PUBLIC RECORD

Dates: 17/08/2026 - 28/08/2026

Doctor:	Dr Mohammed ELMAJEE
GMC reference number:	7453862
Primary medical qualification:	MB ChB 2007 Misurata University

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

Summary of outcome

Suspension, 12 months
Review hearing directed
Immediate order imposed

Tribunal:

Legally Qualified Chair:	Mr Simon Bond
Lay Tribunal Member:	Mr Amit Jinabhai
Registrant Tribunal Member:	Dr Anna Gevers

Tribunal Clerk:	Mr Matt O'Reilly

Attendance and Representation:

Doctor:	Present, represented
Doctor's Representative:	Ms Anna Chestnutt, Counsel, instructed by Stephensons Solicitors LLP
GMC Representative:	Mr Charles Garside, KC

Attendance of Press / Public

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

Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on Facts - 24/08/2026

1. This determination will be handed down in private as it contains information relating to an anonymised witness which could lead to jigsaw identification.

Background

2. Dr Elmajee obtained his MB ChB in 2007 at Misurata University, Libya. He moved to the UK and registered with the GMC in June 2015. In August 2022, Dr Elmajee commenced an ST7 registrar role, specialising in foot and ankle surgery, within the trauma and orthopaedic surgery department, at The Royal Orthopaedic Hospital Birmingham NHS Foundation Trust ('the Trust' or 'the Hospital'). In August 2023, Dr Elmajee undertook an ST8 registrar role in trauma and orthopaedic arthroscopy at the Trust. He remained at the Trust until August 2024 when he moved to Worcestershire Acute NHS Trust Hospitals in the same area of specialism.

3. Dr Elmajee obtained an ST8 registrar position in the trauma and orthopaedic major trauma department at the Queen Elizabeth Hospital in February 2025 until February 2026, when he moved to the Heartlands and Good Hope Hospital, University Hospitals Birmingham NHS Foundation Trust.

4. The matters before this Tribunal can be summarised as follows. At the time of the events, Dr Elmajee and Ms A were both employed by the Trust – Dr Elmajee as a senior registrar, whilst Ms A was a XXX. Ms B XXX. The first alleged incident ('Incident 1') took place on 21 December 2022 in the XXX room. It is alleged that Dr Elmajee entered the XXX room in order to speak with Ms A, and that after Ms A turned around to face Dr Elmajee, he then leant towards her and tried to kiss her on the lips. It is further alleged that Dr Elmajee kissed Ms A's cheek and said to her, *'please one kiss'*, or words to that effect.

5. It is also alleged that Dr Elmajee sent a message to Ms A via WhatsApp on 16 September 2023 (the 'WhatsApp Message') which contained a photograph of Ms A with the comment *'irresistable (sic) lady'*, followed by a 'heart eyes' emoji.

6. A further alleged incident (Incident 2) took place on 21 September 2023 when Dr Elmajee approached Ms A in the XXX room and XXX. It is alleged that Dr Elmajee lunged towards Ms A, pressing up against her body, and leant in and tried to kiss her on the lips.

7. It is alleged that Dr Elmajee's actions during Incidents 1 and 2 were carried out without Ms A's consent. It is further alleged that Incidents 1 and 2, and sending the WhatsApp Message, constituted sexual harassment, were sexually motivated, and were an abuse of Dr Elmajee's more senior position.

8. Ms A wrote a statement for the Trust, dated 15 December 2023, setting out her version of Incidents 1 and 2. She gave the statement to a senior consultant at the Trust, who was Dr Elmajee's mentor at that time. Ms A's statement was treated by the Trust as a formal complaint and a Trust investigation followed. Ms A was interviewed as part of that investigation on 3 January 2024 and the matter was subsequently referred to the GMC.

The Outcome of Applications made during the Facts Stage

9. At the outset of the hearing, Mr Charles Garside KC, on behalf of the GMC, made an application to admit additional evidence. Ms Chestnutt, Counsel, on behalf of Dr Elmajee objected to the application. The Tribunal determined to grant the application pursuant to Rule 34(1) of the General Medical Council (Fitness to Practise) Rules Order of Council 2004 (as amended) ('the Rules'). Its full decision can be found at Annex A.

10. On day 1 of the hearing, Mr Garside, made an application for the identity of the GMC's second witness to be anonymised. Ms Chestnutt made no objection to the application. The Tribunal determined to grant the application pursuant to Rule 35(4) of the Rules and its decision can be found at Annex B.

11. On day 1 of the hearing, Mr Garside made an application to amend the Allegation. Ms Chestnutt made no objection to the application. The Tribunal determined to grant the application pursuant to Rule 17(6) of the Rules. Its decision can be found at Annex C.

