

## PUBLIC RECORD

Dates: 24/06/2024 - 09/07/2024

Medical Practitioner's name: Dr Mohammad SOHAIL  
 GMC reference number: 5198513  
 Primary medical qualification: MB BS University of Punjab (Pakistan)

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

### Summary of outcome

Suspension, 10 months.  
 Review hearing directed  
 Immediate order imposed

### Tribunal:

Legally Qualified Chair	Ms Sharmistha Michaels
Lay Tribunal Member:	Mr Andrew Waite
Medical Tribunal Member:	Dr Keith Dunnett
Tribunal Clerk:	Mr Joel Taylor-Garratt Mx Nate Caruso-Kelly, 5 July only

### Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Thomas Buxton, Counsel, instructed by Stephensons
GMC Representative:	Ms Georgina Goring, 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 - 03/07/2024

### Background

1. Dr Sohail qualified in 1995 and, prior to the events which are the subject of this hearing, worked in various roles within Anaesthetics and Intensive Care. At the time of the events relating to Patient A, Dr Sohail was practising as a Consultant at Fairfield Hospital ('the Hospital') on the Intensive Care Unit ('ICU').
2. The allegations that have led to Dr Sohail's hearing can be summarised as, dishonesty in relation to conversations that Dr Sohail had with Ms B regarding the care of Patient A and dishonesty when completing and submitting a job application form ('the form') to West Middlesex Hospital, in which he did not disclose his regulatory history.
3. It is further alleged that Dr Sohail accepted a Police caution for sending malicious communications, which were of an offensive and racist nature. This did not occur in a professional setting and Dr Sohail admitted to his actions during his Police interview. Dr Sohail accepted a criminal caution and was required to attend a Victim Awareness Course.
4. The initial concerns regarding Patient A were raised with the GMC following a Trust investigation, which concluded in February 2020. The concerns regarding Dr Sohail's application form were raised on 5 March 2020 by Dr D, Clinical Director of Theatres, Anaesthesia and Intensive Care, West Middlesex Hospital. Dr Sohail self-referred regarding his caution on 1 September 2020.

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

5. 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'), that the

Allegation should be amended to alter the anonymisation of Patient A and Ms B. This was unopposed by the Defence and the Tribunal considered that it would make no material difference to the case, nor would it cause any injustice to either party.

### The Allegation and the Doctor's Response

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

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

1. On 30 August 2020 at Solihull Police Station you:
  - a. accepted a caution for sending malicious communications conveying indecent/threatening/offensive articles, in that you sent a series of 'WhatsApp' messages, as set out in Schedule 1, which were grossly offensive to the same individual on or around 6 May 2020; **Admitted and found proved**
  - b. agreed to comply with the condition to attend a victim awareness course by 30 November 2020. **Admitted and found proved**
2. In sending the 'WhatsApp' messages as referred to at paragraph 1a. you demonstrated hostility towards the recipient based on the recipient's membership or presumed membership of a racial group. **Admitted and found proved**

### Probity concerns 1

3. On or around 14 February 2020 you submitted an application to West Middlesex University Hospital for a locum position as a consultant in intensive care ('the application form') and you answered 'no' to the following questions: **Admitted and found proved**
  - a. 'Are you currently subject to a fitness to practise investigation and/or proceedings of any nature by a regulatory or licensing body which may have a bearing on your suitability for the position you are applying for?'; **Admitted and found proved**
  - b. 'Have you ever been removed from the register, or have conditions or sanctions been placed on your registration, or have you been issued with a

warning by a regulatory or licensing body in the UK or in any other country?’

**Admitted and found proved**

4. After answering the question referred to at paragraph 3a you failed to include any information beside the question ‘If you have answered YES above, please provide the reasons given for the investigation and (where applicable) the details of any warnings, conditions or sanctions (including limitations, suspension or any other restrictions) that apply to your professional registration and, the name and address of the regulatory or licensing body concerned’.

**Admitted and found proved**

5. After answering the question referred to at paragraph 3b you failed to include any information beside the question ‘If you have answered YES above, please provide details of any conditions or sanctions (including limitations, suspension or any other restrictions) that apply to your registration and/or any warnings issued, where relevant, and the name and address of the regulatory or licensing body concerned.’ **Admitted and found proved**

6. When you completed and submitted the application form referred to at paragraphs 3-5 you knew that:

a. you were subject to a GMC investigation of which you were notified on 20 November 2019; **Admitted and found proved**

b. you had been issued with a warning by the GMC on 20 January 2015; **Admitted and found proved**

c. an interim order of conditions on your GMC registration was put in place on 4 December 2019. **Admitted and found proved**

7. Your conduct as described at paragraph(s):

a. 3a was dishonest by reason of paragraph 6a; **To be determined**

b. 3b was dishonest by reason of paragraphs 6b and 6c; **To be determined**

c. 4 and 5 was dishonest by reason of paragraphs 6a,6b and 6c. **To be determined**

Probity concerns 2

8. Between 5 June 2019 and 22 June 2019, you were involved in the care and treatment of Patient A. **Admitted and found proved. Amended under Rule 17(6)**
9. On 6 June 2019 Patient A was transferred to Fairfield Hospital from North Manchester General Hospital ('NMGH'). **Admitted and found proved. Amended under Rule 17(6)**
10. You knew that Patient A's transfer as referred to at paragraph 9 was due to a shortage of hospital beds at NMGH. **Admitted and found proved. Amended under Rule 17(6)**
11. On 21 June 2019, at a meeting with Ms B following Patient A's death, you said to Ms B words to the effect that: **Amended under Rule 17(6)**
  - a. the transfer referred to at paragraph 9 was carried out to make Patient A more comfortable before he died; **To be determined. Amended under Rule 17(6)**
  - b. you had had a previous meeting with Ms B, before Patient A died, at which you had said to her that the transfer referred to at paragraph 9 was carried out to make Patient A more comfortable before he died. **To be determined. Amended under Rule 17(6)**
12. You knew that the statements you made at paragraph 11 were untrue. **To be determined**
13. On a date after 21 June 2019, at a meeting with Ms B, you said that you had had a previous meeting with her, before Patient A died, at which you said that the transfer referred to at paragraph 9 was carried out to make Patient A more comfortable before he died, or words to that effect. **To be determined. Amended under Rule 17(6)**
14. You knew that the statement you made at paragraph 13 was untrue. **To be determined**
15. Your actions at paragraphs 11 and 13 were dishonest by reason of paragraphs 12 and 14 respectively. **To be determined**

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

- a. caution in respect of paragraph 1; **To be determined**
- b. misconduct in respect of paragraphs 2-7; **To be determined**
- c. misconduct in respect of paragraphs 8-15. **To be determined**

### **The Admitted Facts**

7. At the outset of these proceedings, through his counsel, Mr Buxton, Dr Sohail made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d). In accordance with Rule 17(2)(e), the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

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

8. In light of Dr Sohail's response to the Allegation made against him, the Tribunal is required to determine whether Dr Sohail made the alleged statements regarding Patient A's care, and whether his actions in relation to the West Middlesex job application were dishonest.

### **Witness Evidence**

9. The Tribunal received evidence on behalf of the GMC from the following witnesses:
  - Ms B, Patient A's former partner, by video link;
  - Mr C, Ms B's husband, via video link;
  - Ms E, bereavement nurse at Fairfield Hospital;
  - Dr D, Clinical Director at West Middlesex Hospital;
  - Dr F, Medical Director at Rochdale Care Organisation.
10. Dr Sohail provided witness statements dated 28 November 2022 and 31 May 2024 and gave oral evidence at the hearing.

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

- Mr G, Head of Doctors at Coyle Personnel Limited.

