunal has found that Dr Saunders' fitness to practice is currently impaired due to his misconduct, XXX and his convictions. Therefore, the full range of sanctions set out in the SG apply. The Tribunal must have regard to the SG, which, although not statutory, gives it an authoritative steer. It should also consider GMP. It is reminded that it must have regard to the aggravating and mitigating factors, and consider the least restrictive sanction first, and then move on, if needs be, to consider the other available options in ascending severity.

- The Tribunal must bear in mind that the purpose of a sanction is not to be punitive, but to protect patients and the wider public interest. The Tribunal should be mindful that this is a balancing exercise - weighing up what is in the public interest, as against the interest of Dr Saunders. Any sanction must be appropriate and proportionate. In the case of *Bolton v Law Society [1994]* 1 WLR 512 it was made clear that the reputation of the profession as a whole is more important than the fortunes of any individual member, even if the consequences may be deeply unfortunate for them.

- The Tribunal is aware that Dr Saunders is facing a matter of dishonesty. Dishonesty is very serious, especially if it occurs in the context of a doctor's professional duties. In the case of *Nkomo v GMC [2019]* EWHC 2625 (Admin) at paragraph 35 it states;

> *'The starting point is that dishonesty by a doctor is almost always extremely serious. There are numerous cases which emphasise the importance of honesty and integrity in the medical profession, and they establish a number of general principles. Findings of dishonesty lie at the top end of the spectrum of gravity of misconduct….*
>
> *Misconduct involving personal integrity that impacts on the reputation of the profession is harder to remediate than poor clinical performance…. In such*

cases, personal mitigation should be given limited weight, as the reputation of the profession is more important than the fortunes of an individual member…

Where dishonest conduct combined with a lack of insight, is persistent, or covered up, nothing short of erasure is likely to be appropriate'.

- However, there is no default rule. The nature and extent of dishonesty may be variable and must be evaluated on a case-by-case basis. The circumstances of each case must be carefully considered by the Tribunal, and it should look to see if there is, for example, compelling insight, or evidence that the behaviour is out of character. It should decide if the reputation of the medical profession is affected.

- XXX

- The Tribunal will be aware, again, of the overarching objective of the GMC as set out in section 1 of the Medical Act 1983.

The Tribunal's Determination on Sanction

182. The Tribunal considered the LQC advice, and the submissions from both parties. It reminded itself of the facts that had been admitted or found proved, and noted the new evidence it had received at this stage of the proceedings. The Tribunal determined that Dr Saunders is facing a number of serious matters of misconduct, comprising clinical failings, harassment, and dishonesty. It also noted that there are two sets of criminal convictions to consider. The Tribunal accepted that there is a strong causal link between XXX and the misconduct and convictions.

183. The Tribunal first identified what it considered to be the mitigating and aggravating factors in this case. It was mindful that it needed to consider and balance any such factors against the central aim of sanctions, which is to uphold the overarching objective.

Aggravating Factors

184. The Tribunal noted that the diverse number of allegations that Dr Saunders is facing is of itself an aggravating feature in this case.

185. The Tribunal considered paragraphs 50 to 59 of the SG, which sets out some of the aggravating factors that are likely to lead a Tribunal to consider more serious action.

186. XXX

187. XXX

188. XXX

189. The Tribunal noted that there were a significant number of clinical failings in the procedure on Patient B. It also noted that Dr Saunders accepts that he did not do his '*due diligence*' in terms of checking whether he was allowed to perform composite bonding. Dr Saunders has admitted to working outside his area of competence. XXX. Practicing dentistry on 11 and 12 May 2022 resulted in criminal convictions, although the Tribunal accepted that Dr Saunders had not realised that he needed to be a dentist before he carried out the procedure.

