

PUBLIC RECORD

Dates: 24/06/2024 - 19/07/2024

Medical Practitioner's name: Dr Mohamed ELMASHY
GMC reference number: 7748234
Primary medical qualification: MB ChB 2002 Tanta University

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

Summary of outcome

Erasure

Immediate order imposed

Tribunal:

Legally Qualified Chair	Mrs Julia Oakford
Lay Tribunal Member:	Ms Liz Daughters
Medical Tribunal Member:	Dr Meenakshi Verma

Tribunal Clerk:	Mr Michael Murphy
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Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr David Morris, Counsel, instructed by Gordon Solicitors
GMC Representative:	Mr Chris Hamlet, Counsel

Attendance of Press / Public

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

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 - 08/07/2024

Background

1. Dr Elmashy qualified in Egypt in 2002 and practised there until 2007. He then practised in Emergency Medicine in Saudi Arabia until 2019. Prior to the events which are the subject of the hearing, he practised in the UK, from October 2019, as a middle grade Doctor in the Emergency Department of North Manchester General Hospital part of Manchester University NHS Foundation Trust (the Trust). This is the role he was undertaking at the time of the events in the Allegation.
2. The Allegation that has led to this hearing can be summarised as concerns relating to Dr Elmashy's conduct which arose from his behaviours and actions towards Ms A and Patient B, where it is alleged that he failed to maintain professional boundaries.
3. The GMC alleged that Dr Elmashy's conduct toward Ms A was sexually motivated and was unlawful sexual harassment. The GMC alleged that Dr Elmashy's conduct toward Ms A included him asking her if the reason she didn't like him was because XXX, saying that he wanted to have sex with her in response to her telling him she did not want that, or words to that effect, and that he sent her inappropriate messages.
4. The GMC also alleged that Dr Elmashy's conduct toward Patient B was sexually motivated and amounted to harassment. The GMC alleged that Dr Elmashy's conduct toward Patient B included him giving her his personal mobile number, saying he wanted to keep in contact with her and asking if they could get a cup of coffee, or words to that effect, during a consultation on 8 May 2022. The GMC alleged that Dr Elmashy's conduct toward Patient B also included him meeting up with her, on 10 May 2022, kissing her on her forehead without consent, scooping her up in his arms after asking her to close her eyes, asking about her personal matters, saying that if she did not have a boyfriend he

would ask her out and sending her inappropriate messages, when at all material times he knew that she was vulnerable due to a mental health condition.

5. The referral to the GMC was further to to a local investigation which arose from Dr Elmashy's conduct towards Ms A on 18 September 2021. Ms A raised these concerns with XXX around July 2022 and she attended a remote interview with the Trust on 22 August 2022. The Trust interviewed Dr Elmashy about the concerns relating to Ms A on 14 September 2022.
6. The referral to the GMC was also from a further local investigation which arose from Dr Elmashy's conduct towards Patient B during a consultation with Patient B on 8 May 2022. Patient B reported Dr Elmashy's conduct to the National Association for People Abused in Childhood (NAPAC), on 10 May 2022, who then reported this to Greater Manchester Police. The police on 10 May 2022 asked Patient B for a report of what had happened and opened an investigation. On 1 July 2022, the Trust interviewed Dr Elmashy about the concerns Patient B had raised.

The Outcome of Applications Made during the Facts Stage

7. The Tribunal granted the GMC's application, made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to amend paragraph 11(b) of the Allegation in order to remove the reference to paragraph 8 within it. Parties were in agreement that this amendment should be made. The Tribunal considered it to be in the interests of justice to allow this amendment and that it could be made without injustice to either party.

The Allegation and the Doctor's Response

8. The Allegation made against Dr Elmashy is as follows:

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

Ms A

1. On 18 September 2021, you met with XXX Ms A at work ('the Meeting with Ms A'), and you failed to maintain a professional boundary with Ms A in that you:
 - a. asked Ms A:

- i. why she had not told you that she was in a relationship with XXX; **To be determined**
 - ii. if the reason she did not like you was because XXX,
or words to that effect; **To be determined**
 - b. said that:
 - i. just because you were Ms A's XXX did not mean you could not be more, when Ms A said that she viewed you as XXX; **To be determined**
 - ii. you thought that Ms A was attractive since she started in the XXX department; **To be determined**
 - iii. Ms A was the only one in the XXX department that you wanted to be with,
or words to that effect; **To be determined**
 - c. propositioned Ms A in that said you wanted to take Ms A out to dinner and then take her back to your house to have sex with her, or words to that effect ('the Proposition'); **To be determined**
 - d. said that:
 - i. you wanted to have sex with Ms A in response to Ms A telling you that she did not want that; **To be determined**
 - ii. when Ms A's ex-partner XXX, you could try again because there would be less of a distraction for Ms A,
or words to that effect; **To be determined**
 - e. asked Ms A if she was sure, or words to that effect, when she said she did not want to have sex with you; **To be determined**
 - f. on one or more occasion said no, or words to that effect, when Ms A said that she needed to go home; **To be determined**
 - g. said that Ms A could not go without giving you a hug, or words to that effect, when she said that she needed to go home. **To be determined**
2. Following the Meeting with Ms A, on one or more occasion, you failed to maintain a professional boundary with Ms A in that you:

- a. sent inappropriate messages to Ms A, as set out in Schedule 1; **To be determined**
 - b. attempted to hug Ms A; **To be determined**
 - c. asked Ms A:
 - i. if:
 1. you were still friends or she had changed her mind about the Proposition; **To be determined**
 2. she was sure when Ms A said that she had not changed her mind,

or words to that effect; **To be determined**
 - ii. what was going on in her love life, or words to that effect. **To be determined**
3. Your conduct as described at paragraphs 1 and 2 was:
 - a. sexually motivated; **To be determined**
 - b. unlawful sexual harassment related to sex and/or sexual orientation by virtue of Section 26 of the Equality Act 2010, in that you engaged in unwanted conduct related to sex and/or sexual orientation which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. **To be determined**

Patient B

4. On 8 May 2022, you consulted with Patient B in A&E ('the Consultation'). **Admitted and found proved**
5. During the Consultation you failed to maintain a professional boundary with Patient B in that you:
 - a. on one or more occasion, informed Patient B that you were speaking to her as a friend and not a patient, or words to that effect; **Admitted and found proved**
 - b. gave Patient B your personal mobile telephone number; **Admitted and found proved**
 - c. said it was fine, or words to that effect, when asked by Patient B if it was appropriate for her to have your telephone number; **To be determined**

- d. asked Patient B to text you before she left A&E so that you could say goodbye to her, or words to that effect; **To be determined**
 - e. said you wanted to keep in contact with Patient B, or words to that effect; **Admitted and found proved**
 - f. asked if you and Patient B could go out for a walk together and get a cup of coffee, or words to that effect; **Admitted and found proved**
 - g. said it would be fine, or words to that effect, when asked by Patient B if going for a walk/getting a cup of coffee would be ok to do with a patient. **To be determined**
6. Between 8 and 10 May 2022, on one or more occasion, you failed to maintain a professional boundary with Patient B in that you:
- a. contacted Patient B via WhatsApp; **Admitted and found proved**
 - b. sent inappropriate messages to Patient B: **Admitted and found proved**
 - i. as set out in Schedule 2; **Admitted and found proved**
 - ii. enclosing two videos of you working out in the gym. **Admitted and found proved**
7. On 10 May 2022, you met with Patient B in a non-work context at a park ('the Meeting with Patient B'). **Admitted and found proved**
8. During the Meeting with Patient B, you failed to maintain a professional boundary with Patient B in that you:
- a. without consent, hugged and/or put your arm around Patient B; **To be determined**
 - b. without consent, kissed Patient B on or around the area of her forehead; **To be determined**
 - c. asked Patient B to close her eyes and, without consent, scooped her up in your arms; **To be determined**
 - d. said that you did not like the distance that Patient B had created between the two of you, or words to that effect, when she sat at the far end of the bench away from you; **To be determined**
 - e. told Patient B about personal matters XXX; **Admitted and found proved**
 - f. asked Patient B about personal matters such as her family and problems with XXX; **To be determined**

- g. said that:
- i. if Patient B:
 - 1. did not have a boyfriend, you would ask her out; **To be determined**
 - 2. ever broke up with her boyfriend, she could come to you; **To be determined**
 - 3. was in A&E, she should text you and you would look after her, when she told you that she could not date or flirt with you because she has a boyfriend; **To be determined**
 - ii. you thought Patient B was very pretty; **To be determined**
 - iii. Patient B had a lot of potential and was clever; **Admitted and found proved**
 - iv. it would only be a conflict of interest if you were dating, when reminded of your conversations with Patient B in A&E, **To be determined**
- or words to that effect;
- h. walked around the park for a period of time with Patient B. **Admitted and found proved**
9. Following the Meeting with Patient B, on one or more occasion, you failed to maintain a professional boundary with Patient B in that you sent inappropriate messages to Patient B as set out in Schedule 3. **Admitted and found proved**
10. At all material times:
- a. Patient B was vulnerable due to a mental health condition; **Admitted and found proved**
 - b. you knew that Patient B was vulnerable. **Admitted and found proved**
11. Your conduct as described at paragraphs:
- a. 5-9 was:
 - i. sexually motivated; **To be determined**
 - ii. in pursuit of an improper emotional relationship with Patient B; **To be determined**

- b. ~~8 and~~ 9 amounted to harassment as defined in 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. **Amended under Rule 17(6)**

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

The Admitted Facts

9. At the outset of these proceedings, through his counsel, Mr Morris, Dr Elmashy made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

Witness Evidence

10. The Tribunal received evidence on behalf of the GMC from the following witnesses:
- Ms A, subject of the Allegation;
 - Patient B, subject of the Allegation.
11. Dr Elmashy provided his own witness statement, dated 14 May 2024, and also gave oral evidence at the hearing.

Documentary Evidence

12. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:
- Facebook messages between Dr Elmashy and Ms A;
 - WhatsApp messages between Patient B and Dr Elmashy;
 - Videos of Dr Elmashy working out at the gym;

- Notes from a meeting between Dr Elmashy and the Trust regarding Patient B on 1 July 2022;
- Notes from Ms A's remote interview with the Trust, dated 22 August 2022;
- Dr Elmashy's interview with the Trust regarding Ms A, dated 14 September 2022;
- Statement email from Dr Elmashy, dated 22 September 2022;
- Medical records of Patient B;
- Emails between Patient B and the Police 11 to 13 May 2022.

The Tribunal's Approach

13. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Elmashy does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e., whether it is more likely than not that the events occurred.

The Tribunal's Analysis of the Evidence and Findings

14. 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.
15. The Tribunal was aware that Dr Elmashy was of good character and has borne this in mind throughout its deliberations. The Tribunal considered all the evidence both oral and written and scrutinised the written evidence in the context of the oral evidence it had received. It had particular regard to the earliest written evidence it had received and how consistent it was with the oral evidence as this evidence might be more reliable as it was recorded when the matters may have been fresher in the witnesses' minds. It examined carefully the transcripts of the Trust interviews and had particular regard to the emails between the police and Patient B as they were contemporaneous with the events concerning Patient B. The Tribunal received numerous messages which it had to consider, which were again contemporaneous with the events and provided the Tribunal with the opportunity to evaluate them in the context of the facts to be determined and the witnesses' evidence.
16. With regard to the witness evidence of Ms A and Patient B the Tribunal found both Ms A and Patient B to be credible witnesses. Their oral evidence was consistent with their

written statements and in turn consistent with contemporary evidence available to the Tribunal. It recognised that credibility could be divisible but found them credible in all aspects of their evidence. Further, Ms A and Patient B had no reason or motive to fabricate matters against Dr Elmashy and continued to engage throughout the process.

17. The Tribunal found Dr Elmashy's evidence to be unreliable and inconsistent as in some respects his accounts differed to that in the Trust Interviews, his written statement and oral evidence. As an example, Patient B in her statement said that Dr Elmashy had told her that he was able to help her as he had an ex-girlfriend who had suffered from an eating disorder. Dr Elmashy's account, in his Trust interview, was that he felt he wanted to help her as he had failed XXX who he said was *'fat'* and had similar issues to Patient B. The Tribunal did not understand why Dr Elmashy referred to an ex-girlfriend rather than telling Patient B XXX, as he claimed, he was relating to her as in a XXX relationship. A further example, in relation to Dr Elmashy's knowledge of Patient B's vulnerability despite admitting paragraph 10 of the Allegation. He recorded in Patient B's medical records; *'8 May 2022 at 13:00 – not eating or drinking lately...XXX year old girl, known depression. Succidal(sic)...Patient is medically fit to be assessed by mental health'*. Within the referral to mental health liaison team document Dr Elmashy stated that Patient B's history of mental health problems included *'depression, anxiety, PTSD and OCD'*.
18. Dr Elmashy continued to contradict himself as to whether he knew she was vulnerable. On 12 May 2022, at a meeting with the Trust, Dr Elmashy stated *'I didn't think she was vulnerable'*. In his interview with the Trust, on 1 July 2022, he stated that he only realised she was vulnerable after the police got involved. In his statement, Dr Elmashy said *'she had not been formally diagnosed'*. He went on to say *'I accept that I knew Patient B was vulnerable at the time of the consultation but did not appreciate the extent of her vulnerability'*. In his oral evidence in response to the GMC, Dr Elmashy agreed he knew Patient B had issues at the time that rendered her vulnerable and agreed he knew he was dealing with someone who was emotionally vulnerable.
19. The Tribunal took the view that Dr Elmashy's version of the events which he denied, did not seem credible, even taking into account that he was a person of good character. Dr Elmashy had contended that he was only seeking a friendship with Ms A and Patient B; that he wanted to treat Patient B as XXX; he had let people down in his life so he wanted to support Patient B. However, the messages for example were of such a nature that in the Tribunal's opinion they did not support this. Throughout its deliberations it considered possible innocent reasons for behaving as he did towards Ms A and in

particular to Patient B but were unable to conclude on the balance of probabilities that there were any.

Ms A

Paragraph 1(a)(i) of the Allegation

20. The Tribunal considered whether Dr Elmashy failed to maintain a professional boundary with Ms A in that he asked her why she had not told him that she was in a relationship with XXX.
21. The Tribunal had regard to Dr Elmashy's interview with the Trust on 14 September 2022, his email statement of 22 September 2022, his oral evidence and his witness statement dated 14 May 2024 in which he said:

'I confirm that I did not ask Ms A if XXX and nor did I say words to that effect. I already knew that Ms A XXX as we had had discussions before 18 September 2021 about her feelings regarding her ex-partner leaving.'

22. Dr Elmashy stated that he never asked Ms A if she was in a relationship with XXX as he already knew this. Ms A stated that this information was known in A and E but not in the ICU, which is where Dr Elmashy was working at this time. Ms A also stated that this was the first time Dr Elmashy asked her if she was in a relationship with XXX which Dr Elmashy denied. Ms A stated during her oral evidence that she herself had not discussed her personal relationships with Dr Elmashy prior to the incident on 18 September 2021. In the Trust interview of 14 September 2022 Dr Elmashy stated *'And once she came inside she said, how's going? Did you know its going, so you are like XXX. She said yes, XXX'*.
23. The Tribunal found Ms A's evidence to be consistent in her witness statement, and in her interview with the Trust on 22 August 2022 as well as her oral evidence. It considered that her evidence indicated that Dr Elmashy did ask Ms A why she had not told him that she was in a relationship with XXX.
24. In considering all of the evidence, the Tribunal preferred Ms A's account of the events. Accordingly, the Tribunal found paragraph 1(a)(i) of the Allegation proved.