### Documentary Evidence

12. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included, but was not limited to, Ms E's bereavement notes, Patient A's medical records, Police documentation including Dr Sohail's caution, various email correspondence, job application form for West Middlesex University Hospital, Dr Sohail's IOT determination and photos of Dr Sohail's WhatsApp messages.

### 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 Sohail 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.

14. It is not the case that the more serious the nature of allegation, the higher the standard of proof is required. The Tribunal should take into account the inherent probability or improbability of an event occurring, in the sense that a more inherently improbable event will require better evidence to persuade the Tribunal that it happened. It is not the case that the more serious the allegation, the more cogent the evidence needed to prove it.

15. The Tribunal was mindful that the matters in this case date back to June 2019, February 2020 and August 2020, and that this delay may mean there was a risk of prejudice to Dr Sohail. Witnesses cannot be expected to remember with crystal clarity events which occurred many years ago.

16. The starting point for the Tribunal should be the contemporaneous documents but these should be considered in the overall context of the case. It is of particular importance for the Tribunal to consider where the documentation is challenged by witness evidence.

17. The case of *Dutta, R (On the Application Of) v General Medical Council (GMC) [2020] EWHC 1974 (Admin) (22 July 2020)* set out that:

*‘The best approach from a judge is to base factual findings on inferences drawn from documentary evidence and known or probable facts. “This does not mean that oral testimony serves no useful purpose... But its value lies largely... in the opportunity which cross examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth”.*

18. The Tribunal the case of *Ivey v Genting Casinos (UK) Ltd (t/a Crockfords) [2017] UKSC 67 (25 October 2017)* which sets out the test for dishonesty:

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

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

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

#### Probity Concerns 1

20. The Tribunal noted that its task in relation to this aspect of the Allegation was to determine whether Dr Sohail had been dishonest when he completed the online application form for a job at West Middlesex Hospital. The Tribunal also noted the conditions imposed on Dr Sohail’s registration by an IOT in December 2019, which Dr Sohail was subject to at the material time, as well as his admissions. Dr Sohail’s admissions included that he was aware of the conditions, a previous warning imposed by



the GMC on his registration in January 2015, and the on-going GMC investigation at the time of completing the form.

21. The Tribunal noted that Dr Sohail had stated that he had not been dishonest and that he had made a mistake when completing and submitting the form. He stated he had been completing a large number of job applications at that time, both on the NHS Jobs website and through locum agencies.
22. The Tribunal bore in mind Dr Sohail's oral evidence that the application form contained within the bundle of documents provided, appeared different to the form that he had completed on the NHS Jobs website in February 2020. However, the Tribunal noted that Dr Sohail agreed that the content of the form was accurate and did not seek to claim that his 'mistake' was due to an issue with the form, nor did he deny that he should have answered YES to both questions.
23. Turning to the test in *Ivey*, the Tribunal accepted Dr Sohail's evidence, both oral and documentary, that he had made upwards of 50 applications during this period of time, both via the NHS Jobs website and through locum agencies. The Tribunal noted that it had not been provided with any of the other NHS Jobs website applications, and that no similar allegation of dishonesty had been made regarding any of these other applications.
24. The Tribunal found that, given Dr Sohail's admissions, he knew at the time of completing the form that he should disclose his conditions, previous warning and ongoing GMC investigation. Therefore, the question for the Tribunal is whether Dr Sohail had deliberately completed the form incorrectly, which would be dishonest, or whether it was a genuine mistake.
25. The Tribunal considered Ms Goring's submission, on behalf of the GMC, that Dr Sohail was financially motivated to complete the form dishonestly as he had been out of work for some months by this time. She said that Dr Sohail had given evidence that he had received feedback saying that he had been unsuccessful in his applications because of his GMC conditions. She submitted that this was why he did not declare them on his application to West Middlesex Hospital.
26. The Tribunal considered this submission as a possible explanation of Dr Sohail's actions. However, the Tribunal reminded itself of Dr Sohail's evidence where he stated that he had not been in any financial difficulties at that time, as he had access to savings. Additionally, the Tribunal questioned the likelihood of Ms Goring's submission in the

context of the many other, properly completed, applications, as well as Dr Sohail's inclusion on the form of details of referees and employers who were aware of his conditions, including Dr H and 'Total Assist', a locum agency. Additionally, in his evidence, Dr Sohail suggested that it would be pointless to conceal his regulatory history on the form as it would be revealed at a later stage in the application process anyway.

27. The Tribunal considered the evidence that Dr D's phone call to Dr Sohail on 4 March 2020 was the first time that the issue of non-declaration had been raised to Dr Sohail and that this call was very brief. The Tribunal noted that, in his witness statement, Dr D had stated '*Dr Sohail, when challenged, simply said "I forgot" and tried to make light of the situation*'. However, in his oral evidence, Dr D agreed that Dr Sohail did say something close to '*Sorry, I missed it, I was making a lot of applications*' but maintained that Dr Sohail used the word '*forgot*'. The Tribunal considered that this supported Dr Sohail's explanation, from the outset, that he had made a mistake when completing and submitting the form.
28. The Tribunal considered Ms Goring's submissions that Dr Sohail's evidence had been unclear as to how the form was actually completed – whether it was a tick box, a drop-down menu, free text, prepopulated or a combination of these. The Tribunal noted that it had not been provided with direct evidence by the GMC of how the form appeared on the NHS Job site, or how these questions were to be completed. Rather, it had been invited to speculate on how the forms were completed and submitted. In light of this, the Tribunal took the view that it was unsurprising that, in his oral evidence, Dr Sohail was unclear on how he had completed the form over four years previously, in the midst of the multiple applications he was making at that time.
29. The Tribunal referred to the email correspondence between Dr Sohail and the GMC, which Ms Goring had submitted showed Dr Sohail was dishonest by claiming that he was not aware of the issue of having completed the form incorrectly. The Tribunal considered that these emails were consistent with Dr Sohail's claim that he made a mistake.
30. The Tribunal noted Ms Goring's submission that Dr Sohail was dishonest when he denied knowledge of having applied to West Middlesex Hospital. It considered the application form in the documents and noted that this was headed '*Chelsea and Westminster Hospital NHS Foundation Trust*.' The Tribunal noted the evidence of Dr D that West Middlesex Hospital was part of the Chelsea and Westminster Trust.
31. The Tribunal considered Dr Sohail's email of 23 April to the GMC where he stated:

*'I have again gone through my NHS application. And I realised I did apply a to Chelsea and Westminster trust and West Middlesex is part of this trust. As job application has expired therefore I can not go into my application form. I am not sure whether I ticked the wrong answer. As I said in my earlier email I always declared my GMC conditions.'*

32. The Tribunal considered it plausible that Dr Sohail had not known or did not recall that he had applied to West Middlesex Hospital, given that the application form was headed '*Chelsea and Westminster Hospital*'. The Tribunal considered that this was supported by the email above where Dr Sohail admitted his mistake having made further enquiries.
33. In all the circumstances of the case, the Tribunal considered that Dr Sohail had been consistent in his explanation, from the outset, that he had made an honest mistake. The Tribunal, having had sight of Dr Sohail's conditions, considered that he had a duty to disclose his regulatory history to prospective employers. However, the Tribunal considered that there was evidence that Dr Sohail had previously been diligent and made this disclosure to referees and employers, and there was no indication of any other failure to disclose in his many other applications around the same time.
34. In all the circumstances of this case, the Tribunal considered that the evidence produced was not sufficient to prove that this instance of non-disclosure was dishonest and not merely an isolated, albeit serious, mistake. The Tribunal considered that an ordinary, decent member of the public, who was aware of the full circumstances of this case, would reach the same conclusion.
35. Therefore, the Tribunal determined that paragraphs 7(a) and 7(b) of the Allegation were found not proved.
36. Turning to paragraph 7(c) of the Allegation, the Tribunal considered that it had seen no evidence of whether a free text box would have appeared on the form or if it was even visible when the previous question had been answered NO. In light of this lack of evidence and its determination that Dr Sohail had not been dishonest when he answered NO, the Tribunal determined that Dr Sohail was not dishonest in not filling in these sections of the form.
37. Therefore, the Tribunal determined that paragraph 7(c) of the Allegation was found not proved.