190. The Tribunal determined that Patient B was vulnerable XXX. The Tribunal decided that this aggravated Dr Saunders' behaviour toward her, although it accepted his explanation that her vulnerability did not register with him at the time XXX. The Tribunal considered that Dr Saunders' method of advertising and informal communications before the procedure was ill advised but accepted that it was not predatory behaviour. It noted that the threats that Dr Saunders made to Patient B took place over an approximate three-week period between 13 May and 9 June 2022, and that he now accepts that these actions were '*shameful*' and *'disgraceful'.* Patient B told the Tribunal in her oral evidence that she was scared when she received the messages and that she was crying when Dr Saunders tried to prevent her from leaving the room.

191. The Tribunal recognised that dishonesty is very serious and can undermine public confidence in the profession. It was aware of the caselaw and accepted that dishonesty is difficult to remediate. It noted that the dishonesty in this case was within a clinical setting. Dr Saunders' had tried to cover up the fact that he had carried out the procedure on Patient B and he attempted to involve her in this by offering her money, and then threatening her via e-mail, text and social media messages over a period of weeks.

192. The Tribunal noted that Dr Saunders was convicted in 2007 for drink driving. This resulted in a finding of impaired fitness to practise made by the university. This conviction also caused a delay in Dr Saunders' obtaining his GMC registration. The Tribunal noted the

similarities between the 2007 conviction and the 2022 conviction in Northern Ireland in that they both involved driving, or being in charge of a car, while under the influence of drink or drugs. The Tribunal was concerned that Dr Saunders had not learned his lesson from the earlier conviction, despite assuring the university that he had. The Tribunal, however, accepted that this offence was committed 18 years ago, when Dr Saunders had been a student, and that it involved the use of alcohol XXX. The Tribunal was of the view that the more serious element to the conviction in Northern Ireland was the refusal to provide a specimen of blood XXX.

193. XXX.

Mitigating Factors

194. The Tribunal then went on to consider the mitigating factors in this case. It noted that although there were a number of matters that Dr Saunders was facing, they had taken place over a short span of time from November 2021 to June 2022.

195. The Tribunal considered paragraphs 24 to 49 of the SG, which sets out some of the mitigating factors that the Tribunal may consider, while balancing these against the central aim of sanctions.

196. The Tribunal considered paragraph 25(a), which sets out an example of a mitigating factor as;

> '*Evidence that the doctor understands the problem and has insight, and of their attempts to address or remediate it. This could include the doctor admitting the facts relating to the case, apologising to the patient, making efforts to prevent behaviour recurring….'*

197. The Tribunal first considered insight. It noted that XXX are at the root of his misconduct and convictions. The Tribunal was not provided with any evidence of insight at the impairment stage and assessed then that Dr Saunders had very limited insight. However, the Tribunal was provided with a bundle of documents at the start of the sanction stage which contained a full and thoughtful reflective statement from him. At the beginning of the statement Dr Saunders said:

' I have spent the years and months that have passed since June 2022 reflecting on the reasons why these events occurred… This is a reflective statement on the thoughts and questions that I have ruminated and reflected upon every day since [XXX].'

198. XXX

199. XXX

200. The Tribunal also heard further oral evidence from Dr Saunders which expanded on his reflective statement. XXX. The Tribunal found that he was honest, reflective and open in his oral evidence at this stage. The appraisal documents also show evidence of insight. It was clear to the Tribunal that he has been honest with his appraiser. An example of this is his appraiser's comments:

'….[XXX]'

201. The Tribunal noted that Dr Saunders had also made attempts to remediate his problems by attending relevant CPD courses involving ethics, XXX and managing professional boundaries. He reflected on what he had learned on these courses in his reflective statement.

202. The Tribunal took into account that Dr Saunders pleaded guilty in the criminal courts when he was convicted of the two sets of criminal offences. Further, the Tribunal noted that he admitted the majority of the Allegation before the Tribunal.

203. The Tribunal was satisfied that Dr Saunders has shown remorse and regret, offering a direct apology to Patient B through his Counsel before the Tribunal. Of Patient B, in his reflective statement he said;

'I cannot express in words how remorseful I am to Patient B, the profession that I have brought into disrepute, and to patients themselves, whose safety I have clearly compromised.'