Paragraph 1(a)(ii) of the Allegation

25. The Tribunal considered if Dr Elmashy failed to maintain a professional boundary with Ms A in that he asked her if the reason she did not like him was because XXX. It had regard to Ms A's witness statement in which she says *'He was saying things like "is this why you don't like me, because XXX? ". He wanted me to give reasons why I didn't like him romantically'* and she maintained this in her oral evidence.
26. Dr Elmashy contended in his evidence that he never asked Ms A if the reason she did not like him was because XXX. In his witness statement he said *'I confirm that there was never a discussion on 18 September 2021 or at any time about Ms A not liking me because XXX or words to that effect... I remember that there was a conversation between Ms A and me on a previous date about her XXX.* In his oral evidence, Dr Elmashy stated that he had looked at Ms A's facebook and had seen a picture on there of her XXX. Ms A's evidence was that she had never discussed XXX with Dr Elmashy before this meeting. In his oral evidence, Dr Elmashy confirmed that he did ask XXX on 18 September 2021. The Tribunal found Ms A to be consistent in her evidence and had no reason or motive to fabricate the facts.
27. In considering all of the evidence, the Tribunal preferred Ms A's account of the events. Accordingly, the Tribunal found paragraph 1(a)(ii) of the Allegation proved.

Paragraphs 1(b)(i), 1(b)(ii) and 1(b)(iii) of the Allegation

28. The Tribunal considered whether Dr Elmashy failed to maintain a professional boundary with Ms A in that he said just because he was XXX did not mean he could not be more, said that he thought that Ms A was attractive since she started in the XXX department and that Ms A was the only one in XXX department he wanted to be with or words to that effect.
29. Dr Elmashy acknowledged that he did have a conversation with Ms A, on 18 September 2021, and that after this he asked her if she wanted to go for coffee. Ms A's evidence was again consistent about what Dr Elmashy had said. Dr Elmashy denied failing to maintain a professional boundary with Ms A as he admitted that part of the conversation took place, but not all of it. In his witness statement he said:

'I confirm that I did say words to the effect that both Ms A and I could be mutual friends in a platonic sense and not in a sexualised way. I recall saying words to the effect that our friendship was not just limited to XXX. At no point during this earlier

conversation or any conversation did I say anything to Ms A with sexual intent in mind. I believed that, as mutual friends and as adults, we could both go for a coffee outside of the workplace as other colleagues did with each other.'

30. In Ms A's interview with the Trust, on 22 August 2022, she stated *'He said that he wants to have sex with me and that he wants to take me out for dinner. When he first said those things I was, said, Mashy, I felt quite uncomfortable, I sort of laughed I won't lie, I laughed. I said Mashy what you on about, I don't see you that way, I see you as XXX and he was why, why. And I said well you are also XXX and I don't want to be involved in awkward situations at work, I really don't want to be involved in that and started saying it is because XXX are you sure you don't want to be with me. You are the only one in XXX that I want to be with...I said I see you XXX, he said well that can change like, just because XXX doesn't mean can't be more and he just really wouldn't take no for an answer'.*
31. In her witness statement, Ms A said *'I viewed him XXX. Dr Elmashy was almost trying to argue with me, and he said things like "just because XXX doesn't mean I can be more"'. In her supplemental witness statement, Ms A said 'At paragraph 15 of my first statement, it states "just because XXX doesn't mean I can be more". This is a typo and should read "just because XXX doesn't mean I can't be more"'. She also stated 'He said, "I've really liked you since I started", "you are the only one in XXX I want to be with"'.*
32. In considering all of the evidence, the Tribunal preferred Ms A's account of the events as it considered this to be more consistent and compelling. Accordingly, the Tribunal found paragraphs 1(b)(i), 1(b)(ii) and 1(b)(iii) of the Allegation proved.

Paragraph 1(c) of the Allegation

33. The Tribunal considered if Dr Elmashy failed to maintain a professional boundary with Ms A in that he propositioned her in that he said he wanted to take Ms A out to dinner and then take her back to his house to have sex with her, or words to that effect.
34. The Tribunal had regard to Ms A's witness statement in which she said *'He said..."I want to [take] you out to dinner and then take you back to mine to have sex with you"'. In her supplemental witness statement Ms A said 'The GMC have asked me whether Dr Elmashy ever invited me to go anywhere with him. The only thing that I can recall was a very throwaway conversation that occurred before I became concerned about Dr Elmashy's behaviour. I had taken another colleague XXX, and Dr Elmashy had said something along the lines of "maybe you can take me next time". I didn't really think anything of it, and I*

just laughed it off. I do not recall him ever asking me to go to dinner or coffee or anything like that’.

35. In her interview with the Trust, on 22 August 2022, Ms A stated *‘He said that he wants to have sex with me and that he wants to take me out for dinner...he like stood up and asked for a hug and I said no lets just go and he was like no, no, we end on good terms, we end on good terms. So he have me a hug and it was just a really awkward situation and the second I left the room I messaged my work friend and I said you are never going to believe what has just happened to me. I didn’t know what to say, I didn’t know what to do and she was like just get to your car, get home, have something to eat, get some sleep and we will talk about it another day and ever since then I have been a bit different with him’.* In her oral evidence, Ms A confirmed that *‘she wouldn’t be here unless he had asked me to have sex with him’.* The Tribunal took the view that Ms A was clear and consistent in her witness statement, Trust interview and oral evidence that Dr Elmashy did ask her to have sex with her.
36. In Dr Elmashy’s witness statement he said *‘When Ms A and I first started working together, I told her that XXX. I did not and would not invite Ms A or anyone else for that matter out for dinner and then go back to my house to have sex XXX’.*
37. The Tribunal did not accept this evidence as a plausible reason as to why he could not have asked Ms A for sex.
38. In considering all of the evidence, the Tribunal preferred Ms A’s account of the events. Accordingly, the Tribunal found paragraph 1(c) of the Allegation proved.

Paragraph 1(d)(i) of the Allegation

39. The Tribunal considered whether Dr Elmashy failed to maintain a professional boundary with Ms A in that he said he wanted to have sex with Ms A in response to her telling him that she did not want that.
40. The Tribunal noted the GMC’s submission, which related to paragraphs 1(d) to 1(f) of the Allegation, that Dr Elmashy simply would not take no for an answer, having assumed to this point that Ms A was interested in him sexually and that this was somewhat reflected in the way he demanded a hug from her with her feeling compelled to oblige. It bore in

mind that Dr Elmashy and Ms A had a good working relationship up until that point. In her supplemental witness statement Ms A said:

'I didn't mind anybody knowing that XXX. Dr Elmashy bringing this up wasn't necessarily the problem for me. The problem was that he repeatedly asked me to have sex with him.'

41. The evidence indicated that Dr Elmashy had a girlfriend at this point so his claim that *'I did not and would not invite Ms A or anyone else for that matter out for dinner and then go back to my house to have sex XXX'* did not make sense.
42. In considering all of the evidence, the Tribunal preferred Ms A's account of the events. Accordingly, the Tribunal found paragraph 1(d)(i) of the Allegation proved.

Paragraph 1(d)(ii) of the Allegation

43. The Tribunal considered if Dr Elmashy failed to maintain a professional boundary with Ms A in that he said when her ex-partner XXX, he could try again because there would be less of a distraction for Ms A, or words to that effect
44. In his witness statement, Dr Elmashy said *'I accept that I suggested to Ms A that we could wait until Ms A's ex-partner XXX for us to work on our non-sexual friendship in order to allow Ms A time to recover emotionally after her partner left'*.
45. Based on the evidence received, the Tribunal was satisfied that Ms A did not misinterpret Dr Elmashy's messages and that he was very clear in what he meant. The Tribunal has already found that Dr Elmashy asked Ms A for sex and had no doubt that Ms A would have interpreted his messages as that he wanted to have sex with her in the future.
46. Accordingly, the Tribunal found paragraph 1(d)(ii) of the Allegation proved.

Paragraph 1(e) of the Allegation

47. The Tribunal considered if Dr Elmashy failed to maintain a professional boundary with Ms A in that he asked Ms A if she was sure, or words to that effect, when she said she did not want to have sex with him.

48. The Tribunal found that Ms A clearly stated in her oral evidence, witness statement and Trust interview that she did not want to have sex with Dr Elmashy. The Tribunal referred to the reasons it gave in finding paragraph 1(d) of the Allegation proved and found they applied to this paragraph also. It also determined that it was logical that Ms A would not change her position on not wanting sex with Dr Elmashy.
49. Accordingly, the Tribunal found paragraph 1(e) of the Allegation proved.

Paragraphs 1(f) and 1(g) of the Allegation

50. The Tribunal considered if Dr Elmashy failed to maintain a professional boundary with Ms A in that he, on one or more occasion, said no, or words to that effect, when Ms A said that she needed to go home and said that Ms A could not go without giving him a hug, or words to that effect, when she said that she needed to go home.
51. In his witness statement Dr Elmashy said *'I recall that, when our meeting finished on 18 September 2021, Ms A said words to the effect "I need to go home" and then she stood up. I recall that I said, "OK" while I was sitting in a chair. I remember that Ms A said, "at least give me a hug" to me and I replied, "OK". We then hugged liked we usually did when meeting / leaving each other in a platonic and friendly way and nothing more. I do not know why Ms A has changed her recollection and opinion of our meeting on 18 September 2021. I am not aware of other occasions relating to this allegation'*.
52. Ms A gave an account of this during her interview with the Trust, in August 2022, in which she stated *'I couldn't get out if I am honest, for me to get out I had to say I need to go and he was still like no, no. And to make things even work he like stood up and asked for a hug and I said no lets just go and he was like no, no, we end on good terms, we end on good terms'*.
53. The Tribunal concluded that Dr Elmashy did not deny that there was a hug but rather proposed that Ms A was the one who initiated it. However, in considering all of the evidence, the Tribunal preferred Ms A's account of the events. Accordingly, the Tribunal found paragraphs 1(f) and 1(g) of the Allegation proved.

Paragraph 2(a) of the Allegation

54. The Tribunal considered whether following the meeting with Ms A, on one or more occasion, Dr Elmashy failed to maintain a professional boundary with her in that he sent inappropriate messages to Ms A. In doing so it had regard to the GMC's submission that the messages are said to have been inappropriate when placed in the context of the surrounding circumstances. The GMC submitted that the messages on 18 September 2021 derive from the assertions made that Dr Elmashy could try to develop a personal relationship with Ms A once her partner had XXX. The messages on 20 September 2021 are said to have been inappropriate as they reflected further unwanted attempts by Dr Elmashy to develop a relationship outside of work with Ms A by inviting her to 'buddy up' with him in the gym.
55. The Tribunal considered it to be clear from the messages in Schedule 1 that Dr Elmashy was not pursuing a social relationship with Ms A but a sexual one. It was satisfied that these messages were inappropriate for a medical professional to send to a work colleague. For example one message stated 'Good night my friend. Let me see how a friend will be'. And was followed by 4 face emojis which included two with thinking poses, two with hearts and one with a smiling face.
56. Accordingly, the Tribunal found paragraph 2(a) of the Allegation proved.

Paragraphs 2(b), 2(c)(i)(1), 2(c)(i)(2) and 2(c)(ii) of the Allegation

57. The Tribunal considered if following the meeting with Ms A, on one or more occasion, Dr Elmashy failed to maintain a professional boundary with her in that he attempted to hug Ms A, asked her if they were still friends or she had changed her mind about the proposition, asked her if she was sure when she said that she had not changed her mind, or words to that effect, and asked her what was going on in her love life, or words to that effect.
58. The Tribunal had regard to Ms A's witness statement in which she said:

'Following the events of 18 September 2021, Dr Elmashy continued to work in the ICU, although he would sometimes come down to XXX every so often to help with staffing. He would still make comments like "are we still friends, or have you changed your mind". I would just say 'no' and walk away. Our friendship definitely changed.'

59. The Tribunal noted that Ms A makes no mention of hugging here. However, in the notes of the Trust's interview on 22 August 2022, conducted via MS Teams, the Tribunal noted she stated:

'I couldn't get out if I am honest, for me to get out I had to say I need to go and he was still like no, no. And to make things even work [sic] he like stood up and asked for hug and I said no lets just go and he was like no, no, we end on good terms, we end on good terms. So he gave me a hug and it was just a really awkward situation and the second I left the room I messaged my friend ...

yes it wasn't very often because he wasn't working in XXX as much I think, I don't remember how long he was in ICU for but he wasn't on the shop floor as much as he used to be but it would make me uncomfortable. There was a time when I was working in resus and he was our reg for the night and he literally didn't leave resus the whole night and he would constantly be asking like what's going on in my love life, am I seeing someone, like have I changed my mind...'

60. The Tribunal had regard to Dr Elmashy's statement, dated 14 May 2024. In response to paragraph 2(b) of the Allegation, he stated:

'Ms A and I used to hug each other as a way of greeting and departing from each other in a platonic way. Our hugs were non-sexual and not inappropriate. Sometimes I would initiate hugging and sometimes Ms A would initiate hugging. I recall that staff in the Hospital would greet each other by hugging each other too.'

61. In relation to paragraphs 2(c) of the Allegation, he stated:

'I admit this in relation to me asking Ms A if we were still friends in the platonic sense.'

62. Dr Elmashy also stated *'I deny that I ever asked Ms A if she had changed her mind about the Proposition or any such conversation took place.'* Dr Elmashy accepted he asked Ms A about her relationship with her partner. He stated *'I accept that I asked Ms A about her relationship with her partner during our meeting on 18 September 2021 and asked her how she was feeling. This was a platonic question and the conversation was friendly. It was not sexual.'*

63. The Tribunal preferred Ms A's evidence and account. She was consistent throughout in her recollection of events and what took place between her and Dr Elmashy. From the evidence before it, the Tribunal was satisfied that Ms A did not want a social friendship or sexual relationship with Dr Elmashy. However, Dr Elmashy's account of what took place was at times inconsistent. Although he denied wanting a social relationship with Ms A, he accepted that he should not have hugged her.

64. From the evidence before it, the Tribunal determined, on the balance of probabilities, that the matters alleged in paragraphs 2b and 2c(i)(1)(2) and (ii) did occur as alleged. It determined that Dr Elmashy failed to maintain a professional boundary with Ms A.
65. Accordingly, the Tribunal found paragraphs 2(b), 2(c)(i)(1), 2(c)(i)(2) and 2(c)(ii) of the Allegation proved.

Paragraph 3(a) of the Allegation

66. The Tribunal considered if Dr Elmashy's conduct as described at paragraphs 1 and 2 of the Allegation was sexually motivated. In doing so it had regard Ms A's witness statement in which she said:

'On 12 October 2020, I received some Facebook messages from Dr Elmashy that were quite odd. I'd known him for a month or so at this point. He had been unwell and admitted to NMG. He sent me a message saying he was "mad" and "disappointed". I took this to mean that he as [sic] upset that I hadn't messaged him sooner, but I hadn't known that he was unwell. I sent him a message to say that I hadn't known and that I hoped he was okay. He replied saying "It depends on how do we see each other, If we are just colleague, it should not make a difference. Maybe I overacted and gave myself unreal importance. Or depended on things in my mind only. So don't bother please. It is ok. Sometimes I am dramatic...'