Probity Concerns 2

38. The Tribunal then turned to consider the concerns relating to Patient A and Ms B, beginning with paragraph 11 of the Allegation.

**Paragraph 11**

39. The Tribunal reminded itself that this paragraph relates to the meeting on 21 June 2019 between Ms B and Dr Sohail on the evening of Patient A's death. The Tribunal heard evidence from Dr Sohail, Ms B and Mr C. However, it noted that Mr C's evidence on this topic was second hand, in that it was only what he had been told by Ms B. The Tribunal noted that there were other members of staff present at this meeting but that no evidence or statements from them had been provided.
40. Ms B's claim is that Dr Sohail told her at this meeting that Patient A had been moved from NMGH to Fairfield to be made 'more comfortable before he died' or words to that effect. The Tribunal considered the medical note on 6 June 2019, made by Dr Sohail, which states '*transferred from North Manchester due to shortage of beds.*' The Tribunal also considered Dr Sohail's clinical note on 21 June 2019 at 19:00 and note of the family discussion at 19:20. These notes state that '*His prognosis became very poor. I decided to keep him comfortable*' and '*[Patient A] had suffered enough, his prognosis looked very poor so I decided to keep him comfortable. He passed away without pain and looked comfortable.*'
41. The Tribunal considered Ms B's evidence to be clear and cogent but, at times, differed from what was written in her witness statement and her email to the GMC dated 26 May 2020. When questioned, Ms B tried to assist the Tribunal by clarifying what she meant within the written statement and did not attempt to exaggerate what she said took place in June 2019. However, the Tribunal was concerned that much of what Ms B said in oral evidence did not match the seriousness of the assertions that she made against Dr Sohail within her witness statement and her email to the GMC.
42. The Tribunal recalled Dr Sohail's evidence that it would be very unusual that a patient would be moved between the ICUs of two hospitals to be made comfortable. He said that Patient A had been assessed at NMGH and was selected for transfer because he was stable and was being moved to receive further ICU treatment with a view to continuing his recovery, which was expected to take a considerable length of time. The Tribunal considered that this was corroborated by the evidence of Dr F. Ms B also gave evidence that she was aware of the length of time that Patient A's recovery was likely to take.

43. The Tribunal reviewed the medical records of Patient A, which set out that he was relatively stable during his time at Fairfield, although he remained on the intensive care ward the whole time and was very poorly. The Tribunal noted that the records painted a picture of a patient who remained sick but was recovering and he continued to receive supportive treatment. However, his condition deteriorated very quickly on the evening of 21 June 2019.
44. The Tribunal recalled Ms B's evidence that she had been told that Patient A was doing fine and that she did not realise how ill he was. The Tribunal considered that, if Ms B had been told that Patient A was doing well, there was no evidence or suggestion that she was told this by Dr Sohail. The Tribunal also considered that Patient A may indeed have appeared fine before crashing rapidly, as documented in the clinical notes.
45. The Tribunal noted that three conflicting reasons for Patient A's transfer had been suggested from different sources. Ms B claims she was told by Dr Sohail that Patient A was moved to be made comfortable, Dr F stated that Ms B *'thought [Patient A] was moved due to the deterioration in his health as that was what Dr Sohail explained to her.'* The medical notes, as set out above, noted that Patient A was moved due to lack of beds. The Tribunal considered that the contemporaneous notes were the best evidence of why Patient A was moved, namely for lack of beds. The Tribunal also considered that there was no evidence to corroborate Ms B's claim.
46. The Tribunal considered that the documentation showed Dr Sohail was aware Patient A was moved because of lack of beds and considered it unlikely that he would have given Ms B any other explanation. The Tribunal also took the view that the only references in the notes to keeping Patient A *'comfortable'* appear in relation to his sudden deterioration and the subsequent withdrawal of treatment.
47. Therefore, the Tribunal determined that paragraph 11 of the Allegation was found not proved.
48. In light of this, the Tribunal also found paragraph 12 of the Allegation not proved.

### Paragraph 13

49. The Tribunal noted that the evidence suggested that the meeting in question between Dr Sohail, Ms B and Ms E took place on 17 July 2019.

50. The evidence that relates to this meeting comes from Ms B, Mr C, Dr Sohail, Ms E and Ms E's notes of the meeting.
51. The Tribunal determined that its considerations regarding paragraph 11 of the Allegation were also relevant to paragraph 13, as it related to the same claim by Ms B that Dr Sohail had told her, untruthfully, that Patient A had been transferred to be made comfortable.
52. The Tribunal noted that, in their witness statements, Ms B and Mr C had described Dr Sohail as *'intimidating'* during the meeting on 17 July 2019. However, in her oral evidence, Ms B said that Dr Sohail had not been intimidating, but recalled others that were present at the meeting had suggested to her that he had been. The Tribunal also recalled Mr C's oral evidence that Dr Sohail had continued to try *'browbeating'* Ms B into conceding that he had spoken to her before. However, Mr C also said that the meeting was not *'angry'*, but that Ms B had left the meeting feeling frustrated. The Tribunal considered that this description of Dr Sohail's behaviour at the meeting was not corroborated by Ms E's evidence, including her contemporaneous notes, which state that Ms B *'feels better for having conversation with Dr Sohail.'* Ms E gave evidence that Dr Sohail had been very pleasant with the family, but that there had been a conflicting recollection of events regarding having met before. The Tribunal considered that, if Dr Sohail had acted in an intimidating manner, Ms E would have made note of this.
53. The Tribunal noted Ms E's evidence that Dr Sohail did refer to a previous meeting with Ms B but was not aware to which meeting this referred. It also noted that Ms E's evidence was that she had not been aware of any previous meeting between Dr Sohail and Ms B taking place on the 21 June 2019.
54. For the reasons set out previously the Tribunal considered it unlikely that Dr Sohail would claim Patient A was transferred to be made comfortable. In light of this and the fact that there had been a previous meeting on 21 June 2019, which Ms E had not been aware of, the Tribunal considered that it was more likely than not that, if reference had been made to a previous meeting, it was likely to be referring to the day of Patient A's death and that there had been some confusion about this at the meeting on 17 July 2019. The Tribunal considered that the GMC had not proved that Dr Sohail acted in the way alleged at the meeting on 17 July 2019.
55. Therefore, the Tribunal determined that paragraph 13 of the Allegation was found not proved.

56. Due to this finding, the Tribunal also found paragraphs 14 and 15 of the Allegation not proved.

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

57. The Tribunal has determined the facts as follows:

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

1. On 30 August 2020 at Solihull Police Station you:
  - a. accepted a caution for sending malicious communications conveying indecent/threatening/offensive articles, in that you sent a series of 'WhatsApp' messages, as set out in Schedule 1, which were grossly offensive to the same individual on or around 6 May 2020; **Admitted and found proved**
  - b. agreed to comply with the condition to attend a victim awareness course by 30 November 2020. **Admitted and found proved**
2. In sending the 'WhatsApp' messages as referred to at paragraph 1a. you demonstrated hostility towards the recipient based on the recipient's membership or presumed membership of a racial group. **Admitted and found proved**

### Probity concerns 1

3. On or around 14 February 2020 you submitted an application to West Middlesex University Hospital for a locum position as a consultant in intensive care ('the application form') and you answered 'no' to the following questions: **Admitted and found proved**
  - a. 'Are you currently subject to a fitness to practise investigation and/or proceedings of any nature by a regulatory or licensing body which may have a bearing on your suitability for the position you are applying for?'; **Admitted and found proved**
  - b. 'Have you ever been removed from the register, or have conditions or sanctions been placed on your registration, or have you been issued with a warning by a regulatory or licensing body in the UK or in any other country?' **Admitted and found proved**

4. After answering the question referred to at paragraph 3a you failed to include any information beside the question 'If you have answered YES above, please provide the reasons given for the investigation and (where applicable) the details of any warnings, conditions or sanctions (including limitations, suspension or any other restrictions) that apply to your professional registration and, the name and address of the regulatory or licensing body concerned'.