…

'There are no words to express how remorseful I am for putting her through this traumatic experience. It will no doubt have an ongoing effect on how Patient B and her family approach future interactions with medical professionals. I sincerely hope that

my actions have not caused any long-lasting negative impact to the health of either herself or her family.'

204. The Tribunal also considered paragraph 25(b) of the SG which sets out another example of a mitigating factor as;

'Evidence that the doctor is adhering to important principles of good practice (ie keeping up to date, working within their area of competence) …. .'

205. The Tribunal noted that Dr Saunders has been working as a doctor for the last 19 months without incident. The Tribunal was satisfied that Dr Saunders had been honest and open with his appraiser and his colleagues. It also had regard to the multi-source colleague feedback, which was all positive.

206. The Tribunal considered the testimonial from Dr Smith, Dr Saunders' clinical supervisor, which stated:

'In summary Johnathan's performance has been excellent throughout his time working at the Royal Lancaster Infirmary. His clinical knowledge and skills are very good, he is conscientious, reliable, knows when to seek advice, and has excellent verbal and written communication skills. He has developed very good working relationships with junior and senior members of the team, nursing staff and other hospital staff. He interacts well with patients and relatives, and no concerns have been raised about his integrity or any aspect of his medical practice.'

207. The Tribunal also considered the positive testimonial evidence it had received on Dr Saunders' behalf from colleagues. Examples of the comments from his testimonial refences are;

'Dr Saunders is a dedicated and compassionate healthcare professional who consistently puts his patients' wellbeing first. He has an excellent bedside manner and is highly knowledgeable and skilled in his medical practice. Dr Saunders is a collaborative team player who communicates effectively and respectively with patients, their families, colleagues, nurses and support staff.'

'A noticeable strength is his effective communication skills, both with patients and staff. He maintains a calm and reassuring manner, fostering a positive environment for everyone involved. This trait is notable throughout the medical and nursing team, earning him respect from patients and colleagues. Furthermore, I must highlight Dr Saunders adherence to infection control, he is consistently smartly dressed, adhering to high standards of professionalism.'

208. XXX

209. The Tribunal took into account Dr Saunders' continued perseverance to become a doctor. It noted that it had taken a total of 13 years from commencing his education for Dr Saunders' to commence his UK medical career.

210. The Tribunal balanced the aggravating and mitigating factors throughout its deliberations and went on to consider each sanction in order of ascending severity, starting with the least restrictive.

No action

211. The Tribunal first considered whether to conclude the case by taking no action. It noted that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

212. The Tribunal was satisfied that there were no exceptional circumstances in Dr Saunders' case which could justify it taking no action. Further the Tribunal considered that concluding the case by taking no action would be insufficient to protect the public interest and would not mark the seriousness of Dr Saunders' misconduct or convictions.

Conditions

213. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Saunders' registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable. The Tribunal noted that conditions may be workable where a doctor has insight into their misconduct, is likely to comply with conditions, and where a doctor is likely to respond positively to remediation or retraining. The Tribunal accepted that Dr Saunders has been complying with conditions for 19 months and that he has shown a willingness to remediate.

214. The Tribunal acknowledged that XXX, might have been appropriately managed with an order of conditions. However, the Tribunal considered that conditions would not reflect the seriousness of Dr Saunders' misconduct and would be insufficient to maintain public confidence in the profession and to promote and maintain proper standards of conduct. The Tribunal considered that this was not a case in which conditions would sufficiently address the issues of the case.

Suspension

215. The Tribunal then went on to consider whether suspending Dr Saunders' registration would be an appropriate and proportionate sanction. It considered whether suspension would adequately protect the public, maintain public confidence in the profession and uphold proper standards for its members. It recognised that suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and the public about what is regarded as behaviour unbefitting a registered doctor.