12. On day 2 of the hearing, Mr Garside made an application for Ms B to have a supporter present when providing her oral evidence. Ms Chestnutt objected to the application. The Tribunal determined to grant the application. Its decision can be found at Annex D.

13. On day 3 of the hearing, whilst the Tribunal was in camera deliberating the facts of the case, it noted an apparent typographical error within the Allegation. On day 1 sub-paragraph 2b of the Allegation had been amended to state, 'paragraph(s) 1 and 1A'. The Tribunal proposed an amendment to the Allegation under its own volition such that sub-paragraph 2b would read 'paragraph(s) 1 and /or 1A'. As the parties had been released, and given that the amendment was a relatively minor one, the Tribunal Clerk sent an email to the parties, on behalf of the Tribunal, enquiring as to whether they consented to the further amendment, or whether they wished to make oral submissions. Both parties responded by email to confirm that they agreed to the amendment being made. The Tribunal was satisfied that the amendment could be made without any injustice and it therefore amended sub-paragraph 2b, as proposed, pursuant to Rule 17(6) of the Rules.

14. Whilst the Tribunal was in camera deliberating the facts of the case, it noted a further apparent typographical error within the Allegation. It noted that it appeared paragraph 2a, which stated '*paragraphs 1ai, 1aii, 1bi and 1bii*', should read, *'paragraphs 1ai, 1aii, 1bi and / or 1bii'*. On day 5 of the hearing, prior to handing down, the Tribunal proposed amending the allegation and invited submissions from parties in session. Neither Mr Garside nor Ms Chestnutt made any objection to the proposed amendment. The Tribunal was satisfied that the amendment could be made without any injustice. It therefore amended sub-paragraph 2a, as proposed, pursuant to Rule 17(6) of the Rules.

The Allegation and the Doctor's Response

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

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

1. Whilst working at The Royal Orthopaedic Hospital NHS Foundation Trust, Birmingham, on:
    a. 21 December 2022, you went to the XXX room to speak to Ms A and you:
        i. leant towards Ms A and tried to kiss her on the lips after she turned around in her chair to face you; To be determined

ii. kissed Ms A's cheek; To be determined

iii. said 'please one kiss', or words to that effect;
To be determined

b. 21 September 2023, you approached Ms A in the XXX room, XXX and:

i. lunged towards Ms A, pressing up against her body;
To be determined

ii. leant in and tried to kiss Ms A on the lips.
To be determined

1A. On 16 September 2023, you sent a WhatsApp message to Ms A which contained a photograph of her with the comment 'Irresistable [sic] lady', followed by a heart eyes emoji.
Amended pursuant to Rule 17(6) / To be determined

2. Your actions as set out at:

a. paragraphs 1ai, 1aii, 1bi and / or 1bii were carried out without Ms A's consent; Amended pursuant to Rule 17(6) / To be determined

b. paragraph(s) 1 and /or 1A: Amended pursuant to Rule 17(6)

i. constituted sexual harassment as defined in Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms A; To be determined

ii. were sexually motivated; To be determined

iii. were an abuse of your more senior position. To be determined

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

The Facts to be Determined

16. In light of Dr Elmajee's response to the Allegation made against him, the Tribunal is required to determine the entirety of the Allegation.

Witness Evidence

17. The Tribunal received oral evidence via MS Teams from Ms A. Ms A provided a witness statement, dated 16 December 2024. She also provided three supplementary witness statements, dated 24 March 2026, 27 March 2026 and 5 August 2026.

18. The Tribunal also received oral evidence from Ms B, XXX at the Trust. Ms B provided a witness statement, dated 7 July 2025. She also provided two supplementary witness statements, dated 24 March 2026 and 26 March 2026.

19. Dr Elmajee provided a witness statement, dated 1 April 2026 and a supplemental witness statement, dated 18 August 2026. He also provided oral evidence.

Documentary Evidence

20. The Tribunal had regard to the documentary evidence provided by the parties.

21. The documentary evidence relied upon by the GMC included but was not limited to: text messages between Ms A and a friend, dated 21 December 2022, a written statement prepared by Ms A, dated 15 December 2023, and a letter, dated 21 December 2023, from the Trust inviting Ms A to attend an investigatory meeting on 3 January 2024, and the notes taken from that investigatory meeting. The Tribunal also had before it the WhatsApp Message, and Intercollegiate Surgical Curriculum Programme ('ISCP') feedback for Dr Elmajee provided by Ms A, Ms B and others.