**Admitted and found proved**

5. After answering the question referred to at paragraph 3b you failed to include any information beside the question 'If you have answered YES above, please provide details of any conditions or sanctions (including limitations, suspension or any other restrictions) that apply to your registration and/or any warnings issued, where relevant, and the name and address of the regulatory or licensing body concerned.' **Admitted and found proved**

6. When you completed and submitted the application form referred to at paragraphs 3-5 you knew that:

a. you were subject to a GMC investigation of which you were notified on 20 November 2019; **Admitted and found proved**

b. you had been issued with a warning by the GMC on 20 January 2015; **Admitted and found proved**

c. an interim order of conditions on your GMC registration was put in place on 4 December 2019. **Admitted and found proved**

7. Your conduct as described at paragraph(s):

a. 3a was dishonest by reason of paragraph 6a; **Determined and found not proved**

b. 3b was dishonest by reason of paragraphs 6b and 6c; **Determined and found not proved**

c. 4 and 5 was dishonest by reason of paragraphs 6a,6b and 6c. **Determined and found not proved**

## Probity concerns 2

8. Between 5 June 2019 and 22 June 2019, you were involved in the care and treatment of Patient A. **Admitted and found proved. Amended under Rule 17(6)**



9. On 6 June 2019 Patient A was transferred to Fairfield Hospital from North Manchester General Hospital ('NMGH'). **Admitted and found proved. Amended under Rule 17(6)**
10. You knew that Patient A's transfer as referred to at paragraph 9 was due to a shortage of hospital beds at NMGH. **Admitted and found proved. Amended under Rule 17(6)**
11. On 21 June 2019, at a meeting with Ms B following Patient A's death, you said to Ms B words to the effect that: **Amended under Rule 17(6)**
  - a. the transfer referred to at paragraph 9 was carried out to make Patient A more comfortable before he died; **Determined and found not proved. Amended under Rule 17(6)**
  - b. you had had a previous meeting with Ms B, before Patient A died, at which you had said to her that the transfer referred to at paragraph 9 was carried out to make Patient A more comfortable before he died. **Determined and found not proved. Amended under Rule 17(6)**
12. You knew that the statements you made at paragraph 11 were untrue. **Determined and found not proved**
13. On a date after 21 June 2019, at a meeting with Ms B, you said that you had had a previous meeting with her, before Patient A died, at which you said that the transfer referred to at paragraph 9 was carried out to make Patient A more comfortable before he died, or words to that effect. **Determined and found not proved. Amended under Rule 17(6)**
14. You knew that the statement you made at paragraph 13 was untrue. **Determined and found not proved**
15. Your actions at paragraphs 11 and 13 were dishonest by reason of paragraphs 12 and 14 respectively. **Determined and found not proved**

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

- a. caution in respect of paragraph 1; **To be determined**
- b. misconduct in respect of paragraphs 2-7; **To be determined**
- c. misconduct in respect of paragraphs 8-15. **To be determined**

#### Determination on Impairment - 05/07/2024

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 Sohail's fitness to practise is currently impaired by reason of misconduct or a caution for a criminal offence.

#### 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 received further evidence as set out below.
3. Dr Sohail provided his own witness statements and also gave oral evidence at the hearing. In his evidence, he reiterated his apology to the victim of his messaging. He told the Tribunal that he was ashamed and saddened by his actions, which had resulted in harm to his integrity, the reputation of the profession and distress to the victim. Dr Sohail told the Tribunal that he had not acted in the same manner before or since this incident and detailed two examples of how he had learned to disengage from confrontational situations without reacting with anger.
4. Dr Sohail insisted that he did not seek to blame the victim of his messaging, nor was there any justification for his conduct, but stated that his actions were a reaction to abuse that he had received from her on a phone call.
5. When questioned about specific, seemingly racist messages, Dr Sohail was unable to explain what he had meant by terms such as '*Why black people so dodgy*', '*U black pussy*', '*Piss on you*', '*U barking*' or '*U growing through evolution.*' Instead, he reiterated that his actions were just a reaction, of which he was deeply ashamed and could not account for. Dr Sohail told the Tribunal he was not trying to degrade the victim and that

he holds no hostility towards black people or any other race. He said that he did not discriminate and treated all people fairly.

6. The Tribunal also received in support of Dr Sohail a bundle of testimonials, which included professional references, colleague and patient feedback and testimonials from employers, all of which it has read.
7. The Tribunal also received evidence of Dr Sohail's training record.

### Submissions

8. On behalf of the GMC, Ms Goring, Counsel, indicated that she made no submission of misconduct regarding paragraphs 3 – 15 of the Allegation. However, she did submit that Dr Sohail's fitness to practise was impaired by reason of misconduct in relation to paragraph 2 of the Allegation as well as by reason of his caution.
9. Ms Goring reminded the Tribunal of the two-stage process it should follow at this stage in proceedings and then referred it to paragraph 65 of Good Medical Practice (2013) ('GMP'), which was the version in place at the time of events:

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

10. Ms Goring reminded the Tribunal that Dr Sohail had admitted to sending harassing messages that were racially aggravated. She submitted that this breached the above paragraph of GMP and was clearly misconduct. Ms Goring submitted that the racist nature of Dr Sohail's messages were in direct contravention of GMP and the GMC's social media guidance. She said that this conduct fell far short of the standards to be expected of a doctor as, indeed, any racially aggravated behaviour would be.
11. Ms Goring submitted that this was a serious departure from what is expected of doctors and so should be found to be misconduct.
12. Ms Goring then turned to the topic of impairment, referring the Tribunal to the case of *CHRE v NMC and P Grant [2011] EWHC 927 (Admin)*. She accepted that there were no patient safety or dishonesty concerns in this case, but submitted that Dr Sohail's actions, and associated caution, brought the profession into disrepute and breached a fundamental tenet of the profession to act with integrity.

13. Ms Goring submitted that Dr Sohail had not demonstrated that he had insight into his actions. She said that Dr Sohail had sought to minimise his actions by describing them as a reaction, which demonstrated his lack of accountability. Ms Goring submitted that Dr Sohail had not reflected upon the racial aspects of the messages and had offered no understanding of whether these were beliefs that he held or if he had done anything to change those beliefs. Ms Goring drew particular attention to Dr Sohail's responses regarding the message '*U growing through evolution.*' She said that there were serious connotations for the meaning of this message and that no explanation had been offered.
14. Ms Goring submitted that Dr Sohail's lack of explanations about his racist language meant that the Tribunal could not be satisfied he had full insight. She said that this lack of insight meant that the Tribunal could not rely upon Dr Sohail's efforts at remediation. Ms Goring submitted that, in any event, Dr Sohail's efforts at remediation were limited and of limited relevance. She submitted that the most relevant course was the Victim Awareness course, which had been a compulsory part of his caution. Ms Goring questioned what independent steps Dr Sohail had taken to remediate and submitted that the Tribunal could not be confident he would not repeat his misconduct in the future.
15. On behalf of Dr Sohail, Mr Buxton, Counsel, submitted he did not contest that Dr Sohail's actions in paragraph 2 of the Allegation constituted misconduct. He said it was unarguable that this conduct fell seriously below the standards expected of a doctor.
16. Mr Buxton submitted that this was a one-off event and was clearly remediable. He reminded the Tribunal of Dr Sohail's early admissions and repeated apologies and expressions of remorse. He submitted that the testimonial evidence demonstrated Dr Sohail's insight and remediation and that he posed no future risk of repetition. He also submitted that Dr Sohail had shown his insight by demonstrating that he has been able to step back from events and understand what happened, what went wrong, what he could have done differently and accepted responsibility.
17. Mr Buxton reminded the Tribunal that Dr Sohail's reflections demonstrated he understood the impact of his actions on the victim as well as the profession and that his remorse was genuine.