216. The Tribunal had regard to paragraph 97(a) to (g) which set out some factors which, if present, would indicate that suspension may be appropriate. The Tribunal considered the following factors to be relevant to Dr Saunders' case;

> *97* ***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.*
>
> ***b*** *In cases involving deficient performance where there is a risk to patient safety if the doctor's registration is not suspended and where the doctor demonstrates potential for remediation or retraining.*
>
> *[XXX]*
>
> *…*
> ***e*** *No evidence that demonstrates remediation is unlikely to be successful, e.g. 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.'

217. The Tribunal found at the impairment stage that Dr Saunders had breached a number of the paragraphs of GMP. It determined that those breaches were serious enough to warrant a suspension, and that no lesser sanction would suffice. It noted that Dr Saunders had caused harm and upset to Patient B, and between November 2021 and June 2022 had presented as a potential risk to other patients due to XXX corresponding poor judgment. However, the Tribunal was satisfied that there was evidence before it to show that Dr Saunders continues to engage with remediation efforts, and that it is unlikely that further remediation would be unsuccessful. Dr Saunders has been working in a hospital with the full support of his colleagues and there have been no incidents of concern.

218. The Tribunal acknowledged that Dr Saunders' misconduct and convictions all occurred at a time XXX and that this had influenced his behaviour. It considered very carefully whether there is a risk of repetition of the misconduct or convictions. The Tribunal decided that Dr Saunders has shown compelling insight into his actions and has learned his lesson.

219. XXX

220. XXX

221. The Tribunal acknowledged that Dr Saunders has now demonstrated significant insight and remediation. He has, over the last 19 months, shown that he can work to a high standard whilst under IOT conditions and the stress of the GMC investigation. He has been under supervision, and his appraisal report reports are positive. The Tribunal accepted that Dr Saunders enjoys his work and that there is evidence that he is a compassionate and caring doctor. The Tribunal also considered that the remedial activities Dr Saunders has undertaken are meaningful and target the issues in the case.

222. In summary, the Tribunal decided that the risk of repetition of the misconduct and convictions was low, XXX. Therefore, the Tribunal determined that suspension would protect patients and the public.

223. The Tribunal determined, however, that Dr Saunders' actions were serious and that XXX did not justify his actions. Dr Saunders performed a procedure on Patient B that he was not legally entitled to do and caused permanent damage to her teeth. He then attempted to conceal what he had done by offering Patient B money and then threatening and harassing her. His actions resulted in a criminal conviction for performing illegal dentistry. XXX. The Tribunal was satisfied that this conduct, especially the dishonest and threatening actions towards a patient would be regarded as '*deplorable*' by fellow practitioners and would undermine public confidence in the profession.

224. Taking all of these factors into account, the Tribunal considered whether the most serious sanction of erasure was the more appropriate and proportionate in this case. The Tribunal decided that this case was not one where Dr Saunders' misconduct is '*fundamentally incompatible with continued registration*' at this time. While his actions in that seven-month period were deplorable, he now has considerable insight and remorse XXX. The Tribunal accepted that Dr Saunders is not ordinarily a dishonest or aggressive person and there have been no other concerns about his conduct. It considered that erasure would not be appropriate or proportionate, nor would it be in the public interest. In weighing the balance between Dr Saunders' interests and the public interest, it noted that erasure would deny the public an otherwise competent and compassionate doctor.

225. In light of the above, the Tribunal determined that a period of suspension would be an appropriate and proportionate sanction when considering Dr Saunders' interests alongside the public interest. The Tribunal took into account the impact that this sanction may have upon Dr Saunders. However, in all the circumstances the Tribunal concluded that his interests are outweighed by the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and behaviour.

Length of Suspension

226. In determining the length of the suspension, the Tribunal had regard to paragraphs 99 to 102 of SG and the table following paragraph 102.

227. The Tribunal considered the aggravating factors in this case and acknowledged that this was a serious departure from the principles set out in GMP. The Tribunal considered that this behaviour was at the top end of serious, falling just short of erasure from the medical register.