At the time I was in a relationship XXX. Dr Elmashy seemed unhappy because XXX. I told him that I hadn't realised that it was something that I needed to talk about with him. He was saying things like "is this why you don't like me, because XXX?"... Dr Elmashy was almost trying to argue with me, and he said things like "just because XXX doesn't mean I can be more"....'

Dr Elmashy then said that he really liked me. He said, "I've liked you since you started", "you are the only one in XXX I want to be with", and "I want to you out to dinner and then take you back to mine to have sex with you". He was very straight faced like he wasn't joking. I recall saying something like "no Mashy, I don't want that". He kept repeating that he wanted to have sex with me. He said it at least five times. When I would say no, he would ask me if I was sure.'

67. In her supplementary statement Ms A clarified that:

'At paragraph 15 of my first statement, it states "just because XXX doesn't mean I can be more". This is a typo and should read "just because XXX doesn't mean I can't be more"....'

At paragraph 16 of my first statement, it states “I want to you out to dinner...”. The word ‘take’ has been omitted in error, and the sentence should read “I want to take you out to dinner and then take you back to mine to have sex with you”.’

68. The Tribunal had regard to the messages Dr Elmashy sent to Ms A, as set out in Schedule 1, and had found in relation to paragraphs 2b and 2c(i)(1)(2) and (ii) above, that Dr Elmashy failed to maintain a professional boundary with Ms A. He asked about and inquired about her personal life and love life, wanted to take her out to dinner, and wanted to have sex with her.
69. In his witness statement Dr Elmashy said *‘I believed Ms A and I had a platonic relationship. I deny that my actions, behaviour and conduct was sexually motivated and believe it was always non-sexual’*. During his oral evidence, by his own admission, Dr Elmashy acknowledged that he knew Ms A did not want a social friendship with him. The Tribunal considered that if Dr Elmashy, as he claimed, had a non-sexual interest in Ms A and was pursuing a platonic relationship with her, he would have no reason to discuss her sexuality with her XXX.
70. However, the Tribunal did not accept Dr Elmashy’s defence. It preferred Ms A’s account over Dr Elmashy’s. The findings it has made led the Tribunal to conclude that Dr Elmashy actions were in pursuit of a future sexual relationship with Ms A and were sexually motivated.
71. Accordingly, the Tribunal found paragraph 3(a) of the Allegation proved.

Paragraph 3(b) of the Allegation

72. The Tribunal considered if Dr Elmashy’s conduct as described at paragraphs 1 and 2 of the Allegation was unlawful sexual harassment related to sex and/or sexual orientation by virtue of Section 26 of the Equality Act 2010, in that he engaged in unwanted conduct related to sex and/or sexual orientation which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. In doing so it had regard to Dr Elmashy’s witness statement in which he denied that his conduct amounted to unlawful sexual harassment. He stated:

*‘I deny that my conduct amounted to unlawful sexual harassment related to sex and / or sexual orientation by virtue of Section 26 of the Equality Act 2010.
I deny that I engaged in unwanted conduct related to sex and/or sexual orientation which had the purpose or effect of violating the dignity of Ms A or create an intimidating, hostile, degrading, humiliating or offensive environment for her.*

As stated above, I believed Ms A and I had a platonic relationship and my actions, behaviour and conduct were always friendly towards her. I am sorry if she now believes that we had a different relationship.'

73. However, the Tribunal has already found that Dr Elmashy's conduct was sexually motivated. It was unwanted from Ms A's perspective. It must therefore follow that his conduct could amount to sexual harassment. The Tribunal had regard to the aspects of her witness statement, as set out above. It also took into account that in her statement she said:

'He wanted me to give reasons why I didn't like him romantically. I felt forced into coming up with reasons. The truth was I just didn't find him attractive, and he was XXX, but I didn't want to say anything hurtful. I tried to say things a bit more softly. I told him that he was my co-worker and much older than me. I said I just didn't want to have those kinds of relations with him, and that I viewed him XXX. Dr Elmashy was almost trying to argue with me, and he said things like "just because XXX doesn't mean I can be more".'

74. The Tribunal noted Ms A's supplementary statement dated 10 January 2024 in which she clarified that the word 'can' should read 'can't'. Further, the Tribunal took account of Ms A's supplementary statement in which she stated:

'I had told my friend and colleague A immediately after the incident of 18 September 2021, and she did check in with me about it at a later date to see if I was okay. I also spoke to K about the matter. XXX. I had raised my concerns with the Trust by that time, so I mainly spoke to her about the matter in the context of seeking reassurance that I was doing the right thing by coming forward...

....The second I left the room I messaged another work colleague [redacted] and told her what happened. I felt very shocked and vulnerable.....'

75. From the evidence before it, the Tribunal considered that Dr Elmashy's conduct was unlawful sexual harassment related to sex by virtue of Section 26 of the Equality Act 2010 in that he engaged in unwanted conduct related to sex which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. Accordingly, the Tribunal found paragraph 3(b) of the Allegation proved in this respect.
76. The Tribunal considered that, despite Ms A's evidence that people in the workplace knew XXX, there was insufficient evidence before it for it to make a determination as to whether Dr Elmashy's conduct related to unlawful sexual harassment in relation to

sexual orientation by virtue of Section 26 of the Equality Act 2010. It therefore found this aspect of paragraph 3(b) of the Allegation not proved.

Patient B

Paragraphs 5(c) and 5(d) of the Allegation

77. The Tribunal considered if during the consultation Dr Elmashy failed to maintain a professional boundary with Patient B in that he said it was fine, or words to that effect, when asked by Patient B if it was appropriate for her to have his telephone number and asked Patient B to text him before she left A&E so that he could say goodbye to her, or words to that effect.

78. The Tribunal had regard to Patient B's statement in which she stated:

'Dr Elmashy gave me his phone number. I remember asking him if it was appropriate for me to have his phone number. Dr Elmashy said that it was fine. He asked me to text him before I left A&E because he wanted to say goodbye to me. Something that confused me was that he said, "if I give you my number it will be a conflict of interest so if you come back to A&E I won't be able to treat you", or words to that effect. This made me feel like he was thinking about the rules, and it gave the impression that he was working within professional boundaries.

Dr Elmashy was the doctor that I saw after I went through triage. It was the first time I had ever met this doctor. I was very anxious at the time and feeling very physically weak and unwell. He told me to call him 'Mashy'. One of the first things that I remember about Dr Elmashy is that he put a drink down on the table in front of me. He asked me to try and drink it. I picked up the drink and I looked at the calories on the bottle. I explained to Dr Elmashy why I couldn't have it because of the number of calories.

I felt like Dr Elmashy was talking to me in a very informal way. He said that he had an ex-girlfriend who had an eating disorder. I thought that this was quite personal information for a doctor to be sharing. We were talking for quite a bit, so I said, "I don't want to keep you from other patients that might be waiting for you". He told me that it was fine, and he said not to worry about it. He kept repeating that he was speaking to me as a friend, not a patient. I told him that I XXX.'

79. In his witness statement Dr Elmashy said:

'When I was working in Saudi Arabia, it was, and I believe still is, common practice for doctors to give their personal telephone numbers to patients if the patient wanted to contact the doctor for assistance and help outside of a hospital setting.

I offered Patient B my personal mobile telephone number and told Patient B that if she needed someone to talk to for pastoral support, guidance and to encourage her to eat and drink then she should call me.'

80. However, specifically in response to this paragraph of the Allegation, Dr Elmashy stated:

'I do not recall Patient B asking me if it was appropriate for her to have my telephone number or words to that effect. I confirm that I did not say that it was "fine" or words to that effect as Patient B did not ask me the question. Patient B did not raise any concerns about me giving her my telephone number either. However, in hindsight, I accept that I should have checked if I was allowed to give her my telephone number and it was an error of judgement on my behalf in giving her my telephone number.

I admit that I asked Patient B to text me before she left the hospital to ensure that she felt that she had received the help and support that she needed and to ensure that there was a plan in place for her to continue with treatment. I recall that I asked Patient B to text me after she had finished her assessment with the Mental Health Team to see what action was taken, if they had helped her or not and if she felt that she was being assisted. Patient B texted me that she finished with Mental Health Team and she thanked me for my assistance. I only wanted to ensure Patient B's best interests were being looked after and I accept that asking Patient B to text me crossed professional boundaries; however, my request for her to text me was not sexually motivated.'

81. The Tribunal considered that given her medical history, Patient B would have come into contact with many clinical professionals for her treatment. She would have been aware of professional boundaries in the context of a doctor and patient relationship. This is evidenced in her statement, as set out above.

82. From the evidence before it, the Tribunal was satisfied that Dr Elmashy failed to maintain a professional boundary with Patient B in that he told Patient B that it was fine, or words to that effect, when asked by Patient B if it was appropriate for her to have his telephone number; and asked Patient B to text him before she left A&E so that he could say goodbye to her, or words to that effect.

83. Accordingly, the Tribunal found paragraphs 5(c) and 5(d) of the Allegation proved.

Paragraph 5(g) of the Allegation

84. The Tribunal considered if during the consultation Dr Elmashy failed to maintain a professional boundary with Patient B in that he said it would be fine, or words to that

effect, when asked by Patient B if going for a walk/getting a cup of coffee would be ok to do with a patient.

85. In his witness statement Dr Elmashy denied that he said to Patient B that it would be fine, or words to that effect, when asked by Patient B if going for a walk/getting a cup of coffee would be ok to do with a patient. He stated:

‘I do not recall Patient B asking me if it would be ok for me to go for a walk and get a cup of coffee with a patient. I do not accept that I told Patient B that it would be “fine” or words to that effect either.’

86. In her witness statement Patient B stated:

‘Dr Elmashy said that he wanted to keep in contact with me. He asked if we could go out for a walk and get a cup of coffee or something. I asked him if that would be okay because I wasn’t sure if you could do that with a patient, but he said it would be fine.’

87. The Tribunal noted the long exchange of messages between Dr Elmashy and Patient B on 8 May 2022, the day she was discharged, over to the next, 9 May 2022. These were from 16:26 to 00:40, and included:

Dr at 16:26	<i>‘Hii That is me your stranger for today (2x smiley face)’</i>
Patient B at 16:27:	<i>‘Hiii’</i>
Dr at 16:29	<i>‘Hope you have a good day and text me before you go home’</i>
Patient B at 17:27:	<i>‘ok XXX’</i>
Dr at 17:27:	<i>‘Am coming now Nice meeting such a person’</i>
Patient B at 18:22:	<i>‘And you too, XXX. I hope the rest of your shift goes well’</i>

88. In the context of the messages, the Tribunal considered, on the balance of probabilities, that it was more likely Dr Elmashy said to Patient B that it would be fine, or words to that effect, when asked by her if going for a walk/getting a cup of coffee would be ok to do with a patient, and in doing so, Dr Elmashy failed to maintain a professional boundary with Patient B.

89. Accordingly; the Tribunal found paragraph 5(g) of the Allegation proved.

Paragraphs 8(a) and 8(b) of the Allegation

90. The Tribunal considered if during the Meeting with Patient B, Dr Elmashy failed to maintain a professional boundary with Patient B in that he without consent, hugged and/or put your arm around Patient B and kissed her on or around the area of her forehead.

91. In her witness statement, Patient B said:

'We met at the XXX entrance of the park. From our texts, I know that I arrived at 2:54pm and he arrived at 3:03pm. As soon as we met, he walked up to me and gave me a hug and a kiss on the forehead. It made me feel uncomfortable. I am autistic, and part of that means that I dislike being touched. I just said "hi, how are you".'

92. In his witness statement Dr Elmashy denied that he hugged or put his arm around Patient B without her consent. He stated:

'As stated above, I recall that, when I was approaching the gate at the entrance to XXX, Patient B was waiting for me. When I approached Patient B, I remember that I put my hand on Patient B's shoulder and kissed her on the top of head on her hair but not on her forehead. As stated above, Patient B put her arm on my back but she did not kiss me back.

I recall that Patient B said that she was sorry because she was sweating due to the warm weather, and I recollect telling her not to worry about it or words to that effect. I do not recall Patient B saying or doing anything to suggest that she did not want me to touch her shoulder or kiss her hair.

My intention and actions in greeting Patient B were akin to a father greeting his daughter. I deny that there was any sexual motivation or intent in the way I greeted Patient B...

I recall kissing Patient B on the top of Patient B's head / hair and not her forehead by way of greeting her in a fatherly manner. It was not sexually motivated.

When I went to kiss Patient B, she did not flinch or pull away from me or act in a way that she was distressed at me doing so.

After I kissed Patient B on the top of her head / hair, she did not pull away or seemed distressed. I recall that she was laughing and joked about her being sweaty or words to that effect.

I believed that Patient B allowed me to kiss her on the top of her head and that it was acceptable for me to do so.

In hindsight, I accept that I should not have kissed her on the top of her head and it was an error of judgement on my part. I am sorry that Patient B now feels that I should not have kissed her; however, at the time I believed that she did consent for me to do so.'

93. The Tribunal accepted Patient B's account. It had regard to the exchange of WhatsApp messages between Dr Elmashy and Patient B. It was the Tribunal's view that the context of the messages did not reflect the dynamics expected for a father to a daughter or a friend to a friend relationship. Furthermore, the messages did also not reflect the dynamics of someone trying to help a person with an eating disorder. Dr Elmashy initiated the exchange of the messages with Patient B whilst she was still on the ward prior to her discharge. Dr Elmashy met Patient B two days after she was discharged. When he hugged and/or put his arm around Patient B, and when he kissed her on her forehead, she would not have had any warning to enable her to give or deny her consent. The Tribunal noted that in her statement, Patient B explains that she is autistic and therefore it made her feel uncomfortable as she does not like being touched.
94. In the circumstances, the Tribunal determined that Dr Elmashy failed to maintain a professional boundary with Patient B when he hugged and/or put his arm around Patient B; and when he kissed Patient B on or around the area of her forehead, without consent.
95. Accordingly, the Tribunal found paragraphs 8(a) and 8(b) of the Allegation proved.

Paragraph 8(c) of the Allegation

96. The Tribunal considered if during the Meeting with Patient B, Dr Elmashy failed to maintain a professional boundary with Patient B in that he asked Patient B to close her eyes and, without consent, scooped her up in his arms.
97. In her witness statement Patient B said:

'We started walking to go and get a cup of coffee from the café in the park. As we were walking, he asked me to close my eyes. He then scooped me up in his arms and carried me for a few steps. He had an arm under my knees and across my back. I asked him to put me down because I don't like to be touched, and he did. I took a few steps away from him to create some distance. He said something to the effect of "I have a goofier side outside of work and I've always wanted to do something like that".'

98. Dr Elmashy, in his witness statement, said:

'I admit that I did scoop Patient B up in my arms as stated above.'

I believed that, at the time, Patient B allowed me to scoop her up in my arms and consented for me to do so.

In hindsight, I accept that I should not have picked Patient B up and acknowledge this was a serious error of judgement. I am genuinely sorry if Patient B did not consent for me to scoop her up at that time. However, my actions were not sexually motivated.'

99. Dr Elmashy's account in his oral evidence was that immediately prior to scooping Patient B up in his arms he had asked her whether her father had ever carried her on his shoulders. Patient B was asked about this and did not recall any such discussion about her father. In his first interview with the Trust on 12 May 2022, Dr Elmashy stated that '*only kissed her on the head, didn't touch her after - I swear XXX (ME demonstrated how he approached the patient from the side to hug and kiss on forehead)... ...we were walking on the path on the far side of the path and was the same on the bench - sat on the far side. I should have known something was wrong because I tapped her on head and she really didn't like it. Said she didn't like people doing that'*. The Tribunal did not accept Dr Elmashy's account that this was an innocent gesture from a father to a daughter. The Tribunal considered the more likely explanation was that he failed to mention this incident in his first account to the Trust because he knew that this was an unacceptable incident and there was no reasonable explanation as to why he would physically pick up and touch a vulnerable XXX year-old patient.