18. Mr Buxton rejected the submission of Ms Goring that Dr Sohail had sought to minimise his actions. He submitted that Dr Sohail had given evidence that he did not seek to blame anyone and accepted full responsibility for his actions.
19. Mr Buxton submitted that Dr Sohail had learned from his mistakes and said that the mandatory nature of the Victim Awareness course did not diminish the effects of its lessons, nor its potential to change someone's way of thinking.
20. Mr Buxton submitted that, in all the circumstances, the Tribunal could be satisfied that Dr Sohail had fully accepted how far short of acceptable standards his behaviour had fallen. He submitted that Dr Sohail had learned his lesson and a reasonable and fully informed member of the public would not consider his fitness to practise to be impaired.

### The Relevant Legal Principles

21. 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.
22. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted: first whether the facts as found proved amounted to misconduct, and that the misconduct was serious, and then whether the finding of that misconduct, as well as Dr Sohail's criminal caution could lead to a finding of impairment.
23. The Tribunal must determine whether Dr Sohail's fitness to practise is impaired today, taking into account Dr Sohail's conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.
24. The Tribunal was mindful of the test for impairment, which was set out by Dame Janet Smith in The Fifth Shipman Report, cited and approved in the case of *Grant*:
  - a) *Whether the registrant 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;*
  - b) *Whether the registrant has in the past brought and/or is liable in the future to bring the profession into disrepute;*

- c) *Whether the registrant has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession.*
- d) *Whether the registrant has in the past acted dishonestly and/or is liable to act dishonestly in the future.*

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74 *In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

25. The Tribunal had regard to the case of *Bevan v GMC [2005] EWHC 174 (Admin)*:

'39 *...insight is most material to ensure that the doctor has realised that he has indeed gone wrong and therefore will not do anything similar in the future. That is the purpose behind a need to recognise insight. Insight does not seem to me to be really an appropriate way of looking at a situation where there is no danger of any recurrence but there is a concern that there has not been necessarily a full acceptance of the facts which have been alleged against the doctor.'*

26. The Tribunal also had regard to the case of *PSA v HCPC and Roberts 2020 EWHC 1906 (Admin)*, which reiterated that the issue of impairment was whether the doctor was impaired as of now, that an isolated incidents could show a momentary lapse and that a finding of misconduct does not necessarily mean that fitness to practise is impaired. However, the case also sets out that it will be a rare case that racially aggravated misconduct does not result in a finding of impairment.

## The Tribunal's Determination on Impairment

### Caution

27. The Tribunal considered whether the nature of the caution was so serious in Dr Sohail's case as to lead to impairment.

28. The Tribunal concluded that Dr Sohail has accepted a caution for a criminal offence. The offence involved Dr Sohail sending a series of messages to a woman whom he had met online which were grossly offensive. The Tribunal found that Dr Sohail's caution involved an offence which had the potential to seriously undermine public confidence in the profession.

### Misconduct

#### *Paragraph 2*

29. The Tribunal considered whether Dr Sohail's actions at paragraph 2 of the Allegation constituted serious misconduct. The Tribunal bore in mind that any hostility towards a racial group is a serious matter, however it found that Dr Sohail's language was particularly shocking. The Tribunal noted in particular the phrases, '*U black people all dodgy*', '*U growing through evolution*' and '*Piss on you*'. The Tribunal considered Dr Sohail's response in oral evidence and found that he was unable to give an explanation as to what he meant by these phrases. The Tribunal therefore took the view that the language was used to imply that black people are inferior and inherently untrustworthy.
30. The Tribunal found that these comments were a departure from paragraph 65 of GMP. The Tribunal found that Dr Sohail had acted in a racially aggravated manner in which he intended to hurt or offend another person due to a personal dispute, and he had therefore shown a lack of respect for the recipient of the messages and failed to uphold her dignity. The Tribunal further noted that the comments are degrading to black people in general. Furthermore, these messages were typed, persistent and escalated as they went on, and therefore in the Tribunal's view could not be considered a mere 'slip of the tongue'.
31. The Tribunal considered Dr Sohail's evidence that he had been racially abused by the recipient of the messages in a voice call shortly before he sent these messages, however it had no evidence of the phone call or the contents of what had been said. There is within the bundle evidence that the victim did make some statements in response to Dr Sohail's tirade, including in reply to him saying black people are dodgy, she stated '*by the way talking about dodgy anyone can dodgy. Theirs lost of Asian who are dodgy even doctors [sic]*', and later '*U pak*'. The Tribunal found that, even if Dr Sohail had been verbally or otherwise abused by the recipient, it was no excuse for the extremely offensive language he used towards her. The Tribunal further found that this explanation

from Dr Sohail was an attempt to minimise his behaviour as a ‘response’ to the recipient and showed a deflection of blame from himself onto others.

32. The Tribunal therefore found that the facts found proved at paragraph 2 amounted to serious misconduct.

*Paragraphs 3, 4, 5 and 6*

33. The Tribunal considered whether Dr Sohail’s admitted actions in relation to Patient A and the completion of the form constituted misconduct. The Tribunal bore in mind its previous findings that Dr Sohail had not been dishonest in either of these cases as well as the fact that Ms Goring had made no submission regarding these aspects of the case.
34. The Tribunal concluded that Dr Sohail’s conduct in relation to Patient A and completing the form did not fall so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.

*Paragraphs 8, 9 and 10*

35. The Tribunal found that these paragraphs referred to factual matters which established the background to later allegations. The Tribunal therefore found no misconduct in relation to these paragraphs.
36. The Tribunal, having found that the facts found proved at paragraph 1 amounted to caution and paragraph 2 amounted to misconduct, went on to consider whether Dr Sohail’s fitness to practise is currently impaired by reason of misconduct and caution.

Impairment

37. In determining whether a finding of current impairment of fitness to practise is necessary, the Tribunal looked for evidence of insight and remediation, and the likelihood of repetition, balanced against the three elements of the overarching statutory objective. The Tribunal considered whether Dr Sohail’s fitness to practice is impaired by reason of misconduct and caution together, as they relate to the same course of action.
38. The Tribunal first considered Dr Sohail’s insight into his actions. The Tribunal noted that Dr Sohail admitted to sending the messages in his police interview, acknowledged that they were offensive, and had offered to apologise to the victim. However, the Tribunal



was concerned that Dr Sohail also stated that his actions were ‘*revenge*’ on the recipient and showed some self-pity at the situation he found himself in.