22. The documentary evidence relied upon by Dr Elmajee included, his CV, a list of colleagues providing ISCP feedback for him. Dr Elmajee also provided a screenshot from the ISCP Feedback platform, dated 24 March 2026, and ISCP Guidance, dated March 2020. He further provided a reference from Mr C, Consultant in Trauma & Orthopaedics, dated 28 November 2025, and emails from ISCP dated 27 November 2025 and 10 March 2026, attaching ISCP feedback relating to Dr Elmajee from Ms A, Ms B, and others.

The Tribunal's Approach

23. In reaching its decision on the facts, the Tribunal will apply the civil standard of proof. This means that the Tribunal must decide whether, on the balance of probabilities, the GMC is able to prove that it is more likely than not that the matters occurred as alleged. The burden of proof rests with the GMC and it is for the GMC to prove the case that it is

presenting against the doctor. There is no burden on the doctor to prove or disprove anything.

24. In assessing a witness's credibility, the Tribunal was reminded that it should not assess witness credibility exclusively on the demeanour of the witness when giving their evidence, but their veracity should be tested by reference to objective facts proved independently in their evidence, in particular, by reference to the documents in this case. The Tribunal should make a rounded assessment of witness reliability, rather than approaching their reliability in respect of each charge in isolation from the others: *R (on the application of Dutta) v GMC [2020] EWHC 1974 (Admin) 19*. It is open to the Tribunal not to rule out the whole of a witness's evidence based on credibility; credibility could be divisible: *Khan v General Medical Council [2021] EWHC 374 (Admin) 20*.

25. For the purposes of this Tribunal, Dr Elmajee is of good character. His good character is relevant to the Tribunal's considerations in a number of ways as established in *Sawati v General Medical Council [2022] EWHC 283 (Admin)*. First, good character can go to credibility, in other words, how reasonable it is to believe or disbelieve what an individual says. It can also go to propensity, the probability that they have misconducted themselves. Second, the weight to be attached to good character is in the end a matter for the tribunal undertaking the factual evaluation. Third, the significance of such good character evidence should not be overstated; it should not detract from the primary focus on the evidence directly relevant to the alleged wrongdoing. Fourth, the weight given to an unblemished record may properly be less in the case of a doctor at an early stage in their career than a doctor with an established track record, accepting also that inexperience may be a correspondingly weightier consideration in understanding what happened.

26. This case involves an allegation that Dr Elmajee's conduct was sexually motivated. The Tribunal took into account the comments of Justice Mostyn in *Basson v General Medical Council [2018] EWHC 505* who said that a *"sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship."* Further, Justice Mostyn said that the state of a man's mind is to be proved in the usual way by the necessary body of evidence on the balance of probabilities. However, the state of a person's mind is not something that can be proved by direct observation. As a result, Justice Mostyn concluded that a person's motivation for acting in the way that they did can only be proved by any inferences drawn from the primary facts and the surrounding circumstances.

27. The Tribunal was reminded of the case of *GMC v Haris [2020] EWHC 2518 (Admin)*, in which it was held that sexual motivation could be inferred from (a) the fact that the touching was of the sexual organs; (b) the absence of a clinical justification; and (c) the absence of any other plausible reasoning for the touching.

28. In addition, the Tribunal had regard to the case of *PSA v Health and Care Professions Council and Yong [2021] EWHC 52* the Court stated that Regulatory Tribunals should refer to any evidence which supported sexual motivation, even if that evidence was being discounted: indeed, if it was being discounted, the Court stated it was even more necessary to refer to it and explain that.

29. The Tribunal took into account the case of *Professional Standards Authority for Health and Social Care v Health and Care Professions Council and Yong [2021] EWHC 52* in which the Court clarified that the statutory definition of harassment (in the Equality Act 2010) does not depend on the motive of the alleged perpetrator, if the effect of the conduct violated the alleged victim's dignity, or created an intimidating, hostile, degrading, humiliating or offensive environment.

The Tribunal's Analysis of the Evidence and Findings

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

31. When deliberating, the Tribunal considered that as paragraph 1A of the Allegation is alleged to have occurred chronologically after Incident 1 but prior to Incident 2, it was logical to consider paragraph 1A first before moving on to consider subparagraph 1b. The Tribunal took the view that its findings about 1A could be pertinent to its deliberations about 1b.

Ms A's evidence
Incident 1

32. Ms A confirmed that she XXX employed by the Trust XXX. She stated that she first met Dr Elmajee approximately XXX years ago at the time of her statement and knew him from his work as a registrar in the XXX team at the Trust. Ms A said that XXX, and that they would interact in theatres, clinics, on the wards, and in patient-based settings.