100. The Tribunal again noted paragraph 13 of Patient B's statement in which she explained that she is autistic and therefore does not like being touched. The Tribunal considered, on the balance of probabilities, that it was unlikely Patient B would have given her consent for Dr Elmashy to scoop her up in his arms and given that she had only known him for a very short period. The Tribunal concluded that because Dr Elmashy had instructed Patient B to close her eyes and did not forewarn her regarding his intended actions, Patient B could not have consented to being picked up. In the circumstances, the Tribunal determined that Dr Elmashy failed to maintain a professional boundary with Patient B when he scooped her up in his arms without her consent.

101. Accordingly, the Tribunal found paragraph 8(c) of the Allegation proved.

Paragraph 8(d) of the Allegation

102. The Tribunal considered if during the Meeting with Patient B, Dr Elmashy failed to maintain a professional boundary with Patient B in that he said that he did not like the

distance that Patient B had created between the two of them, or words to that effect, when she sat at the far end of the bench away from him.

103. In her witness statement, Patient B said:

‘Dr Elmashy gave me a book and a punnet of grapes. I told him that he didn’t have to give me anything. He said that he just wanted to see me eat. He then tried to encourage me to eat some of the grapes. I felt a bit pressured and anxious like I was put on the spot. I remember Dr Elmashy saying that he didn’t like the distance I had created between the two of us, because I had sat at the far end of the bench away from him.’

104. In Dr Elmashy’s witness statement he said:

‘I deny that I said this to Patient B and the context of this allegation and my actions were not sexually motivated.

As stated above, I recall that when Patient B and I were sitting on the bench at the park, Patient B sat down first and then I sat at the end of the bench. I put the punnet of grapes and the cups of coffee in between us on the bench. I remember saying words to the effect that it was “better this way so we can face each other while talking” because we could not see each other if we were sitting side by side. It was more practical to sit this way.’

105. However, the Tribunal considered the context of the lengthy exchange of WhatsApp messages between Dr Elmashy and Patient B, initiated by Dr Elmashy. When Dr Elmashy and Patient B met, by his own admission Dr Elmashy hugged Patient B and kissed her on or around her forehead. The Tribunal was not persuaded by Dr Elmashy’s account, and it considered, on the balance of probabilities, that it was more likely that Dr Elmashy said that he did not like the distance that Patient B had created between the two of them, or words to that effect, when she sat at the far end of the bench away from him.

106. The Tribunal therefore determined that Dr Elmashy failed to maintain a professional boundary with Patient B. Accordingly, it found paragraph 8(d) of the Allegation proved.

Paragraph 8(f) of the Allegation

107. The Tribunal considered if during the Meeting with Patient B, Dr Elmashy failed to maintain a professional boundary with Patient B in that he asked Patient B about personal matters such as her family and problems with eating.

108. In his witness statement, Dr Elmashy said:

'I do not recall initiating a discussion with Patient B about her family and problems with eating while we were in the park and I recall that she spoke about them first.

In relation to her eating, I brought a punnet of grapes in order to try and encourage Patient B to eat as this was the main purpose of meeting with her and keeping in contact with her outside of the hospital setting. I may have discussed how she should eat them in light of her difficulties with eating.

Again, I accept that discussing personal matters with Patient B was a serious error of judgement on my behalf.'

109. Further, during his oral evidence to the Tribunal, Dr Elmashy stated that he asked Patient B about her personal matters such as her family and her problems with eating.

110. Patient B, in her witness statement, said:

'After sitting on the bench for a bit, we continued our walk. We talked about a lot of things during the walk. We talked about the fact that he was from Egypt and that he had been a doctor over there. He told me that XXX. He asked me about my family and my problems with eating. I told him about XXX. We were probably there in the park for about three hours. I am not completely sure of the exact time that we left, but I think it would have been around 6pm.

During the walk, Dr Elmashy said something to the effect of "to be honest, if you didn't have a boyfriend, I would ask you out. I think you're very pretty; you have a lot of potential and you're clever".

111. The Tribunal had regard to the following messages:

Patient B at 23:48	<i>'XXX, I only eat red grapes for the resveratrol, otherwise it feels like a waste'</i>
Dr at 23:49	<i>'Ok babe red it is'</i>
Patient B at 23:49	<i>'For what sorry?'</i>
Dr at 00:05	<i>'Red grapes'</i>
Patient B at 00:05	<i>'Yeh but I mean red grapes for what?'</i>
Patient B at 00:06	<i>'You don't need to bring any tomorrow'</i>
Dr at 00:06	<i>'Will bring it tomorrow with me Comon babe Just wana see you eat.'</i>
Patient B at 00:06	<i>'Aw thank you but you really don't have to.'</i>

112.The Tribunal also took account of the context leading up to the meeting. It noted that in the exchange of WhatsApp message, there was some discussion between Dr Elmashy and Patient B in respect of their families, and included:

Dr at 00:08: *‘Tell me about your life’*
Patient B at 00:11: *‘I’m XXX, I love XXX.’*
Dr at 00:12: *‘But my family are very religious I am trying. XXX.’*

113.The Tribunal considered that the tone of these messages and repeated use of the word ‘babe’ and concluded that this was at odds with arguments advanced by Dr Elmashy that he was acting in a fatherly or friendly manner to Patient B. It was of the view that Dr Elmashy’s persistence in giving the punnet of grapes to Patient B, walking with her and asking about her life, that it was more likely Dr Elmashy would have initiated the conversation about the personal matters and eating problems. The Tribunal could not ignore Patient B’s evidence in her witness statement, as set out above.

114.In the circumstances, the Tribunal determined that Dr Elmashy failed to maintain a professional boundary with Patient B when he asked Patient B about personal matters such as her family and problems with eating.

115.Accordingly, the Tribunal found paragraph 8(f) of the Allegation proved.

Paragraphs 8(g)(i)(1), 8(g)(i)(2) and 8(g)(i)(3)

116.The Tribunal considered if during the Meeting with Patient B, Dr Elmashy failed to maintain a professional boundary with Patient B in that he said if Patient B did not have a boyfriend, he would ask her out, that if she ever broke up with her boyfriend, she could come to him and if Patient B was in A and E, she should text him and he would look after her, when she told him that she could not date or flirt with him because she had a boyfriend.

117.The Tribunal had regard to Patient B’s witness statement in which she said:

‘During the walk, Dr Elmashy said something to the effect of “to be honest, if you didn’t have a boyfriend, I would ask you out. I think you’re very pretty; you have a lot of potential and you’re clever”. I told him that I couldn’t flirt with him or date him because I have a boyfriend. After I said we couldn’t date, he said if I was in A&E to text him and he would look after me. I reminded him that he told me about the conflict of interest (as detailed at paragraph 8 of this statement). He said it would only be a conflict of interest if we were dating which is what made me realize that his intention in A&E was to date me.

*He said that if I ever broke up with my boyfriend, I should come to him.
I don't remember what I said. I felt very nervous. We parted ways and I went home.'*

118. The Tribunal was provided with an email which Patient B sent to Greater Manchester Police, dated 11 May 2022. The Tribunal noted this was only two days after she had met with Dr Elmashy and therefore her recollection of events would have been fresh in her mind. In her email, Patient B stated:

'I can't remember if I said all of this last night but here are a few things I remembered after you left. At the hospital he bought me a drink to try to encourage me to have some fluids. He asked me to remove my face mask so he could look at me/my facial expressions properly. At the time I thought it was to see my facial expressions to do a mental health assessment more accurately but now I'm doubting that intention. In the park he said that if I didn't have a boyfriend he would date me, that if I ever broke up with my boyfriend he would date me. He made a comment about the space I'd created between us when we were walking and sat on the bench which he clearly wanted to be smaller. He wanted me to promise that I'd let him take me swimming. He gave me a punnet of grapes to share in the park and then he wanted me to take the rest home, he also lent me a book to read which I felt was an excuse to get to see me again when I return it.'

119. In his witness statement, Dr Elmashy denied saying to Patient B that he would ask her out if she did not have a boyfriend. In relation to if she ever broke up with her boyfriend, she should come to him, Dr Elmashy stated:

'I deny saying to Patient B that she and I could become romantically involved if she ever broke up with her boyfriend.

Patient B volunteered information to me XXX.

I recall saying to Patient B that she could talk to me as a pastoral friend if she ever broke up with her boyfriend or argued with him.

I was offering her a source of support which I now accept I should not have done because it crossed a professional boundary. My offer to assist her was not sexually motivated.'

120. The Tribunal noted the exchange of WhatsApp messages in which there was some discussion about personal family matters, including about Patient B's boyfriend. These included:

Patient B at 00:13 *'What do you mean injured??'*

Dr at 00:14: *'If you feel you wanna express it go on
am a good listener
Emotionally
Was investing my feeling in the wrong person'*

Patient B at 00:15: *'Yes. I think love is when another person's happiness
becomes your happiness, and you work towards
making that person happy. You trust them, you would
take care of them and they would do the same for you'*

Dr at 00:16: *'It is true
You said it very well
So have you had that feeling before?'*

Patient B at 00:19: *'XXX, I developed lots of mental health problems that my family
got frustrated with and angry at me for developing (even
thought it was probably from XXX) I mean there was a lot'*

Dr at 00:22: *'Oh god babe'*

Patient B at 00:22: *'XXX'*

Dr at 00:22: *'you had been through and you still who you are. You
are a fighter by nature I see. XXX'*

Patient B at 00:25: *'Because I feel like XXX'*

Dr at 00:26: *'Oh I see'*

121.The Tribunal determined that it preferred Patient B's account of events. It noted that Dr Elmashy had initiated the first contact with Patient B and provided her his personal mobile number. He then contacted her via WhatsApp shortly after she had been discharged from the hospital on 8 May 2022 and chatted with her at length via WhatsApp messaging until the early hours of the next day. He arranged to meet with Patient B outside of the clinical setting, bought her a punnet of grapes, and walked with her.

122.In the circumstances, the Tribunal considered, on the balance of probabilities, that it was more likely Dr Elmashy did say to Patient B that if she did not have a boyfriend, he would ask her out; and that if she ever broke up with her boyfriend, she could come to him. The Tribunal determined that Dr Elmashy failed to maintain a professional boundary with Patient B when he said to her the matters alleged.

123.Accordingly, the Tribunal found paragraphs 8(g)(i)(1), 8(g)(i)(2) and 8(g)(i)(3) of the Allegation proved.

Paragraphs 8(g)(ii),and 8(g)(iv)

124.The Tribunal considered if during the Meeting with Patient B, Dr Elmashy failed to maintain a professional boundary with Patient B in that he said he thought Patient B was

very pretty, and that it would only be a conflict of interest if they were dating, when reminded of your conversations with Patient B in A&E, or words to that effect.

125.The Tribunal had regard to Patient B’s statement in which she said:

‘During the walk, Dr Elmashy said something to the effect of “to be honest, if you didn’t have a boyfriend, I would ask you out. I think you’re very pretty; you have a lot of potential and you’re clever”. I told him that I couldn’t flirt with him or date him because I have a boyfriend. After I said we couldn’t date, he said if I was in A&E to text him and he would look after me. I reminded him that he told me about the conflict of interest (as detailed at paragraph 8 of this statement). He said it would only be a conflict of interest if we were dating which is what made me realize that his intention in A&E was to date me.

He said that if I ever broke up with my boyfriend, I should come to him. I don’t remember what I said. I felt very nervous. We parted ways and I went home.’

126.Dr Elmashy, in his witness statement, acknowledged that he asked Patient B about her boyfriend. In the context of his contacting Patient B, and then meeting her outside of the workplace setting, the Tribunal considered that it was more likely that Dr Elmashy said to Patient B the matters alleged.

127.Accordingly, the Tribunal found paragraphs 8(g)(ii), 8(g)(iii) and 8(g)(iv) proved.

Paragraphs 11(a)(i) and 11(a)(ii) of the Allegation

128. The Tribunal considered if Dr Elmashy’s conduct at paragraphs 5 to 9 of the Allegation was sexually motivated and was in pursuit of an improper emotional relationship with Patient B. In doing so it bore in mind Dr Elmashy’s explanation that he was replacing and treating Patient B like XXX who also had an eating disorder. The Tribunal took the view that this made no sense as XXX. The Tribunal also found that Dr Elmashy was unable to provide any reasonable explanation as to why if his account was true he didn’t inform Patient B that he saw her as XXX. The only reasonable inference the Tribunal could make was that Dr Elmashy’s intention was for Patient B to see him as a potential boyfriend and not a father figure.

129.The Tribunal did not accept the tone of the messages Dr Elmashy sent to Patient B matches that of what a father would send to his daughter such as *‘Have you been in love before?...Text me when you wake up Good night amazing human being’*. The frequency of these types of messages went on late into the night immediately following Dr Elmashy

seeing Patient B in A and E. The Tribunal was satisfied that Dr Elmashy fostered false trust from his first messages to Patient B by using language that would not be appropriate towards a patient or a father towards his daughter such as *'I will keep you awake', 'Have you been in love before?' and 'Am talking to brain and mind of a very mature lady which was the reason I got attracted to you...Your brain'*. He referred to Patient B as *'babe'* and claimed this was a typo and that it was supposed to say *'baby'* but nonetheless the Tribunal still did not believe that this was appropriate.

130. The Tribunal had regard to Patient B's medical records which stated that, on 8 May 2022 at 13:00, she was *'not eating or drinking...depression, suicidal'*. Dr Elmashy sent the first message to Patient B at 16:27. His messages to her included him stating *'Am flirty too even with friends. And you would see different Mashy tomorrow as well'* and *'Not try to base our friendship on feeling but kinds missed talking to you face to face'* which was in response to Patient B's message stating *'I try not to base my friendships on physical appearances so I was trying not to say your muscles are pretty cool'* as Dr Elmashy sent her two videos of him lifting weights in the gym.

131. The Tribunal considered the messages sent by Dr Elmashy to Patient B to show aspects of him grooming a vulnerable patient. It took the view that Dr Elmashy's whole interaction with Patient B was inappropriate and that he was seeking both an improper emotional relationship with her and it was sexually motivated as he was pursuing a future sexual relationship.

132. The Tribunal found that Dr Elmashy had picked Patient B up and considered that that this was sexually motivated because he wanted to touch her, albeit not in a sexual manner. The Tribunal determined that he did this for his own sexual gratification as there was no other plausible reason for him to touch her by putting his arms around her and lifting her up. The Tribunal also found that this action was part of his pursuit of a future sexual relationship.

133. Dr Elmashy's actions made Patient B feel so uncomfortable that she rang a helpline for assistance with the situation later the same day. Patient B's oral evidence was that after her meeting with Dr Elmashy in the park she had conflicted emotions and it brought stuff back, traumatic memories of not having her boundaries respected. She explained that this is why she contacted the NAPAC helpline.

134. Accordingly, the Tribunal found paragraphs 11(a)(i) and 11(a)(ii) of the Allegation proved.

Paragraph 11(b) of the Allegation

135. The Tribunal considered if Dr Elmashy's conduct at paragraph 9 of the Allegation amounted to harassment as defined in 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.