39. The Tribunal then considered Dr Sohail’s reflective piece prepared for this hearing. The Tribunal accepted that Dr Sohail has shown some insight into the impact of his actions on the profession and has shown remorse and regret and shame, however it found that Dr Sohail’s reflections on these matters were incomplete and did not adequately address the impact on his victim or the root cause of his actions.
40. The Tribunal then considered Dr Sohail’s oral evidence. In oral evidence, Dr Sohail suggested that his actions were not entirely his fault because he was ‘*responding*’ to offensive comments made by the recipient in an earlier phone call. He further refused to address what he meant by the most offensive and degrading comments, despite having several opportunities to do so. The Tribunal found that if Dr Sohail was unwilling to address why he made the comments and what he meant by them, he cannot have developed full insight into his actions.
41. The Tribunal further considered that Dr Sohail has failed to reflect adequately on the impact of his behaviour on the victim. The Tribunal noted that while Dr Sohail did mention the victim in his reflective piece, there was no explanation of any understanding of the impact of racial abuse on her or black people in general. The Tribunal therefore found that there was little evidence that Dr Sohail understood the impact of his actions on those involved, nor did he understand that his actions were grossly offensive.
42. Finally, the Tribunal noted that Dr Sohail has previously received a caution for common assault and a subsequent warning from the GMC in relation to an altercation with a female friend in 2014. The Tribunal was mindful that the circumstances are not dissimilar from those in this case, and it was concerned that Dr Sohail has not learned from this experience and reflected on how to manage his anger in interpersonal conflicts. The Tribunal noted that Dr Sohail gave some examples of dealing with anger and has attended a Conflict Resolution course, however these were specifically in relation to his actions at work and a member of the public. The Tribunal therefore found that Dr Sohail has limited insight into why he reacted in such an aggressive manner when faced with difficulties in a personal relationship, despite having previously received a warning following a police caution for common assault XXX.

43. The Tribunal noted that in his oral evidence on the allegations relating to Patient A and Ms B, Dr Sohail was able to give detailed evidence, however when discussing the caution and racially aggravated comments, he was not able to clearly articulate what had happened and why he had acted in the manner he did. The Tribunal was concerned that Dr Sohail was unwilling to speak openly about these allegations and took the view that he did not appear to understand that the way he behaves in his private life impacts on his professional life and should be taken equally seriously.
44. The Tribunal therefore determined that Dr Sohail has shown incomplete insight into his actions. It found that Dr Sohail has failed to address the reasons he acted in the manner that he did, nor has he shown an understanding of the impact of his actions on the recipient or other black people who may hear these comments. The Tribunal found that Dr Sohail has shown insufficient evidence that he fully understands his comments were grossly offensive.
45. The Tribunal then considered whether Dr Sohail has remediated the misconduct. The Tribunal was mindful that such offensive and racially motivated language is hard to remediate, but not impossible.
46. The Tribunal first considered the testimonials provided by Dr Sohail. The Tribunal noted that they all spoke highly of Dr Sohail's clinical abilities and that some specifically addressed their lack of concern about Dr Sohail's behaviour or approach to equality and diversity in the workplace. The Tribunal was mindful however that both in these proceedings and his previous warning in 2014 the issues occurred in private relationship settings and therefore the testimonials were given less weight.
47. The Tribunal then considered the evidence of courses and CPD which Dr Sohail provided. The Tribunal noted that some modules may be relevant to the issues in this case, for example, Equality Diversity and Inclusion and Conflict Resolution. However, it found that these courses appeared to have been undertaken as part of Dr Sohail's employment and were not targeted at the concerns raised in this case. The Tribunal was mindful that the Allegation relates to issues in Dr Sohail's private life, and he stated in his oral evidence that these courses related to the workplace primarily.
48. The Tribunal was concerned that Dr Sohail has not undertaken courses or training which indicate sufficient and targeted remediation has taken place, for example, how to resolve

interpersonal conflicts, anger management or any specific work around racism or cultural awareness.

49. The Tribunal bore in mind the Victim Awareness course which Dr Sohail attended because of his caution; however, it has not been provided with any reflection on the learning he has undertaken, nor did his reflective statement show full understanding of the impact of his actions on the victim.
50. The Tribunal therefore found that Dr Sohail's remediation is inadequate and incomplete.
51. The Tribunal then considered whether there remains a risk of repetition. The Tribunal noted that while there were no clinical concerns relating to Dr Sohail, it found, for all the reasons given above, that Dr Sohail has failed to address the root cause of his actions and has not set out a strategy to prevent himself from behaving in this way in the future. The Tribunal therefore found that there remains a risk of repetition and a finding of impaired fitness to practise is necessary to protect the public.
52. The Tribunal determined that a member of the public, fully informed of the facts of the case, would be shocked and horrified by Dr Sohail's behaviour. The Tribunal found that Dr Sohail has, in the past, and is liable to in the future, bring the profession into disrepute. Finally, the Tribunal found that Dr Sohail has, in the past, and is liable in the future, to breach a fundamental tenet of the profession, namely acting with integrity and treating people with respect and dignity.
53. The Tribunal determined that a finding of impaired fitness to practise is necessary to protect, promote and maintain the health, safety and well-being of the public, and to promote and maintain public confidence in the medical profession.
54. The Tribunal has therefore determined that Dr Sohail's fitness to practise is impaired by reason of misconduct and caution for a criminal offence.

#### **Determination on Sanction - 09/07/2024**

1. Having determined that Dr Sohail's fitness to practise is impaired by reason of his caution and his 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 to reaching a decision on sanction.
3. The Tribunal received further evidence on behalf of the GMC, which included details of Dr Sohail's previous GMC Warning, issued in 2015.
4. The Tribunal received further evidence on behalf of Dr Sohail, which included completion certificates and synopses of two training courses that Dr Sohail undertook after the conclusion of the impairment stage of the hearing.

## Submissions

5. On behalf of the GMC, Ms Goring submitted that the appropriate sanction in this case was one of suspension. She reminded the Tribunal that, at this stage, there was no burden or standard of proof, and that the full spectrum of sanctions was available to the Tribunal's judgement.
6. Ms Goring referred the Tribunal to the Sanctions Guidance (2024) ('the SG'), which sets out that the main reason for imposing sanctions is to protect the public. She submitted that this includes maintaining public confidence in the profession, as set out at paragraph 17 of the SG:

*'17 Patients must be able to trust doctors with their lives and health, so doctors must make sure that their conduct justifies their patients' trust in them and the public's trust in the profession (see paragraph 81 of Good medical practice). Although the tribunal should make sure the sanction it imposes is appropriate and proportionate, the reputation of the profession as a whole is more important than the interests of any individual doctor.'*

7. Ms Goring submitted that it would not be appropriate for the Tribunal to take no action in this case as there are no exceptional circumstances to justify doing so. She also submitted that imposing an order of conditions on Dr Sohail's registration would not be appropriate or proportionate. She said that conditions could not be formulated to address Dr Sohail's misconduct or prevent him sending racially aggravated text messages. Ms Goring also submitted that Dr Sohail's misconduct such that an order of conditions would not be proportionate to adequately address the seriousness of his actions.

8. Ms Goring referred the Tribunal to paragraphs 91 and 92 of the SG, which deal with suspension:

*'91 Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.*

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

9. Ms Goring also submitted that paragraph 97(a) was relevant in this case:

*'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.'*

10. Ms Goring submitted that these paragraphs of the SG indicated that suspension was the appropriate sanction in this case. She noted that the Tribunal had previously found that Dr Sohail's misconduct was remediable and submitted that, although his misconduct was a significant departure from the standards set out in GMP, it was not fundamentally incompatible with continued registration.

11. Ms Goring submitted that, if the Tribunal agreed that suspension was the appropriate sanction in this case, then it should be a lengthy one and referred the Tribunal to paragraph 100 of the SG:

*'100 The following factors will be relevant when determining the length of suspension:*

...