228. Taking this into account, the Tribunal was satisfied that imposing a period of 12 months' suspension was appropriate and proportionate. In the Tribunal's view only the maximum available suspension would satisfy the need to promote and maintain public confidence and to send out a clear message to the profession that this type of conduct is unacceptable, in order to maintain proper professional standards. A reasonable and well-informed member of the public or the profession would be satisfied that this was a proportionate response to Dr Saunders' behaviour. Further, a period of 12 months will also give Dr Saunders' time to continue his work on XXX.

229. Accordingly, the Tribunal determined to suspend Dr Saunders' registration for a period of 12 months.

Review

230. The Tribunal determined to direct a review of Dr Saunders' case. A review hearing will convene shortly before the end of the period of suspension. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Saunders to demonstrate XXX. It therefore may assist the reviewing Tribunal if Dr Saunders provides:

- XXX;
- XXX;
- XXX;
- Any recent testimonial(s) from paid and/or unpaid work;
- Evidence that he has kept his knowledge and skills up to date; and
- Anything else Dr Saunders believes will assist a reviewing Tribunal.

Determination on Immediate Order - 12/06/2024

231. Having determined that Dr Saunders' registration should be subject to an order of suspension for a period of 12 months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order.

Submissions

232. On behalf of the GMC, Ms Rollings submitted that an immediate order was necessary to protect public confidence in the profession, is otherwise in the public interest and is in Dr Saunders' best interest. She also submitted that the IOT currently in place should be revoked.

233. On behalf of Dr Saunders', Mr Gillespie made no specific submissions. He stated that the Tribunal has imposed the maximum possible suspension and that, in those circumstances, one could see how a properly informed member of the public would think it necessary to impose an immediate order.

The Tribunal's Determination

234. In reaching its decision, the Tribunal considered the relevant paragraphs of the SG and exercised its own independent judgement. In particular, it took account of paragraphs 172, 173 and 178:

> '*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. …*
>
> *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.'*

235. The Tribunal determined that an immediate order was necessary to protect public confidence in the medical profession and is otherwise in the public interest. It is also took the view that it was in the best interests of Dr Saunders to impose an immediate order given that XXX.

236. This means that Dr Saunders' 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.

237. The interim order is hereby revoked.

238. That concludes this case.

ANNEX A – 30/05/2024

Application for no case to answer under Rule 17(2)(g)

239. At the close of the case on behalf of the GMC, Mr Gillespie, on behalf of Dr Saunders made an application pursuant to Rule 17(2)(g) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('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'.*

240. The Tribunal heard submissions from both Mr Gillespie and Ms Rollings, and they are summarised below.

Submissions

On behalf of Dr Saunders

241. Mr Gillespie told the Tribunal that the application for no case to answer was in respect of paragraphs 2(c) and 6(h)(ii) of the Allegation.

242. Firstly, in relation to paragraph 2(c), Mr Gillespie accepted that photographs were sent by Dr Saunders to Patient B. However, he said that Patient B had said in her evidence that she was not really sure why Dr Saunders had sent photographs of his teeth. He reminded the Tribunal that Dr Saunders had sent two photographs to her but there was no evidence that these related to cosmetic bonding. He submitted that the other photographs were sent by Patient B to Dr Saunders. One was of her own teeth, and the other of a friend of hers who had received treatment from someone else, which she sent to Dr Saunders so that he could see what she wanted to achieve. He submitted that Patient B was slightly equivocal as to what the photos of Dr Saunders were supposed to demonstrate.

243. Mr Gillespie submitted that there is no evidence that Dr Saunders had sent examples of composite bonding to Patient B indicating that he could achieve similar results. He also submitted that the evidence does not support the Allegation, because the paragraph uses the plural and not the singular. Further, and more importantly, Patient B's evidence was that she

was not entirely sure what the purpose of those photographs was, and so there is insufficient evidence to support paragraph 2(c).