136. In its deliberations, the Tribunal noted that Dr Elmashy admitted that he sent the messages to Patient B but did not admit that this amounted to harassment. It also noted that she did respond to his messages and stated *'I didn't press any charges of anything...I'm happy to have him as a friend, I was never expecting to go to the police...So we are never talking again?'*. Dr Elmashy asked Patient B to remove his number from her phone and stated *'It was taken the in the wrong turn and affected me in a bad why while I was only trying to be a friend'*. Patient B responded *'It wasn't only to help me out Mashy, You were flirting a lot, you kissed me and you wanted to date me. If anything happens to you know, it's your own fault. I promise you I didn't press any charges because I was genuinely happy to be your friend but don't pretend you were being purely philanthropic, don't pretend you didn't knowingly cross any lines, and don't you dare blame me'*. The messages suggested that Dr Elmashy was attempting to blame Patient B for his actions.

137. In her witness statement Patient B said:

'Either the day after or a few days after I spoke to the Police, Dr Elmashy messaged me to say that police officers had been at the Hospital asking for him. His message made me feel very anxious. I lied and said that I had mentioned him to some friends, and that a friend of mine must have reported him. I felt really scared that he was going to be angry with me. His responses were very defensive. He asked me to drop the accusations and clear his name'

138. The Tribunal had regard to all of the messages sent by Dr Elmashy to Patient B, after the meeting, on 10 and 11 May 2022. It was satisfied that in the messages he engaged in improper and constant questioning of her about him now being in trouble; if she confirmed the allegation he would be in *'deep shit'* and asking her to clear his name as he is now in a *'big problem'*. This made the communication oppressive and it was unreasonable to send to a vulnerable patient.

139. The Tribunal was satisfied that Dr Elmashy engaged in a course of improper, oppressive and unreasonable conduct which caused alarm and distress to Patient B and that he should have known that what he was doing amounted to harassment.

140. Accordingly the Tribunal found paragraph 11(b) of the Allegation proved.

141. The Tribunal has determined the facts as follows:

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

Ms A

1. On 18 September 2021, you met with XXX Ms A at work ('the Meeting with Ms A'), and you failed to maintain a professional boundary with Ms A in that you:
 - a. asked Ms A:
 - i. why she had not told you that she was in a relationship with XXX; **Determined and found proved**
 - ii. if the reason she did not like you was because XXX, **Determined and found proved**

or words to that effect;
 - b. said that:
 - i. just because you were Ms A's XXX did not mean you could not be more, when Ms A said that she viewed you as XXX; **Determined and found proved**
 - ii. you thought that Ms A was attractive since she started in the XXX department; **Determined and found proved**
 - iii. Ms A was the only one in the XXX department that you wanted to be with, **Determined and found proved**

or words to that effect;
 - c. propositioned Ms A in that said you wanted to take Ms A out to dinner and then take her back to your house to have sex with her, or words to that effect ('the Proposition'); **Determined and found proved**
 - d. said that:

- i. you wanted to have sex with Ms A in response to Ms A telling you that she did not want that; **Determined and found proved**
 - ii. when Ms A's ex-partner XXX, you could try again because there would be less of a distraction for Ms A, **Determined and found proved**

or words to that effect;
 - e. asked Ms A if she was sure, or words to that effect, when she said she did not want to have sex with you; **Determined and found proved**
 - f. on one or more occasion said no, or words to that effect, when Ms A said that she needed to go home; **Determined and found proved**
 - g. said that Ms A could not go without giving you a hug, or words to that effect, when she said that she needed to go home. **Determined and found proved**
2. Following the Meeting with Ms A, on one or more occasion, you failed to maintain a professional boundary with Ms A in that you:
- a. sent inappropriate messages to Ms A, as set out in Schedule 1; **Determined and found proved**
 - b. attempted to hug Ms A; **Determined and found proved**
 - c. asked Ms A:
 - i. if:
 - 1. you were still friends or she had changed her mind about the Proposition; **Determined and found proved**
 - 2. she was sure when Ms A said that she had not changed her mind, **Determined and found proved**

or words to that effect;
 - ii. what was going on in her love life, or words to that effect. **Determined and found proved**
3. Your conduct as described at paragraphs 1 and 2 was:
- a. sexually motivated; **Determined and found proved**
 - b. unlawful sexual harassment related to sex and/or sexual orientation by virtue of Section 26 of the Equality Act 2010, in that you engaged in unwanted conduct related to sex and/or sexual orientation which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile,

degrading, humiliating or offensive environment for her. **Determined and found proved in relation to unlawful sexual harassment related to sex**

Patient B

4. On 8 May 2022, you consulted with Patient B in A&E ('the Consultation').
Admitted and found proved
5. During the Consultation you failed to maintain a professional boundary with Patient B in that you:
 - a. on one or more occasion, informed Patient B that you were speaking to her as a friend and not a patient, or words to that effect; **Admitted and found proved**
 - b. gave Patient B your personal mobile telephone number; **Admitted and found proved**
 - c. said it was fine, or words to that effect, when asked by Patient B if it was appropriate for her to have your telephone number; **Determined and found proved**
 - d. asked Patient B to text you before she left A&E so that you could say goodbye to her, or words to that effect; **Determined and found proved**
 - e. said you wanted to keep in contact with Patient B, or words to that effect; **Admitted and found proved**
 - f. asked if you and Patient B could go out for a walk together and get a cup of coffee, or words to that effect; **Admitted and found proved**
 - g. said it would be fine, or words to that effect, when asked by Patient B if going for a walk/getting a cup of coffee would be ok to do with a patient.
Determined and found proved
6. Between 8 and 10 May 2022, on one or more occasion, you failed to maintain a professional boundary with Patient B in that you:
 - a. contacted Patient B via WhatsApp; **Admitted and found proved**
 - b. sent inappropriate messages to Patient B: **Admitted and found proved**
 - i. as set out in Schedule 2; **Admitted and found proved**
 - ii. enclosing two videos of you working out in the gym. **Admitted and found proved**
7. On 10 May 2022, you met with Patient B in a non-work context at a park ('the Meeting with Patient B'). **Admitted and found proved**

8. During the Meeting with Patient B, you failed to maintain a professional boundary with Patient B in that you:
- a. without consent, hugged and/or put your arm around Patient B; **Determined and found proved**
 - b. without consent, kissed Patient B on or around the area of her forehead; **Determined and found proved**
 - c. asked Patient B to close her eyes and, without consent, scooped her up in your arms; **Determined and found proved**
 - d. said that you did not like the distance that Patient B had created between the two of you, or words to that effect, when she sat at the far end of the bench away from you; **Determined and found proved**
 - e. told Patient B about personal matters XXX -; **Admitted and found proved**
 - f. asked Patient B about personal matters such as her family and problems with eating; **Determined and found proved**
 - g. said that:
 - i. if Patient B:
 - 1. did not have a boyfriend, you would ask her out; **Determined and found proved**
 - 2. ever broke up with her boyfriend, she could come to you; **Determined and found proved**
 - 3. was in A&E, she should text you and you would look after her, when she told you that she could not date or flirt with you because she has a boyfriend; **Determined and found proved**
 - ii. you thought Patient B was very pretty; **Determined and found proved**
 - iii. Patient B had a lot of potential and was clever; **Admitted and found proved**
 - iv. it would only be a conflict of interest if you were dating, when reminded of your conversations with Patient B in A&E, **Determined and found proved.**
- or words to that effect;

- h. walked around the park for a period of time with Patient B. **Admitted and found proved**
- 9. Following the Meeting with Patient B, on one or more occasion, you failed to maintain a professional boundary with Patient B in that you sent inappropriate messages to Patient B as set out in Schedule 3. **Admitted and found proved**
- 10. At all material times:
 - b. Patient B was vulnerable due to a mental health condition; **Admitted and found proved**
 - c. you knew that Patient B was vulnerable. **Admitted and found proved**
- 12. Your conduct as described at paragraphs:
 - a. 5-9 was:
 - i. sexually motivated; **Determined and found proved**
 - ii. in pursuit of an improper emotional relationship with Patient B; **Determined and found proved**
 - c. ~~8 and 9~~ amounted to harassment as defined in 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. **Amended under Rule 17(6) Determined and found proved**

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

Determination on Impairment - 15/07/2024

1. 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 Elmashy's fitness to practise is impaired by reason of misconduct.

The Evidence

2. 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 has received written

and oral evidence, on Dr Elmashy's behalf, from Dr C who was Dr Elmashy's Educational Supervisor at Manchester Infirmary, which is part of the Trust.

3. The Tribunal also received written evidence as follows, contained within a Stage 2 bundle, provided by Dr Elmashy:
 - Written evidence of CPD including:
 - Online Advanced Paediatric Life Support Course Completion Certificate dated 15 September 2020;
 - Advance Life Support Course completed at Fairfield General Hospital dated 21 October 2020;
 - A list of a number of courses undertaken between 2019 and 2024;
 - Certificate of completion of an Advanced Communication Skill course undertaken on 2 and 3 November 2023;
 - Certificate of completion of Domestic Violence and abuse course dated 27 June 2024;
 - Certificate of completion of Risk and Multi-agency safeguarding course dated 1 July 2024;
 - Certificate of Adverse Childhood Experiences course dated 3 July 2024;
 - Dr Elmashy's appraisal summary, dated 5 December 2023 which included a copy of his Personal Development Plan;
 - Excellence reports dated 4 March 2024, 3 May 2024, 12 May 2024 and 16 May 2024;
 - Professional Boundaries in Practice course attended on 1 September 2022 together with Dr Elmashy's reflections on the course;
 - Copy of the slides of the presentation made to colleagues by Dr Elmashy on Professional Boundaries together with feedback from the training and Certificate of Appreciation;
 - Staff and Patient Feedback;
 - Testimonials from ten doctors, a nurse and a senior nurse.

Submissions

4. On behalf of the GMC, Mr Hamlet submitted that the admitted paragraphs of the Allegation would amount to misconduct by themselves, so these combined with the

Tribunal's findings of fact amounts to misconduct which was serious. He stated that the documents submitted by Dr Elmashy contained no acknowledgement of this Tribunal's findings or any attempts made by him to understand the effects his actions had upon his patients. Mr Hamlet submitted that Dr Elmashy does not recognise his role in his sexually motivated conduct towards Ms A and Patient B and that as such there remains a risk of repetition.

5. Mr Hamlet stated that, based on the evidence received, Dr Elmashy has continued to deny that which the Tribunal has found proved. He said that Dr Elmashy does not understand that his behaviour amounted to sexually motivated behaviour and harassment which indicates a lack of insight. Mr Hamlet reviewed the CPD submitted by Dr Elmashy and stated that most of this had no relevance to the issues raised in this case.
6. Mr Hamlet reminded the Tribunal that Dr Elmashy did not provide oral evidence at this stage nor any reflections as to the findings of this Tribunal. Dr Elmashy claimed to have had no idea of any limitations between a patient and a doctor but says he now understands these as a product of this case. However, Mr Hamlet said that Dr Elmashy maintains that he did not believe he had done anything wrong and that this must be his current position as no new evidence has been submitted.
7. Mr Hamlet submitted that Dr C was not aware of the full extent of the admissions made by Dr Elmashy and that he was told very little about the Allegation, so the Tribunal should consider Dr C's evidence in this context. He stated that Dr Elmashy's defence arguments were that Ms A made everything up and that he had no idea he was doing anything wrong in his actions with Patient B. Mr Hamlet submitted that this reflects a deep-seated attitudinal problem with a risk of repetition.
8. Mr Hamlet submitted that as Dr Elmashy lacks insight and there is a risk of repetition of his misconduct and therefore a finding of impairment is necessary to address the risk he poses to the public. He went on to submit that due to the serious nature of Dr Elmashy's misconduct a finding of impairment is necessary to maintain public confidence in the medical profession and proper standards of conduct.
9. On behalf of Dr Elmashy, Mr Morris submitted that Dr Elmashy recognises that the facts found proved in this case amount to serious professional misconduct and that a finding of impairment is an inevitable consequence of that.

10. Mr Morris stated that the Allegation with regard to Ms A amounted to one episode on one day. He stated that the Allegation with regard to Patient B amounted to an abuse of his professional position and was clearly one of the more serious forms of misconduct. He submitted Dr Elmashy stopped the behaviour, which the Tribunal found to be sexually motivated, towards Patient B before he knew the police were investigating this and that the WhatsApp messages show that after this Dr Elmashy showed only concern for Patient B's health.
11. Mr Morris submitted that misconduct can be remedied, and that Dr Elmashy has demonstrated a significant element of acceptance. He reminded the Tribunal that, in his Trust interview regarding Patient B on 1 July 2022, Dr Elmashy denied his conduct was sexually motivated and acknowledged that his self-disclosure of personal matters to a patient was wrong and had crossed professional boundaries. Mr Morris asserted that this shows concession, admission and acceptance that he did cross professional boundaries. Mr Morris also reminded the Tribunal that Dr Elmashy, in his meeting with the Trust on 12 May 2022, denied sexual motivation. He stated that Dr Elmashy has always accepted that he should have behaved differently and that he made a catastrophic mistake.
12. Mr Morris referred the Tribunal to the following paragraphs of the Sanctions Guidance (2024) (SG) which defined insight:

'45 Expressing insight involves demonstrating reflection and remediation.

46 A doctor is likely to have insight if they: a accept they should have behaved differently (showing empathy and understanding) b take timely steps to remediate (see paragraphs 31–33) and apologise at an early stage before the hearing c demonstrate the timely development of insight during the investigation and hearing.

47 The tribunal should be aware that cultural differences and the doctor's circumstances (eg their ill health) could affect how they express insight. For example, how they frame and communicate an apology or regret'

13. Mr Morris stated that Dr Elmashy made admissions to some paragraphs of the Allegation and that he failed to maintain professional boundaries. He submitted that Dr Elmashy has recognised the harm he caused Patient B and has apologised to her for the anxiety and distress she suffered as a result of her interactions with him.

14. Mr Morris stated that Dr Elmashy had taken a course on maintaining professional boundaries before the Trust’s investigation had concluded. He took the Tribunal through Dr Elmashy’s reflections and submitted that he has developed significant insight into the danger of crossing professional boundaries.
15. Mr Morris took the Tribunal through the positive feedback Dr Elmashy has received from his colleagues and submitted that Dr Elmashy is not a doctor who can properly be described as having a deep-seated attitudinal problem towards the issue of respecting professional boundaries and avoiding sexually motivated behaviour.