*b the seriousness of the findings and any mitigating or aggravating factors (as set out in paragraphs 24–60)*

*c ensuring the doctor has adequate time to remediate.’*

12. Ms Goring also referred the Tribunal to paragraphs 139 – 141 of the SG which, she submitted, indicated that this was a case that required more serious action to be taken:

*‘139 Doctors must treat their colleagues and patients fairly, whatever their actions, choices and beliefs. The guidance is set out in paragraphs 19 and 87 of Good medical practice.*

*140 Discrimination undermines public confidence in doctors and has the potential to pose a serious risk to patient safety. This includes views about a patient’s or colleague’s lifestyle, culture, or their social or economic status, as well as the characteristics covered by equality legislation.<sup>29</sup>(Good medical practice, paragraphs 19 and 56).*

*141 More serious outcomes are likely to be appropriate where a case involves discrimination (as defined by equality legislation) against patients, colleagues or other people who share protected characteristics, either within or outside their professional life. This does not affect a doctor’s right to opt out of providing a particular procedure because of their personal beliefs or values, as long as this does not result in direct or indirect discrimination against, or harassment of, individual patients or groups of patients (see the more detailed guidance Personal beliefs and medical practice).’*

13. Ms Goring further submitted that, given the Tribunal’s findings about Dr Sohail’s lack of complete insight or remediation, a review was necessary in this case.
14. Ms Goring then set out what she submitted were the aggravating factors in this case. She submitted that Dr Sohail had previous fitness to practise history, which included a GMC warning for conduct that was not dissimilar. She said he had limited insight and had not been open in his evidence about the meaning of the messages he had sent.
15. Ms Goring also referred the Tribunal to paragraphs 55 and 56 of the SG:

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

...

*c discrimination against patients, colleagues and other people (see paragraphs 139–141)*

...

56 *Tribunals are also likely to take more serious action where certain conduct arises in a doctor's personal life, such as (this list is not exhaustive):*

*b discriminating in relation to characteristics protected by law: age, disability, gender reassignment, race, marriage and civil partnership, pregnancy and maternity, religion or belief, sex and sexual orientation (see paragraphs 139–141)'*

16. Ms Goring submitted that, although these paragraphs indicated that discriminatory behaviour, like that of Dr Sohail, could be considered an aggravating factor, the Tribunal should be careful not to double count this in its considerations.
17. Ms Goring then set out what she submitted were the mitigating factors in this case. She said that Dr Sohail had fully engaged with proceedings, had made early admissions and offered an apology, although this had been qualified in terms of his actions being a reaction to what had been said to him. Ms Goring acknowledged the testimonial evidence but urged the Tribunal to be cautious when considering how much weight to give these as, in a number of these testimonials, it was not apparent that the author was aware of the full extent of the Allegations that Dr Sohail faced.
18. On behalf of Dr Sohail, Mr Buxton submitted that he agreed a period of suspension was the appropriate sanction in this case. He agreed that taking no action or imposing an order of conditions would not be appropriate or proportionate in this case.
19. Mr Buxton agreed with the mitigating factors set out by Ms Goring but reminded the Tribunal that it had found Dr Sohail to have demonstrated some insight. He also referred the Tribunal to the bundle of testimonials and submitted that these were consistent in praising Dr Sohail's care, including being complimentary about the pleasant manner in which Dr Sohail conducts himself. Mr Buxton also submitted that Dr Sohail had a good career until this isolated incident, and that this behaviour has not been repeated since.
20. Mr Buxton submitted that the Tribunal could be satisfied, when looking at all the circumstances of the case, that this was a one-off incident and not indicative of a deep

seated, attitudinal issue. He said that there had been no other similar concerns in Dr Sohail's career and reminded the Tribunal that, during his evidence, Dr Sohail was at pains to state this was not the way he thinks or behaves and reiterated his apology and shame.

21. Mr Buxton reminded the Tribunal of its previous findings that Dr Sohail's misconduct was remediable. He submitted that Dr Sohail did understand the implications of his behaviour on the reputation of the profession and understood the damage that he had done to his own integrity. Mr Buxton submitted that a period of suspension would be proportionate to Dr Sohail's misconduct and would have a deterrent effect by sending an appropriate message to the profession that his misconduct was not acceptable.
22. Mr Buxton referred the Tribunal to Dr Sohail's most recent training courses, completed on 7 July 2024, having read the Tribunal's impairment determination. He submitted that this was not attempting to show that Dr Sohail had now remediated but, rather, that it showed the beginnings of Dr Sohail's further reflection and attempts at remediation, having taken on board the Tribunal's decisions. Mr Buxton submitted that this demonstrated Dr Sohail's commitment to self-improvement.
23. Mr Buxton submitted that the mitigating factors, in conjunction with Dr Sohail's personal circumstances and the public interest in keeping competent doctors in practise, meant that any period of suspension should not be at the upper limit of length.

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

24. The Tribunal bore in mind that the reason for imposing sanctions is to uphold the overarching objective to protect the public. Sanctions are not imposed to punish doctors, although they may have a punitive effect.
25. The Tribunal took a proportionate approach, balancing the interests of Dr Sohail with the public interest. It bore in mind that the reputation of the profession as a whole is more important than the interests of any individual doctor.
26. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal exercising its own judgement. It must consider the least restrictive sanction first and then, if necessary, consider the other sanctions, taking into account the evidence and submissions that have been read and heard.
27. The Tribunal must consider any relevant mitigating and aggravating factors and address



them within the context of the determination.

#### Aggravating and mitigating factors

28. The Tribunal began by identifying the aggravating factors in the case. It considered it an aggravating factor that Dr Sohail had a previous fitness to practise disciplinary history, which the Tribunal considered to be for conduct that was not dissimilar, in that it related to aggressive behaviour towards a woman XXX. The Tribunal also considered Dr Sohail's lack of complete insight and remediation to be an aggravating factor, as well as his failure to be open about the meaning of his WhatsApp messages.
29. The Tribunal bore in mind Ms Goring's submission regarding paragraphs 55 and 56 of the SG to avoid double counting Dr Sohail's discriminatory behaviour as an aggravating factor. The Tribunal noted that several of Dr Sohail's messages were of a particularly concerning nature such as *'Why black people so dodgy'* and *'U growing through evolution.'*
30. The Tribunal considered that Dr Sohail's early admissions, full engagement with the GMC investigation, apology and evidence of remorse were all mitigating factors in this case. It also recognised that Dr Sohail had demonstrated some insight into the impact of his actions on the reputation of the profession. The Tribunal was satisfied that this was a single incident where racist language was used by Dr Sohail and that he had no previous regulatory concerns where he demonstrated hostility towards a person based on their membership of a racial group. The Tribunal further noted that there had been no evidence of repetition of such misconduct since August 2020. The Tribunal also noted the positive nature of the testimonials provided, which included some specific references to Dr Sohail never having displayed any discriminatory behaviour with colleagues or the public at work.

#### **No action**

31. The Tribunal first considered whether it would be appropriate to take no action. It accepted Ms Goring's submission that there would need to be exceptional circumstances in the case to justify taking no action. The Tribunal considered that there were no such exceptional circumstances in this case and that it would not be appropriate to take no action.

## Conditions

32. The Tribunal reminded itself that neither party had submitted that an order of conditions would be appropriate in this case. It considered paragraph 81 of the SG:

*'81 Conditions might be most appropriate in cases:*

- a involving the doctor's health*
- b involving issues around the doctor's performance*
- c where there is evidence of shortcomings in a specific area or areas of the doctor's practice*
- d where a doctor lacks the necessary knowledge of English to practise medicine without direct supervision.'*

33. The Tribunal considered that none of these factors applied in this case. It also considered that the seriousness of the case meant that conditions would not be proportionate and that, given the nature of the misconduct, it would be particularly difficult to formulate conditions that would be workable and measurable. As such, the Tribunal determined that an order of conditions would not be appropriate or proportionate in this case and not sufficient to mark the seriousness of Dr Sohail's misconduct.