244. In relation to paragraph 6(h)(ii), Mr Gillespie submitted that Patient B's evidence does not support the paragraph as charged. He submitted that there was no evidence that Patient B was saying stop and that Dr Saunders had carried on regardless of this request, in fact her evidence was to the contrary. He stated that there was simply no evidence to support the Allegation. Mr Gillespie submitted that with there being no evidence, there should be no case to answer in relation to paragraph 6(h)(ii).

On behalf of the GMC

245. Ms Rollings submitted that the GMC did not oppose the application in relation to paragraph 6(h)(ii) of the Allegation. In respect of paragraph 2(c), she submitted that the GMC was opposed to the application. She directed the Tribunal to relevant caselaw on the subject of no case to answer.

246. Ms Rollings submitted that there is sufficient evidence to support paragraph 2(c) and that the GMC wished to have the opportunity to cross examine Dr Saunders on the photographs within the bundle. These were provided in the context of telephone conversations and Facebook conversations about composite bonding. She submitted that, on balance, the photographs potentially demonstrate that Dr Saunders was showing Patient B that he had done that work on his own teeth and that was an example of him doing cosmetic composite bonding. The basis for that evidence was found in Patient B's oral testimony where she said words to that effect that the photographs had been sent to her to demonstrate composite bonding.

247. Ms Rollings reminded the Tribunal that the legal test essentially is whether there is sufficiency of the GMC's evidence in order to proceed, and it is only at this stage the Tribunal is able to make the judgement as to whether all of the evidence it has heard allows it to remove this paragraph of the Allegation, which of course is on the balance of probabilities. She submitted that in all of the circumstances the GMC invite the Tribunal to dismiss Mr Gillespie's application in respect of no case to answer in relation to paragraph 2(c).

The Tribunal's Approach

248. The Tribunal carefully considered the submissions of both Counsel. In reaching its decision, it had full regard to all the evidence presented to date, both oral and documentary.

249. The Legally Qualified Chair ('LQC') gave legal advice to the Tribunal which is summarised as follows:

- Rule 17(2)(g) of the Rules states that the practitioner may make submissions regarding whether sufficient evidence has been adduced to find some or all of the facts proved.

- The leading case that assists the Tribunal in how to make decisions is the criminal case of *R v Galbraith* [1981] 2 All ER 1060 (transposing the language from the criminal court to these proceedings):

  '(1) If there is ***no*** *evidence that the misconduct alleged has been committed by the doctor, then 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.*

- Where the Tribunal comes to the conclusion that the GMC's evidence, taken at its highest, is such that a Tribunal properly directed could not properly find matters proved based on it, it is their duty, upon a submission being made, to stop the case.

- Where however the GMC's 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 come to the conclusion that the allegation can be proved then the Tribunal should allow the matter to be proceed.'

- At this stage of the proceedings, the Tribunal is not deciding if the facts have been proved, but rather if they are capable of being found proved by a reasonable Tribunal properly directed. The Tribunal now needs to now decide:

  1. Is there any evidence at all?
  2. If there is some evidence identify what it is
  3. Assess the strength of it- taking the GMC case at its highest.

- The allegations must never be left simply because the Tribunal would like to hear from the registrar.

The Tribunal's Determination

250. The Tribunal kept foremost in its mind that, at this stage, it was required to determine the sufficiency of the evidence taken at its highest and not to make any findings of fact. It then went on to consider paragraphs 2(c) and 6(h)(ii) of the Allegation and the evidence it has been provided with so far.

Paragraph 2(c)

251. In making its decision, the Tribunal considered whether the evidence presented, when taken at its highest, supported the GMC's case that Dr Saunders sent example pictures to Patient B indicating that he could achieve similar results.

252. The Tribunal noted that Dr Saunders had sent two photographs of himself to Patient B, showing his teeth before and after some form of dental treatment. There was no information with the photographs to explain what the photographs were showing specifically.