The Relevant Legal Principles

16. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof, and the decision of impairment is a matter for the Tribunal’s judgement alone.
17. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct which was serious and then whether the finding of that misconduct which was serious could lead to a finding of impairment. The Tribunal continued to bear in mind throughout its deliberations that Dr Elmashy was of good character at the time of the allegation.
18. The Tribunal must determine whether Dr Elmashy’s fitness to practise is impaired today, taking into account his conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.
19. The Tribunal had regard to the questions posed by Dame Janet Smith in the Fifth Shipman Report, as referred to in the case of *CHRE v NMC and Grant [2011] EWHC 927 (Admin)*, as follows:

‘Do our findings of fact in respect of the doctor’s misconduct... show that his/her fitness to practise is impaired in the sense that s/he:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

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

20. Both Mr Hamlet and Mr Morris had referred to caselaw during their submissions and certain paragraphs of judgments. In order to assist the Tribunal in having the relevant principles set out in these case before it, Mr Morris provided the Tribunal with copies of the following cases:

GMC v Awan (2020) EWHC 1553 (Admin)
Sawati v GMC (2022) EWHC 283 (Admin)
GMC v Khetyar (2018) EWHC 813 (Admin)
Sayer v General Osteopathic Council (2021) EWHC 370

21. The Tribunal was aware that that in due course if it found misconduct, it would need to consider insight and these cases were relevant in that regard. In doing this the Tribunal would need to weigh all relevant written and oral evidence. The decision on insight was a matter for the Tribunal's judgment. The Tribunal was aware that although Dr Elmashy had contested parts of the Allegation, it did not automatically mean he lacked insight. A doctor is not expected to undertake a road to 'Damascus' change immediately following findings against him and may need to protect his position in the event of appeal. The Tribunal would need to consider the particular facts and the evidence actually advanced in Dr Elmashy's case.
22. The Tribunal recognised that some of these cases were also relevant to Sanction but as the Tribunal had not reached that stage, it only considered matters relating to Impairment.
23. The Tribunal found the list of principles set out at paragraph 25 in *Sayer* of particular assistance:

'(1) Insight is concerned with future risk of repetition. To this extent, it is to be distinguished from remorse for the past conduct.

(2) Denial of misconduct is not a reason to increase sanction: Awan §38.

(3) It is wrong to equate maintenance of innocence with lack of insight. Denial of misconduct is not an absolute bar to a finding of insight. Admitting misconduct is not a condition precedent to establishing that the registrant understands the gravity of the offending and is unlikely to repeat it: Motala §34 and Awan §38.

(4) However attitude to the underlying allegation is properly to be taken into account when weighing up insight: Motala §34 Where the registrant continues to deny impropriety, that makes it more difficult for him to demonstrate insight. The underlying importance of insight and its relationship with denial of misconduct was usefully analysed by Andrew Baker J in Khetyar (at §49) as follows:

“Of course, no sanction was to be imposed on him for his denials as such; however, insight requires that motivations and triggers be identified and understood, and if that is possible at all without there first being an acceptance that what happened did happen it will be very rare, and any assessment of ongoing risk must play close attention to the doctor’s current understanding of and attitude towards what he has done.”.

(5) The assessment of the extent of insight is a matter for the tribunal, weighing all the evidence and having heard the registrant. The Court should be slow to interfere: Motala §§30 and 31’

The Tribunal’s Determination on Impairment

Evidence of Dr C

24. The only oral evidence received by the Tribunal at this stage was from Dr C. The Tribunal found Dr C’s evidence to be inconsistent as for example he said he was told by Dr Elmashy all about the issues he was facing and what he had done, then said in evidence he did not know about Ms A. When it was pointed out to him that he had been sent a copy of the Allegation in May 2024, he said he must have known but could not recall this. Dr C implied that it was his fault that he did not know more about the matters Dr Elmashy was facing as he did not question him sufficiently. In relation to Patient B Dr C said Dr Elmashy had not told him that the allegation involved a vulnerable patient. The Tribunal found that it could give very little weight to his evidence relating to the openness of Dr Elmashy in relation to what the facts of the Allegation were.

25. Dr Elmashy did not give oral evidence under oath at this stage of the proceedings so the matters in the Stage 2 Bundle could not be subject to further clarification and elaboration because Dr Elmashy had not been subject to cross-examination nor questions from the Tribunal.
26. Throughout its deliberations it acknowledged the concessions made by Dr Elmashy, through his counsel Mr Morris, that he accepted that the findings relating to both Ms A and Patient B would amount to serious misconduct and that his fitness to practice is currently impaired.

Misconduct

Ms A

27. The Tribunal considered whether to deal with the paragraphs of the Allegation relating to Ms A individually or holistically. It determined that the paragraphs were intrinsically linked as they led to findings of sexual motivation and sexual harassment and therefore considered them together.
28. The Tribunal did not consider Dr Elmashy's behaviour to Ms A was an isolated incident because after the 18 September 2021 meeting, on more than one occasion he failed to maintain professional boundaries with Ms A. He only stopped his actions after Ms A reported the matter to XXX in July 2022 as confirmed by Ms A in her evidence *'I have not had any further contact with Dr Elmashy since raising my concerns.'*
29. The Tribunal considered the findings to be serious because they involved persistent unwanted actions by Dr Elmashy towards Ms A, which were both sexually motivated and amounted to harassment. There was also a power imbalance in that Dr Elmashy was an older and more senior doctor and Ms A was XXX. His conduct had a negative impact on Ms A. The Tribunal was aware that maintaining professional boundaries in the workplace were of particular importance and found that the following paragraphs of Good Medical Practice (2013) (GMP) had been breached:

'36 You must treat colleagues fairly and with respect.

37 You must be aware of how your behaviour may influence others within

and outside the team.’

Dr Elmashy’s conduct was a serious breach of GMP.

30. The Tribunal considered the nature of its findings in relation to sexual motivation and determined that it was not at the higher level of sexually related misconduct. In some respects, it was towards the lower end of the scale. Nevertheless, it was persistent, involved harassment and he abused his position as a doctor by breaking boundaries and not respecting Ms A when she made it clear she did not want a sexual relationship with him. His actions were morally culpable and disgraceful actions towards a colleague.
31. The Tribunal therefore concluded that the paragraphs of the Allegation relating to Ms A was serious misconduct.

Patient B

32. The Tribunal decided to deal with all of the paragraphs relating to Patient B holistically rather than individually as they were all integrated and resulted in findings of sexual motivation and sexual harassment.
33. The Tribunal considered Patient B to be an extremely vulnerable patient as shown by her medical records, who after the events involving Dr Elmashy was fearful of going to the hospital where he worked in case she should see him again and further was worried he would get her home address from her hospital records. It had no doubt that Dr Elmashy’s actions towards Patient B amounted to an abuse of his professional position and he was morally culpable and it was disgraceful behaviour. It considered that he had breached the following paragraphs of GMP:

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

55 You must be open and honest with patients if things go wrong. If a patient under your care has suffered harm or distress, you should:

a put matters right (if that is possible)

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.'

34. The Tribunal considered that the actions Dr Elmashy took towards Patient B by in effect telling her he was 'her doctor' after she was discharged from A&E and under the care of the Mental Health Team, when he was not necessarily a qualified doctor for her in all aspects of her health care. It found that this was not only harmful to Patient B but also could have potentially undermined the care that she was receiving from his colleagues particularly in the Mental Health Team. The Tribunal found his apology to Patient B to be superficial and the Tribunal found that he did in fact harass her in an attempt to get her to contact the police and withdraw her concerns. He adopted a self-serving attitude towards a very vulnerable patient. Overall, the Tribunal considered that he had seriously abused his professional position as a doctor.
35. The Tribunal had regard to the WhatsApp messages Dr Elmashy sent to Patient B following their meeting in the park, which included *'And by the way your bf will hate me more now becuz I started to like you more...How do you know I wanted to kiss you?...'* Patient B responded to state *'You did kiss me, on the head when we said hello'*. As a result of the messages and Dr Elmashy's actions in the park, Patient B was so concerned and shocked, as it brought back memories of historic sexual abuse, that she contacted the NAPAC who contacted the police. She stated in a message to him *'I was scared, I was scared you'd be angry, I never wanted to talk to the police, I had no idea what to di [sic]'*.
36. The Tribunal found that Dr Elmashy only stopped pursuing a future sexual relationship with Patient B after the police became involved. It noted a change in the tone of the messages sent by Dr Elmashy after this in the way he addressed her. It considered this to be an attempt by Dr Elmashy to protect himself as he referred to Patient B several times as 'friend'. He messaged Patient B to say *'Could you clear my name please now I was acting like a friend. But I got so much trouble now...I was trying to support you in a friend way...As a friend and someone did not harm you in anyway could you drop that accusations from the police please?...Did you confirm the call to police?...The police called you?...What did they ask you and what was your answer'*. The Tribunal took the view that Dr Elmashy was fishing for information from Patient B and was being manipulative. It appeared as if he was interrogating her and at times his tone appeared angry, and he was trying to intimidate her. Dr Elmashy admitted, in his oral evidence, that he was angry at this time and wanted to know what she had told the police. The Tribunal was satisfied that this was an attempt by Dr Elmashy to interfere with the police investigation.

37. The Tribunal noted that Dr Elmashy was considerably older than Patient B with him being over XXX years her senior.
38. The Tribunal considered that the misconduct towards Patient B was extremely serious as he pursued a future sexual relationship with a very vulnerable patient who was left feeling shocked, upset and distressed and in her words did not realise the seriousness of Dr Elmashy's behaviour towards her within the messages and meeting in the park until she sought help from NAPAC. Further, he harassed her and tried to intimidate her. The breaches of GMP were a serious violation of Patient B's rights as a patient. The Tribunal has concluded that Dr Elmashy's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to serious misconduct.

Impairment

39. The Tribunal having found that the facts found proved amounted to misconduct went on to consider whether, as a result of that misconduct, Dr Elmashy's fitness to practise is currently impaired. It had regard to the paragraphs of the Sanctions Guidance that define insight (recognising it is not dealing with Sanction) which Mr Morris referred to. It also had regard to the principles as set out in the caselaw.
40. The Tribunal in accordance with the case of *Cohen v GMC (2008) EWHC 581 (Admin)* asked itself the questions firstly whether Dr Elmashy's conduct which led to the Allegation is easily remediable, secondly has it been remedied and thirdly is it highly unlikely to be repeated?
41. The Tribunal considered that the misconduct involving sexual motivation and sexual harassment by their nature were not easily remediated with regard to the facts of this case. However, it acknowledged that whilst it was not impossible it would be difficult particularly in regard to Dr Elmashy's actions towards a very vulnerable patient causing her extreme distress.
42. The Tribunal considered the contents of Dr Elmashy's Stage 2 bundle. It found that, his CPD, the multisource feedback from colleagues and patient feedback, the testimonials and his recent appraisal in December 2023, demonstrated that he appeared to be a competent doctor in his clinical practice.

43. It considered in relation to remediation that Dr Elmashy's attendance on a 'Professional Boundaries in Practice' Course on 1 September 2022 and his reflection on this was particularly pertinent to his possible remediation. Also, the training he had presented to colleagues on Professional Boundaries together with the slides provided could be relevant. In relation to boundaries, Dr Elmashy in the slides has identified some of the issues involved but has not taken the next important step of applying them directly to his behaviours towards Ms A and Patient B. He has not shown remorse for his actions. He has rather considered that it isn't his fault because he didn't know about boundaries but now, he does and indeed said in conclusion to his reflection, "*At the End. It was a brain blowing knowledge I gained from the course. I wish I could have had it when I moved to the UK...I am very excited to begin a new chapter of my work experience with a new boundaries practice.*" Then, following the course he delivered a training session to International Medical Graduates (IMG) on professional boundaries in January 2024. The Tribunal considered that the slides are just knowledge content of what boundaries are. The Tribunal does not know, as Dr Elmashy did not give evidence, if there was any relevance to the issues that concerned his own failure to maintain professional boundaries. The slides on their own are insufficient evidence of remediation.
44. The Tribunal concluded that the course and the training he delivered had given him the knowledge of what professional boundaries are, but Dr Elmashy has not demonstrated an understanding of how he could put this into practice nor reflected on what he did wrong in relation to Ms A and Patient B and therefore he has not fully remediated. Further, the Tribunal was concerned that he has an attitudinal problem in that his reflections are one dimensional as to how his misconduct has affected himself and not others. He became angry and intimidated Patient B as he wanted not to be accountable for what he may have done and has not shown how he would deal with this in the future.
45. The Tribunal then went on to consider whether Dr Elmashy had developed insight as this was an important factor in whether he was likely to repeat his misconduct. The Tribunal was aware that determining the extent of Dr Elmashy's insight was a matter for its own judgement and that it was facts sensitive. It bore in mind that the denial of an allegation is not an indicator that there is a lack of insight. It was aware that the purpose of fitness to practise proceeding is not to punish a doctor for past misdoings but to protect the public from against the acts and omissions of those who not fit to practise. It recognised that the Tribunal therefore looks forward not back but taking into account the way he has acted in the past.

46. The Tribunal had regard to the evidence provided by Dr C. Dr C was Dr Elmashy's appraiser. The Tribunal found that Dr Elmashy had not been fully transparent with him and had chosen not to disclose the full extent of the GMC Allegation.
47. The Tribunal rejected Dr Elmashy's explanation that there were cultural differences between medical practice in Egypt and Saudi Arabia compared with the UK. The Tribunal did not accept this as it deemed that it was improbable in its judgement that in any jurisdiction sexual motivated behaviour and sexual harassment of a colleague or patient, particularly an emotionally vulnerable patient would be acceptable behaviour by a doctor. Further, the Tribunal took the view that a doctor should not need to be told it is inappropriate to ask a colleague for sex and when they refused to harass them; nor to obtain a patient's phone number during a consultation, to repeatedly send WhatsApp messages to a vulnerable patient, meet them in the park and intimidate and sexually harass them. The Tribunal acknowledged that Dr Elmashy had denied the matters relating to Ms A but in relation to Patient B it considered that having regard to the primary facts that he admitted for Patient B that a doctor evaluating this should have recognized this might be viewed as sexual harassment and considered to be sexually motivated behaviour.
48. Dr Elmashy has maintained his view that the problem is that doctors do not know the rules regarding professional boundaries as opposed to it being morally wrong to breach these and he was not morally culpable in that regard. Therefore, for all the reasons set out above the Tribunal found that Dr Elmashy has demonstrated a complete lack of insight. Although he has acquired knowledge relating to professional boundaries, he has not demonstrated that he fully understands or accepts the concerns raised due to his misconduct.
49. Having considered all of the evidence, the Tribunal took the view that Dr Elmashy has not submitted anything specific to address the concerns raised in this case. It noted that he completed a professional boundaries course but that he has not shown he understood the seriousness of his actions. The evidence indicates that Dr Elmashy put his own interests first and attempted to minimise his actions. The Tribunal took the view that there was a lack of evidence to demonstrate that Dr Elmashy's misconduct had been remedied, and together with his lack of insight he is liable to repeat his misconduct. The Tribunal concluded that Dr Elmashy may have a deep-seated attitudinal issue as he does

not seem to grasp the seriousness of what he has done, (referring to the matters he admitted), this adds to the fact that the risk of repetition in this case is high.

50. The Tribunal next considered the criteria set out in the case of Grant. The Tribunal was satisfied that Dr Elmashy's misconduct put a Patient at unwarranted risk of harm. It also concluded that patients were put at an indirect risk of harm due to how Dr Elmashy treated his colleague Ms A in the workplace, and he was on occasions sending or receiving WhatsApp messages whilst he was on duty. The Tribunal found Dr Elmashy's conduct towards Patient B caused her actual harm as she was distressed, alarmed, scared and fearful of returning to NMG as his behaviour towards her breached boundaries and was sexually motivated and amounted to sexual harassment. The Tribunal took the view that Dr Elmashy groomed Patient B, knowing she was vulnerable. Due to his incomplete remediation and lack of insight there was a risk of unwarranted harm to patients in the future.
51. The Tribunal was also satisfied that Dr Elmashy's overall misconduct brought the medical profession into disrepute. It took the view that a member of the public, and fellow medical professionals, would find Dr Elmashy's actions deplorable and be shocked if a finding of impairment were not made. Further, there was a risk of repetition of the misconduct.
52. The Tribunal considered that Dr Elmashy had breached fundamental tenets of the medical profession and was likely to do so again as there were significant breaches of GMP.
53. The Tribunal considered the overarching objective of protecting patients and determined that a finding of current impairment would be necessary to protect patients and to maintain public confidence in the medical profession and uphold proper professional standards.
54. The Tribunal has therefore determined that Dr Elmashy's fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 18/07/2024

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

The Evidence

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant in reaching its decision on sanction. The only evidence it received at this stage was a copy of an email, dated 13 July 2024, from Dr D who is the clinical lead to IMG’s at Manchester Royal Infirmary. This email attested to the fact the training on professional boundaries was Dr Elmashy’s idea. He confirmed that the training was well received and undertaken twice.