## Suspension

34. The Tribunal then went on to consider whether imposing an order of suspension on Dr Sohail would be appropriate and proportionate, noting that both parties had submitted that this was the appropriate sanction in this case. The Tribunal considered all the relevant paragraphs of the SG.
35. The Tribunal considered that Dr Sohail's misconduct was of a very serious nature. That this was the second time he had accepted a police caution for conduct that involved reacting angrily and aggressively towards a woman when something XXX did not go as he wanted and, in this instance, used racial abuse. The Tribunal considered that, in each case, Dr Sohail had accepted the caution form the Police but later sought to underplay his own accountability by trying to diminish his actions or explain that he had acted in retaliation to something done by the other person. The Tribunal considered that this demonstrated Dr Sohail's limited insight into his actions.

36. The Tribunal considered that Dr Sohail’s remediation was not yet complete, but it bore in mind its previous finding that Dr Sohail’s misconduct was remediable, as well as the evidence of his on-going attempts to remediate. Further, it noted that there was no evidence to suggest that he would be unwilling to continue these efforts to remediate, or that they would be likely to be unsuccessful. The Tribunal also bore in mind that there were no patient safety concerns in this case.
37. The Tribunal referred to paragraphs 91 – 93 and 97 of the SG, as set out above, and accepted that these indicated a period of suspension may be the appropriate sanction in this case. The Tribunal considered that a period of suspension would have a deterrent effect and would send out a signal to Dr Sohail, the medical profession and the public that this type of conduct is never acceptable.
38. Having considered the reasons in favour of suspension, the Tribunal went on to consider whether, because of the seriousness of Dr Sohail’s misconduct erasure was appropriate and proportionate in this case. The Tribunal carefully looked at the factors indicating when erasure may be an appropriate sanction as set out in paragraph 109 of the SG. However, the Tribunal determined that although his misconduct was of a serious nature, given the efforts that Dr Sohail had so far made to remediate, the fact that there was some insight and that there had been no repetition in four years, his misconduct was not fundamentally incompatible with continued registration. Having considered this, the Tribunal determined that erasure would not be a proportionate sanction and concluded that a period of suspension would be sufficient to uphold proper professional standards and maintain public confidence in the profession.
39. Having determined to suspend Dr Sohail’s registration, the Tribunal went on to consider the length of the period of suspension. It took into account paragraphs 99 and 100 of the SG, as set out above.
40. The Tribunal considered paragraph 100(b) and (c) of the SG to be relevant in this case. In view of the seriousness of Dr Sohail’s misconduct, and the time he would need to fully develop his insight and undertake targeted remediation, the Tribunal concluded that a period of 10 months suspension would be proportionate. This would mark the misconduct and send a signal to the public and profession that such misconduct will not be tolerated from a medical professional.
41. The Tribunal determined to direct a review of Dr Sohail’s case. A review hearing will convene shortly before the end of the period of suspension. The Tribunal wishes to

clarify that, at the review hearing, the onus will be on Dr Sohail to demonstrate how he has fully appreciated the gravity of his offence. It may assist the reviewing Tribunal if Dr Sohail provides evidence of his fully developed insight into his conduct and demonstrates targeted remediation in the areas of anger within personal relationships with women and in relation to race and cultural awareness. He may also wish to provide evidence of how he has maintained his clinical skills and knowledge during the period of suspension. Dr Sohail may of course provide any other information that he considers will assist the reviewing Tribunal.

#### **Determination on Immediate Order - 09/07/2024**

1. Having determined that Dr Sohail's registration should be suspended for a period of 10 months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Sohail's registration should be subject to an immediate order.

#### **Submissions**

2. On behalf of the GMC, Ms Goring referred the Tribunal to the relevant paragraphs of the SG. She submitted that an immediate order of suspension was in the public interest in this case.
3. On behalf of Dr Sohail, Mr Buxton made no submissions.

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

4. In reaching its decision, the Tribunal has exercised its own judgement, taking into account all the circumstances. The Tribunal has borne in mind the guidance given in paragraphs 172 - 178 of the SG, in particular:

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

173 *An immediate order might be particularly appropriate... where immediate action must be taken to protect public confidence in the medical profession.*

...

178 *Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.'*

5. The Tribunal noted that Dr Sohail was not currently working as a doctor and so there were no patients who may be put at risk if an immediate order were imposed.
6. The Tribunal reminded itself of its previous findings regarding the serious nature of Dr Sohail's misconduct, which had brought the profession into disrepute, but noted that there were no patient safety concerns in this case.
7. The Tribunal considered that, due to the racist nature of Dr Sohail's misconduct, the public would expect immediate action to be taken. Therefore, the Tribunal determined that it was necessary to impose an immediate order of suspension to uphold public confidence in the profession.
8. This means that Dr Sohail'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.
9. This concludes the case.

SCHEDULE 1

Messages sent to recipient on or around 6 May 2020

Time	Message
1:03 pm	Yes
1:03 pm	Yes
1:03 pm	We can have our own party tonight
1:03 pm	Will stay in hotel
1:05 pm	Why not
1:05 pm	That's what we discussed other day
1:05 pm	Where we gonna meet all closed
1:06 pm	So will stay indoor
1:06 pm	Party talking romance n slow dance
1:06 pm	U dnt trust me or what
1:10 pm	Well we do
1:11 pm	I am an educated guy not some cheap person from street ok
1:11 pm	It's mutual respect and mutual pleasure
1:11 pm	What I am going to do against your wish
1:12 pm	I do not compromise my or your safety ok
1:12 pm	It's just it's private and comfortable
1:12 pm	But it's upto you
1:12 pm	It's ok we won't meet
2:11 pm	Hello
2:11 pm	Called you
2:39 pm	Bcaz u ignore me
3:07 pm	Hi
3:07 pm	Looking very sexy
3:07 pm	In pic
3:12 pm	See now u been online
3:12 pm	No response
3:13 pm	Think u text me when u haven't got any other man to talk to
3:13 pm	Lol
3:13 pm	When you r bored
9:07 pm	Why all black people so dodgy
9:08 pm	Yes
9:08 pm	So dodgy
9:08 pm	U are
9:10 pm	U sound weirded
9:10 pm	Goodbye
9:10 pm	U sound dodgy
9:11 pm	No
9:11 pm	But black people are writes
9:11 pm	And dodgy

Record of Determinations –  
Medical Practitioners Tribunal

9:14 pm	U black pussy
9:14 pm	U shit
9:14 pm	Dodgy black shit
9:15 pm	U asshole
9:15 pm	U shit do u whom I am
9:15 pm	U shit
9:15 pm	U dodgy
9:15 pm	Black
9:16 pm	Go away
9:16 pm	Stop texting
9:16 pm	Stp texting
9:16 pm	Stop texting
9:16 pm	U fat black
9:16 pm	I do not want to se
9:16 pm	U
9:16 pm	U black pussy
9:17 pm	Stop texting me
9:17 pm	Stop texting me
9:17 pm	Stop texting
9:17 pm	U black pussy
9:17 pm	Shut up
9:17 pm	Piss on you
9:17 pm	Get lost
9:17 pm	Get lost
9:17 pm	Stop texting me
9:18 pm	Ok
9:18 pm	U barking
9:18 pm	Stop texting
9:19 pm	Stop texting me
9:19 pm	U black pussy
9:19 pm	Dodgy
9:20 pm	U sound like a man
9:20 pm	U sick
9:20 pm	Shit
9:20 pm	U black people all dodgy
9:20 pm	U growing through evolution
9:20 pm	Lol
9:21 pm	U mental shit