253. The Tribunal took into account that Patient B did not address the photographs in her original statement. However, she was asked about the photographs in her oral evidence. In her evidence in chief, she said that she thought Dr Saunders was showing her what he had done to his own teeth. In cross examination, she told the Tribunal that she was '*not sure*' why Dr Saunders had sent photographs of his own teeth to her but thought this could be composite bonding he had done to himself.

254. The Tribunal, when considering Patient B's evidence, could see no reason why Dr Saunders would have sent these photographs in the context of the exchange of messages on the subject of composite bonding if not to demonstrate work he had done.

255. The Tribunal concluded, that taking the evidence at its highest, a reasonable Tribunal could, on one possible view of the evidence find this paragraph of the Allegation proved.

256. The Tribunal determined that in taking the evidence at its highest, there remains a case to answer in respect of paragraph 2(c).

Paragraph 6(h)(ii)

257. In making its decision, the Tribunal considered whether the evidence presented, when taken at its highest, supported the GMC's case that Dr Saunders had not stopped the treatment when asked to do so by Patient B.

258. The Tribunal considered Patient B's oral evidence, in which she was clear that when she '*was in pain and asked for a break*' Dr Saunders had stopped what he was doing. Patient B accepted that whenever she had asked to stop; Dr Saunders had stopped. The Tribunal noted that this was not inconsistent with her witness statement, dated 10 October 2022. This evidence directly contradicts paragraph 6(h)(ii). It also noted that the GMC do not oppose the application in relation to this paragraph.

259. On that basis, the Tribunal found that there is no case to answer in respect of paragraph 6(h)(ii).

Summary

260. The Tribunal therefore determined to grant Mr Gillespie's application in relation to paragraph 6(h)(ii) only.

SCHEDULE 1

Date	Message
01 June 2022	'Pay the 2.5k or take the 2.5k on the 6th or 8th otherwise you will be wishing you never tried this on. I'm not just some average Wigan twat. I have the means and intelligence to ruin you of [sic] you ruin me. That's a promise.'
	'You'll be seeing me if this isn't sorted tonight. At your fucking door.'
	'I'm in Ireland I can be back in 2 hours no fuckerbis [sic] robbing me your q9 will be fucking scrao [sic]. I'm predicting. Just have a feeling someone might fuck shit up for you.'
	'Fuck this I'm booking a flight now you've pushed me too far I'll be fucking getting my money in the morning you best get it ready. Robbing fuck.'
02 June 2022	'This 2500 best be fucking in my account or I will not be responsible for what I do if you make me physically get that money from you or whoever has it.'
	'I swear I'm going to ruin FUCKING EVERYTHING IF THAT MONEY IS NOT HERE AND I GET ON THAT FUCKING FLIGHT TOMORROW YOU'VE CRISSED [sic] THE LINE NOW ILL [sic] LOOK FORWARD TO A NIGHT I'M [sic] THE CELLS MY GET THAT'
	..'MY fucking money in my fucking account or your teeth will be the least of your worries you've robbed me no one fucking robs me. You'll realise that.'
	'Put that fucking money on cause you'll lose more than 2.5k if I get there. More than fucking 10k in the damage I'll cause.'
	'Pay me what you owe me. Or watch that smirk get wiped off your fucking face.'
	'I'' bring a nerf gone [sic]…gun'
	'If you don't pay expect random shit to happen – shit that costs thousands'
4 June 2022	'Ill do the necessary to get what is mine'
5 June 2022	'But if my intuition is correct than this is not going to be a good summer for all parties involved, it's just a guy [sic] feeling'
	'I wouldn't even piss on you if you were on fire you thriving little twat'
	'You little trampy cunt'
	'Pay now or pay later it makes no odds to me but I will happily obtain my money by any means necessary. You think its all about words. You're gonna [sic] be sorry for robbing me.'
	'Hope you sleep well knowing you ruined people's lives you scumbag'
	'Hope you've understood what you're doing. If I lose my licence

	I will be a very unhappy man.’
	‘I dont [sic] even care about the money it's the fact you think you think you can rob me like this.....game over if you still carry this on when I'm back.’

XXX