Submissions

On behalf of the GMC

3. On behalf of the GMC, Mr Hamlet submitted that the appropriate and proportionate sanction in this case was one of erasure and referred the Tribunal to the relevant paragraphs of the SG. He also referred the Tribunal to its findings on facts and impairment. Mr Hamlet reminded the Tribunal of the statutory overarching objective and that it found all three limbs engaged in its impairment determination.
4. Mr Hamlet reminded the Tribunal that it should consider the mitigating and aggravating factors in the case. In relation to mitigating features, he referred to the Tribunal’s impairment determination in which it considered that Dr Elmashy’s sexual motivation towards Ms A was at the lower end of sexually related misconduct. He submitted there were no identified mitigating factors in relation to Patient B in its impairment determination. He also submitted that Dr Elmashy was otherwise a competent doctor.
5. Turning to aggravating features in this case, Mr Hamlet submitted that Dr Elmashy’s actions were persistent and unwanted towards Ms A, which only stopped after Ms A reported the matter to XXX, so there was potential for this to have continued if not for the intervention. He also submitted that Patient B was an extremely vulnerable patient, and referred the Tribunal to its impairment determination that identified that Dr Elmashy’s misconduct had the potential to undermine Patient B’s care from other

colleagues. He submitted that Dr Elmashy only stopped pursuing Patient B after police became involved. Mr Hamlet stated that Dr Elmashy's actions were an abuse of his professional position for his own self-interest, and that it involved a power imbalance in respect to his relationships to Ms A and Patient B. He submitted that Dr Elmashy has not applied the training on boundaries to his own behaviour, has not shown remorse and has maintained the view that it was not his fault. Mr Hamlet reminded the Tribunal that in the absence of oral evidence, it was unable to identify any evidence that Dr Elmashy has remedied the concerns raised in this case. He stated that Dr Elmashy's reflections were one-dimensional, dealing with only how this has affected him and not others. Mr Hamlet reminded the Tribunal that it characterised Dr Elmashy's failure to grasp the seriousness of what he has done as a deep-seated attitudinal problem.

6. Mr Hamlet submitted that taking no action or imposing an order of conditions would be wholly inadequate in this case, given the Tribunal's findings of repeated sexually motivated misconduct, lack of insight and risk of repetition. He then referred the Tribunal to those paragraphs of the SG which indicate when suspension might be the appropriate sanction and stated that the features and in particular the conclusion the Tribunal reached that Dr Elmashy has an attitudinal problem points in effect to suspension being inappropriate. Mr Hamlet submitted that an order of erasure would be appropriate in this case. He referred the Tribunal to paragraphs 107 – 111 which indicate when erasure might be the appropriate sanction and submitted that paragraphs 109 (a), (b), (c), (d), (e) and (f) were engaged in this case. Mr Hamlet submitted that, due to the many aggravating features in this case, it would be appropriate to erase Dr Elmashy's name from the medical register in order to protect the public, to uphold public confidence in the medical profession and proper standards of conduct for members of the medical profession.
7. Mr Hamlet was provided with a copy of the case of *General Medical Council v Medical Practitioners Tribunal Service (Dr Mehta) (2018) CSIH 69*. He submitted that in *Mehta* there was considered to be a significant degree of remorse and a high level of insight through efforts to remediate. He submitted that, based on the Tribunal's findings, Dr Elmashy has not provided this and also didn't make admissions to the central features of this case.
8. Mr Hamlet reminded the Tribunal of its finding that Dr Elmashy has no insight and that there had been efforts to remediate but these weren't directed towards his own

misconduct. He stated that the risk of repetition in the case of *Mehta* was considered to be very low which is the opposite of what this Tribunal found.

9. Mr Hamlet submitted, by reference to paragraph 33 of the *Mehta* judgement, that remediation and insight can constitute exceptional reasons, but that such efforts must be truly exceptional, to warrant departure from what would be the range of normal or expected outcomes for serious sexual misconduct. He invited the Tribunal to consider when looking at the particular details, the features of *Mehta* which distinguish it, and place it considerably further down the scale of seriousness to this case, which has significantly more aggravating features and significantly fewer mitigating features.

On behalf of Dr Elmashy

10. On behalf of Dr Elmashy, Mr Morris submitted that Dr Elmashy accepts that the seriousness of the Tribunal's findings requires a sanction, and that the only two realistic options are those of suspension and erasure. He reminded the Tribunal that, on the issue of seriousness, it found Dr Elmashy's conduct towards Ms A to be towards the lower end of the scale with no inappropriate sexual touching and no unwanted sexual relationship. He also reminded the Tribunal of its finding that, Dr Elmashy abused his professional position as a doctor and breached GMP in his behaviour towards Patient B. Mr Morris submitted that there was no successful sexual seduction of either Ms A or Patient B and that the harm caused was not long lasting with no evidence being submitted of long term psychological harm.
11. Mr Morris submitted that there are mitigating factors in this case such as Dr Elmashy's attempt at remediation and that the Tribunal had found his reflections were pertinent to his remediation, albeit incomplete. He stated that Dr Elmashy has acknowledged how his misconduct affected others and is of previous good character with positive testimonials attesting to his integrity.
12. Mr Morris submitted that suspension is appropriate where the conduct is serious but falls short of being fundamentally incompatible with continued registration. He stated that Dr Elmashy's conduct is not fundamentally incompatible with continued registration as he has acknowledged the finding of misconduct was very serious. Further, he has worked at the Manchester Royal Infirmary since the incidents without any concerns being raised. Mr Morris submitted that there was no evidence in this case to indicate

that remediation is unlikely to be successful and that a sanction of suspension could be imposed in this case.

13. Mr Morris referred the Tribunal to two cases which he said were relevant to this case:
 - *Bawa-Garba v GMC (2018) EWCA Civ 1879* – this case emphasised that the decision on an appropriate and proportionate sanction was facts sensitive. Further, where the SG said ‘may’ in relation to erasure is permissive not mandatory.
 - *Giele v GMC (2006) (Admin) 2143* – in considering the maintainance of confidence, the existence of a public interest in not ending the career of a competent doctor will play a part.
14. Mr Morris submitted that misconduct is particularly serious where there's an abuse of the special position of trust a doctor occupies and that more serious action, such as erasure, is likely to be appropriate in such cases but is not mandatory. He emphasized that erasure is not to be regarded as inevitable, nor would erasure be the appropriate sanction in any but an exceptional case. Mr Morris submitted that only if the Tribunal considers suspension not to be sufficient should it move on to consider erasure.
15. Mr Morris was also provided with a copy of the case of *Mehta*. He submitted that the identification of the particular form of remediation that is identified in *Mehta* chimes with Dr Elmashy's remediation. He referred the Tribunal to the email from Dr D, dated 13 July 2024, which stated that the teaching session Dr Elmashy delivered on professional boundaries in medical practice was actually Dr Elmashy's idea. Dr Elmashy asked if he could deliver this *'as he believed it is very important for them to learn about such topic being coming from different educational and professional backgrounds'*. Mr Morris submitted that Dr Elmashy's reflections confirmed the fact that it was his idea as he stated it was 'brain blowing' knowledge he gained from the course and wished he could have had it when he moved to work in the UK. Dr Elmashy stated that he could see that most of the immigrants or people came from different cultures and that they must have these kinds of courses before even starting working. Dr Elmashy also stated that he was excited to make a short talk and eye opening education for immigrants.
16. Mr Morris submitted that the Dr Elmashy's desire to assist in upholding the standards of the profession and to reduce the chances that others will act in such a way as to damage the public's confidence in the profession is genuine and exceptional. He stated that the

course Dr Elmashy took was an exceptional course in terms of doctors presenting evidence of remediation to a tribunal. He went on to submit that what Dr Elmashy has done now is confined by the findings of this Tribunal, namely that Dr Elmashy's remediation is not complete. Mr Morris submitted that the reflection and the trigger from that reflection leading to the slides are particularly pertinent to Dr Elmashy's possible remediation, which the Tribunal has found to be present but not substantially complete.

The Tribunal's Approach

17. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal exercising its own judgment by reference to the SG. It must consider the least restrictive sanction first and then, if necessary, consider the other sanctions. The Tribunal must consider its determination on impairment and take those matters into account during its deliberations on sanction.
18. The Tribunal recognised the purpose of a sanction is not to be punitive but to protect patients and the wider public interest, although it may have a punitive effect. If the Tribunal departs from the SG, it must give reasons for departing from the relevant part of the SG.
19. The Tribunal will apply the principle of proportionality, balancing the wider public interest with that of Dr Elmashy's. The Tribunal bore in mind the reputation of the profession as a whole was more important than the interests of an individual member.
20. The LQC endorsed the reference to the following cases by Mr Morris, which were accepted by Mr Hamlet, and reminded the Tribunal that it should take them into account with particular regard to the facts of this case and further a factor to be weighed in the balance was that Dr Elmashy is a competent doctor and there might be a public interest in not ending his career.
 - *Bawa-Garba v General Medical Council [2018] EWCA Civ 1879*
 - *Giele v General Medical Council (2006) EWHC Admin 2143*
21. During the in camera discussions the LQC referred the Tribunal to the following case:
 - *General Medical Council v Medical Practitioners Tribunal Service (Dr Mehta) (2018) CSIH 69* – the fact that a doctor has given presentations on the subject, which was

part of the Allegation, might have an impact on public confidence in the profession.

22. The Tribunal reconvened to invite submissions on this case as it might have relevance to its considerations in relation to Dr Elmashy. The LQC emphasised to the Tribunal that it must deal with this case on its own facts.

The Tribunal's Determination on Sanction

23. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Elmashy's interests with the public interest.

Aggravating and Mitigating Factors

24. The Tribunal has already set out its decision on the facts and impairment which it took into account during its deliberations on sanction. Before considering what action, if any, to take in respect of Dr Elmashy's registration, the Tribunal considered and balanced the aggravating and mitigating factors in this case.

Lack of insight

25. The Tribunal has already found that there is a lack of insight into his misconduct by Dr Elmashy. The only further evidence it has received is the email from Dr D but the Tribunal found that this did not alter its finding that Dr Elmashy lacked insight.
26. The Tribunal considered the following to be aggravating factors in this case:

Ms A

- Dr Elmashy had abused his professional position to sexually harass a much younger colleague. There was a power imbalance in that Dr Elmashy was not just a senior doctor but XXX. Ms A said in her evidence she was conscious of that dynamic. His actions were persistent and had only stopped when Ms A complained XXX;
- There had been a negative impact on Ms A as she felt uncomfortable working at the hospital;
- Dr Elmashy was not open and transparent with Dr C about the Allegation.

Patient B

- Dr Elmashy abused his professional position by pursuing a sexual and improper emotional relationship with a vulnerable patient. He had violated the trust of a doctor-patient relationship;
- His actions were grooming and predatory in the sense that Patient B was a vulnerable patient who had mental health issues and a history of sexual abuse and self-harm;
- His actions had the potential to undermine the care that she was receiving from other doctors particularly in the Mental Health Team;
- Dr Elmashy's conduct towards Patient B caused her actual harm as she was distressed, alarmed, scared and fearful of returning to NMG as his behaviour towards her breached boundaries;
- Patient B had contacted NAPAC who contacted the police, it was only after Police involvement that Dr Elmashy's pursuit of Patient B stopped;
- Dr Elmashy attempted to interfere with the police investigation by harassing Patient B and pressuring her to withdraw her complaint. The Tribunal took the view that Elmashy's messages to Patient B to withdraw her complaint appeared manipulative and at times, angry and intimidating;
- Dr Elmashy was not open and transparent with Dr C about the Allegation.

27. Having identified aggravating factors in this case, the Tribunal identified the mitigating factors in relation both Ms A and Patient B to be:

- Dr Elmashy is of previous good character, having no previous allegations made against him;
- Dr Elmashy has made attempts to remediate by attending a Professional Boundaries course in September 2022 and delivering training on professional boundaries to IMG's;
- No evidence of repetition since the incident;
- Dr Elmashy has made an indirect apology through his counsel to Patient B;
- The Tribunal also accepted that, in all other respects, Dr Elmashy was a good doctor. Testimonials, his latest appraisal and excellence reports show that he is clinically well regarded;
- There has been a lapse of time of over two years since the last incident.

28. The Tribunal considered the aggravating factors significantly outweighed the mitigating factors in this case but ensured that throughout its decision making that it not only applied appropriate weight to them but bore them in mind.

No action

29. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Elmashy's case, the Tribunal first considered whether to conclude the case by taking no action. It noted that taking no action may be appropriate where there are exceptional circumstances.
30. The Tribunal determined that there were no exceptional circumstances to justify taking no action in this case. The Tribunal determined that in view of the serious nature of Dr Elmashy's sexual misconduct and the findings made by the Tribunal at impairment stage, it would not be sufficient, proportionate or in the public interest to conclude the case by taking no action.

Conditions

31. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Elmashy's registration. The Tribunal has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.
32. The Tribunal noted that neither party submitted that an order of conditions was an appropriate sanction in this case. The Tribunal had regard to the various paragraphs of the SG which indicate the cases in which conditions might be appropriate. The Tribunal found that as the nature of Dr Elmashy's sexual misconduct was not specifically related to performance or health issues, conditions were not appropriate.
33. The Tribunal, in any event, found that imposing conditions on Dr Elmashy's registration would not be sufficient to mark the seriousness of his misconduct, or satisfy the demands of the overarching objective.

Suspension

34. The Tribunal then went on to consider whether imposing a period of suspension on Dr Elmashy's registration would be appropriate and proportionate. In doing so, the Tribunal had regard in particular to the following paragraphs of the SG, which indicates circumstances in which it may be appropriate to impose a sanction of suspension:

92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration

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

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

a A serious departure from Good medical practice, but where the misconduct is not so difficult to remediate that complete removal from the register is in the public interest. However, the departure is serious enough that a sanction lower than a suspension would not be sufficient to protect the public.

b ... d

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

f No evidence of repetition of similar behaviour since incident.

35. The Tribunal acknowledged that suspension has a deterrent effect and can be used as a signal to the doctor, the profession, and to the public about what is regarded as behaviour unbecoming a registered doctor. It determined Dr Elmashy's actions included serious breaches of GMP and sexually motivated behaviour and fell short of the standards of conduct reasonably expected of a doctor.
36. The Tribunal had previously concluded that in relation to Ms A that Dr Elmashy's sexual misconduct was at the lower end of seriousness. The reason for this is that it did not involve any kind of indecent assault. Nonetheless, it found that his actions towards Ms A were persistent and unwanted which were both sexually motivated and amounted to harassment. It recognised that there was an inherent power imbalance XXX. Dr Elmashy denied all of the paragraphs of the Allegation relating to Ms A and the Tribunal accepted that he was entitled to do this and did not hold this against him as his defence was that it did not happen.

37. The Tribunal took the view that Dr Elmashy had groomed Patient B, knowing she was a vulnerable patient with mental health issues, a history of sexual abuse and under the care of the Mental Health Team. It considered he had used his position as a doctor to exploit Patient B's vulnerability to reinforce the idea that sharing phone numbers or meeting up, outside the clinical environment, would be permitted. Despite her asking if this was appropriate. This was a serious abuse of the position of trust held by a doctor. The Tribunal also found that Dr Elmashy's actions were potentially harmful when he told her he was 'her doctor' after she was discharged from A&E and under the care of the Mental Health Team, when he was not necessarily a qualified doctor for her in all aspects of her health care. This could have potentially undermined the care that she was receiving from other doctors particularly in the Mental Health Team. Furthermore, Dr Elmashy had contended to the Tribunal that he was acting in a fatherly manner towards Patient B and not with sexual motivation. In any event, the Tribunal considered that it would be wholly inappropriate for a doctor to have a father/daughter relationship or any emotional relationship with a patient, vulnerable or otherwise.
38. The Tribunal further noted that the recipients of Dr Elmashy's sexually motivated behaviour were younger women with whom he had a marked age disparity. There were similarities in the way that he shared details of his personal life with them and used social media to pursue them, and when things didn't go his way was prepared to harass them. He was in a position of trust and seniority as Ms A's colleague/teacher and as Patient B's doctor. It regarded Dr Elmashy's sexually motivated misconduct to be an abuse of that trust and his behaviour towards both Ms A and Patient B to be predatory in the circumstances of this case.
39. The Tribunal was in no doubt that Dr Elmashy's misconduct was unacceptable for any medical practitioner. Sexual misconduct must always be treated seriously. The Tribunal considered that Dr Elmashy gave no thought to the feelings or dignity of Ms A and Patient B, his actions were a reckless disregard of, and a serious departure from the principles set out in GMP. It determined that Dr Elmashy put his own pursuit of a future sexual relationship with Patient B over her interests.
40. The Tribunal bore in mind its previous findings in relation to Dr Elmashy's remediation efforts in its impairment determination. It found that Dr Elmashy had made attempts at remediation by attending a professional boundaries course on 1 September 2022 and reflecting on it. He then delivered a training session to IMG's on professional boundaries. The Tribunal had considered the slides for the training to be just knowledge of what boundaries are and the slides were insufficient evidence of remediation. The Tribunal

was concerned that it had no evidence as to how he had applied this learning to his misconduct. He did not articulate to the Tribunal if he understood how serious his misconduct was (even relating to the paragraphs he admitted) or how he would remedy his behaviour in the future. The Tribunal acknowledged that through his counsel he had accepted that the facts found proved amounted to misconduct and his fitness of practise was impaired and that the Sanction under consideration would be Suspension or Erasure. Furthermore, Dr Elmashy had maintained the view that the problem is that doctors coming to practise in the UK were not made aware of the rules regarding professional boundaries as opposed to it being morally wrong to breach these and he was not morally culpable in that regard. The Tribunal had regard to paragraph 28 of the SG which states:

‘Many doctors joining the medical register have previously worked, lived or were educated overseas, where different professional standards and social, ethnic or cultural norms may apply. Doctors are expected to familiarise themselves with the standards and ethical guidance that apply to practising in the UK before taking up employment, although experience of working as a doctor in the UK plays a key role in their development.’

41. The Tribunal noted that at the time of his misconduct, Dr Elmashy had been practising at NMG in the A & E department since October 2019 and was not new to practise in the UK. The Tribunal was concerned that Dr Elmashy has an attitudinal problem in that his reflections are one dimensional as to how his misconduct has affected himself and not others and abdicating his own responsibility for his behaviours. Thus, the Tribunal found that Dr Elmashy has continued to demonstrate a lack of insight.
42. The Tribunal took into account that Dr Elmashy was of previous good character, and it had no evidence of previous adverse findings, nor evidence of repeated behaviour since the incidents with Ms A and Patient B. However, the Tribunal gave little weight to this as there were significant aggravating factors to negate the mitigating factors. It further noted that Dr Elmashy had started UK practice in October 2019 and by May 2022 there were allegations of inappropriate sexually motivated behaviour made against him by two separate younger women.
43. The Tribunal noted that paragraph 93 of the SG states that suspension may be appropriate where there may have been an acknowledgement of fault and where the Tribunal is satisfied that the behaviour or incident was unlikely to be repeated. The

Tribunal considered that Dr Elmashy had lacked insight by minimising his conduct for the reasons above. Therefore, it could not be satisfied that his sexually motivated behaviour was unlikely to be repeated.

44. The Tribunal also bore in mind the following paragraphs of the SG which relate to abuse of professional position, vulnerable patients, predatory behaviour.

142 Trust is the foundation of the doctor-patient partnership...

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

144 Personal relationships with former patients may also be inappropriate depending on:

- a the nature of the previous professional relationship*
- b the length of time since it ended*
- c the vulnerability of the patient*
- d whether the doctor is caring for other members of the family.*

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

- a presence of mental health issues*
- b ... d*
- e history of abuse or neglect.*

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

147 If a doctor has demonstrated predatory behaviour, motivated by a desire to establish a sexual or inappropriate emotional relationship with a patient, there is a significant risk to patient safety, and to public confidence and/or trust in doctors. More serious action is likely to be appropriate where there is evidence of (this list is not exhaustive):

a inappropriate use of social networking sites to approach a patient outside the doctor-patient relationship

b use of personal contact details from medical records to approach a patient outside their doctor-patient relationship

c visiting a patient's home without an appointment or valid medical reason

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

149 This encompasses a wide range of conduct from criminal convictions for sexual assault and sexual abuse of children (including child sex abuse materials) to sexual misconduct with patients, colleagues, patients' relatives or others.

150 Sexual misconduct seriously undermines public trust in the profession. The misconduct is particularly serious where there is an abuse of the special position of trust a doctor occupies, or where a doctor has been required to register as a sex offender. More serious action, such as erasure, is likely to be appropriate in such cases.

45. For the reasons previously set out in the determination, the Tribunal was satisfied that Dr Elmashy's conduct engaged each of the above paragraphs.
46. The Tribunal accepted that Dr Elmashy had trained IMG's on professional boundaries. However, the content of the training was generic and superficial, and he did not appear to be fully open about his own situation in that there was no content that referenced the specifics of the Allegation against him and his own learning from the ongoing GMC investigation into him. The Tribunal had particular regard to paragraph 7 of *Mehta* which states:

'The Tribunal noted that the respondent had, over a lengthy period of time since the incident, publicly involved himself in presentations and discussions which were specifically based upon his own inappropriate behaviour, and at least one of which was attended by more than 75 colleagues. He had held himself out as an example from which other doctors might learn.'

47. The Tribunal concluded that these were different circumstances than those of Dr Elmashy. Therefore, the Tribunal gave it limited weight and found that it did not impact on its findings in relation to his misconduct having undermined public confidence in the profession. The Tribunal took into account that doctors occupy a position of privilege

and trust. They are expected to act in a manner which maintains public confidence in them and in the medical profession and to uphold proper standards of conduct. It considered that Dr Elmashy has breached that trust.

48. The Tribunal took into account that doctors occupy a position of privilege and trust. They are expected to act in a manner which maintains public confidence in them and in the medical profession and to uphold proper standards of conduct. It considered that Dr Elmashy has breached that trust.
49. The Tribunal recognised that, having regard to the sexual misconduct, there were more serious sexual matters than were found proved in this case. However, the Tribunal found that because of the overall seriousness of all the findings against Dr Elmashy together with the absence of insight, or meaningful remediation and the risk of repeating the misconduct, it could not conclude that suspension was the appropriate sanction to reflect the gravity of Dr Elmashy's misconduct. A period of suspension, of any length, would not satisfy the wider public confidence in the profession and that an informed and reasonable member of the public would consider suspension would not be sufficient, despite Dr Elmashy being a competent doctor, nor would it meet the statutory overarching objective to protect the public.

Erasure

50. The Tribunal carefully considered the indicators of when a doctor's behaviour was likely to be fundamentally incompatible with continued registration as set out in paragraph 109 of the SG. The Tribunal considered paragraph 109(a), (b), (c), (d), (e), (i) and (j) of the SG were engaged in Dr Elmashy's case:

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

a A particularly serious departure from the principles set out in Good medical practice where the behaviour is difficult to remediate.

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

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

d Abuse of position/trust

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

f ... h

i Putting their own interests before those of their patients

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

51. The Tribunal was satisfied that the circumstances of Dr Elmashy's case were such that his misconduct is fundamentally incompatible with continued registration.
52. The Tribunal gave consideration as to whether it was in the public interest to erase Dr Elmashy from the medical register, as opposed to imposing a lengthy suspension which would afford him the opportunity to demonstrate insight and remediation. The Tribunal concluded, for all the reasons set out above, that erasure was the only sanction that would mark the seriousness of his misconduct. Erasure was required to send a message to the medical profession and to the public that this type of behaviour was unacceptable. Dr Elmashy's misconduct would significantly undermine public confidence in the profession and bring the profession into disrepute. There has been little in the way of any meaningful remorse or apology by Dr Elmashy. The totality of this case is very concerning and Dr Elmashy's misconduct has undermined the fundamental tenets of the practice of medicine.
53. The Tribunal acknowledged that erasure would mean the loss of a competent doctor to the public. However, it concluded that the need to uphold the overarching objective took precedence with regard to the facts of this case. It concluded that Dr Elmashy's interests are outweighed by the need to protect patients, to promote and maintain public confidence in the medical profession, and to uphold proper professional standards and conduct for members of the profession.
54. The Tribunal therefore determined to erase Dr Elmashy's name from the medical register.

Determination on Immediate Order - 19/07/2024

1. Having determined to erase Dr Elmashy's name from the medical register, 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

2. On behalf of the GMC, Mr Hamlet submitted that, given the aggravating features in this case, an immediate order of suspension should be imposed to prevent Dr Elmashy from practising until the erasure takes effect.
3. On behalf of Dr Elmashy, Mr Morris made no submissions.

The Tribunal's Determination

4. In its deliberations, the Tribunal had regard to the following paragraphs of the SG:

'172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor³⁹ include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.

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

5. The Tribunal bore in mind its finding that Dr Elmashy's misconduct was fundamentally incompatible with continued registration. Based on the concerns raised in this case, the Tribunal was satisfied that an immediate order was necessary to protect members of the public and that it would be in the public interest.
6. The Tribunal therefore determined to impose an immediate order of suspension.
7. This means that Dr Elmashy's registration will be suspended from today. The substantive direction, as already announced, will take effect 28 days from the date on which written notification of this decision is deemed to have been served, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the

appeal has concluded.

8. The interim order is hereby revoked.
9. That concludes the case.

Schedule 1:

Date	Time	Message
18 September 2021	21:45	'Yeah but will wait for [Ms A's ex-partner] to travel. We can work on our friendship till then' 'U asked for friends and I am in' 'Good night my friend. Let me see how a friend you will be'
20 September 2021	21:59	'Just try to find time to body me in the gym please' 'Ok?' 'As a friend as we agreed'

Schedule 2:

Date	Time	Message
8 May 2022		
	16:29	'Hope you have a good day and text me before you go home'
	22:48	'Wow. Long list and yet my name is not in the list 😊😊😊' said in response to Patient B responding to your question about what her plan was for the following day
	23:03	'We still on our day for the park walk right?'
	00:13	'Have you been in love before?'
	00:40	'Text me when you wake up Good night amazing human being'
9 May 2022		
	16:42	'Are we going for a walk tomorrow same time like now?' 'Will bring you something you will love'
	16:48	'Oh. But it is ok. Am flirty too even with friends. And you would see different Mashy tomorrow as well 😊😊😊😊'
	18:05	'Not scary difference. Don't worry. It is just not dr Mashy. It is Mashy the person outside the scrub' said in response to Patient B asking 'What's the difference in tomorrow's Mashy?'

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	18:12	'You free for a call?'
	18:15	'Will take you once for it' said in response to Patient B saying 'I've not been swimming in ages, I miss it a lot, do a lap for me'.
	19:14	'Promise if we had nice time tomorrow and you enjoy my company I will take you one day for swimming'
	19:15	'I know I will like you company. So it is you to see if you like mine. Then everything you dream to do we can do together'
	21:32	'Ok honey. Just take rest so you won't be exhausted tomorrow when I see you'
	21:33	'Text me when you wake up so we can arrange how we meet'
	21:37	'Not try to base our friendship on feeling 😊😊😊😊 but kinds missed talking to you face to face. Honestly'
	21:54	'Oh no. I just miss you' said in response to Patient B saying 'I hope you don't miss face to face talking because my text replies are slow'
	22:12	'Yes you have me' said in response to Patient B saying 'Well to be fair I am hella sick but I already have a doctor'
	22:15	'Anyways. I am still happy to know you and it was destiny that I met you and will see you tomorrow'
	22:17	'And fir me so far you are XXX years old lady not XXX. 😊😊'
	22:18	'Am talking to brain and mind of a very mature lady which was the reason I got attracted to you'
	23:49	'Ok babe red it is'
10 May 2022	00:06	'Comon babe' 'Just wana see you eat'
	00:41	'See you tomorrow 😊😊'
	09:12	'So what are you doing today then?' said in response to Patient B saying 'Well this is a first, work is canceled today for some reason'
	09:14	'Then?'

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		'So do you fancy meeting earlier then?' said in response to Patient B saying 'I think I just have a therapy session this morning'
	09:34	'So do you want to go together from somewhere?'
	14:36	'Good no worries we will cover each other 😊' said in response to Patient B saying 'I can't wear a can't when I'm walking, I'm already overheating'

Schedule 3:

Date	Time	Message
10 May 2022	18:12	'And by the way your bf will hate me more now becuz I started to like you more 😊'
	18:13	'Are you smiling now.? 😊😊😊😊'
	18:18	'How do you know I wanted to kiss you?'
	18:19	'Friends only it will be. Respect'
	23:31	'Your friend is here. Talk to me'
	23:34	'Sorry may be am asking too much. Am here if you need me my friend'
	23:55	'You made me worried for sometimes'
11 May 2022	16:00	'Oh I see. Thank you fir letting me know and putting me in that situation' said in response to Patient B informing you that she was talking about you to two friends and thinks one of them called the police
	16:01	'Could you clear my name please now I was acting like a friend. But I got so much trouble now'
	16:02	'Am sorry this has happened. But it put me in a big problem already in hospital and police. I was trying to support you in a friend way. You can keep the book'
	16:08	'As a friend and someone didnt harm you in anyway could you drop the accusations from the police please?'
	16:24	'Did you confirm the call to police?'
	16:25	'Becz police cannot take a move unless the person in the case agree ot confirm the situation'

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	16:28	'You should have told me [Patient B]' said in response to Patient B confirming that the police had called her
	16:31	'So obviously I can loose my job and my licence bec2 of that'
	16:32	'If you confirm the crim I will be in deep shit'
	16:33	'What did you tell them exactly?' 'What did they ask you and what was your answer'
	16:38	'But the problem has already happened and I hope they take your word clear'
	16:39	'So for both of us safety I have to leave and remove your number and you too please. I was trying to help you as a friend but it went so far on my shoulder'
	16:41	'We cannot [Patient B]. It qas taken in the very wrong turn adb hit me in a very bad way in my work and my life. For trying only to help a person' said in response to Patient B asking if you were never talking again
	16:42	'It was taken in the wrong turn and affected me in a bad way while I was only trying to be a friend'