33. Ms A stated that prior to the incidents in question, Dr Elmajee was *'very open and jokey'*, which included making '*suggestive comments about things'*. However, Ms A explained that this conduct did not usually make her feel particularly uncomfortable and that Dr Elmajee's *'jokes/suggestive comments were usually taken in good spirits'.*

34. Within Ms A's GMC witness statement, dated 16 December 2024, she described Incident 1 as follows:

> *'5. The first incident with Dr Elmajee took place on 21 December 2022. I can't recall the exact time but it was probably afternoon. I was in the XXX room at the time. XXX. No one else was present when this incident occurred; it was only myself and Dr Elmajee in the XXX room at the time.*
>
> *6. I was sat down working at the computer. There were two computer chairs at the desk. I was sat on my chair initially doing work. Dr Elmajee came in to speak to me about a patient he was due to see at the next clinic. I was finishing what I was doing, and as we were talking, I swivelled round to look at him. He then leaned towards me and he went to kiss me. He was touching my face with his lips. His lips were on mine. He did not say anything as he did this.*
>
> *7. I withdrew and turned away. I physically moved my head back and pushed my chair back a bit. I think I said something like, 'what are you doing' or 'no, please don't do that' or something. He then kissed my cheek and said, 'please one kiss'. I said 'no' and was flustered. Then, my colleague [Ms B] [XXX] returned from the ward. Dr Elmjaee (sic) behaved normally when [Ms B] came in. He said hello to [Ms B] and then he said goodbye and left. The interaction lasted a matter of seconds.*
>
> *8. If he had gotten any further with the kiss on the lips it would have been a full kiss but ended up being a peck because I withdrew. The same also applies for the kiss on the cheek. When it happened, I think I was more shocked and in disbelief than anything. I felt flustered and was thinking 'what on earth has just happened'. Afterwards, I was a bit shaken. I wasn't terrified or anything, but I thought that it was a very strange interaction.*
>
> *9. I told my colleague [Ms B] about what had happened afterwards in a verbal conversation at the time when Dr Elmajee left the room. I also told a friend (from outside of work)…about what happened by message.'*

35. Ms A said that once Dr Elmajee had left the XXX room she told Ms B about Incident 1. Ms A stated that she also sent a text message to a friend about what had occurred. Ms A explained that she did not inform anyone else about Incident 1 at the time; nor did she report the matter at the time because she felt that she had *'dealt with it and ... felt okay about it'*.

36. The Tribunal had regard to Ms A's text message sent at 13:05 on 21 December 2022, as follows:

> *'Ok so obviously we don't tell [Ms A's partner] but you remember I told you that doctor flirted with me? Well he's just tried to kiss me. I told him to bugger off and I hope that's the end of it but I'm a bit shocked'*

37. In her initial written statement to the Trust, dated 15 December 2023, which she provided to Dr Elmajee's mentor, Ms A stated:

> '*On December 21st 2022 I was alone in the [XXX] room XXX when Mr Elmajee entered and sat down next to me at the computer desk. Conversation was initially about patients that we were due to see in the next clinic. As I turned my chair-to face Mr Elmajee he leaned in and began trying to kiss me on the lips. I withdrew and he then kissed me on the cheek and said "please just one kiss". I told him no and at this point my colleague returned and he left. I disclosed what had happened to my colleague and later to a friend who advised me to make a personal note of the incident.'*

38. During the Trust's investigation meeting on 3 January 2024, Ms A was asked about what had happened during Incident 1. The notes of the meeting recorded that Ms A said the following:

> *'The first Incident I was in the [XXX] Room alone. The person in question came into me and we were initially talking about patients. So I was working at the desk, then I turned towards him to talk about a patient we were due to see in clinic that week and he attempted to kiss me on the cheek. So I retracted and pulled away, then he went to kiss me on the cheek and said "please just one kiss". I said no, not at all. Then thankfully my colleague returned and he left.'*

<u>ISCP Feedback</u>

39. In her first supplemental witness statement dated 24 March 2026, Ms A confirmed that she provided ISCP feedback for Dr Elmajee on 16 June 2023. She could not recall if

Dr Elmajee had asked her to provide that feedback or whether she simply received an email requesting the feedback. The Tribunal was provided with a copy of Ms A's feedback form and noted that she had rated Dr Elmajee as 'outstanding' in 11 out of 17 of the categories for which feedback was requested, including *'communication with colleagues'*, '*active involvement with the team'* and '*overall rating compared to peers'*.

40. In her first supplementary witness statement, Ms A said:

> *'I would stand by the comments I gave at the time about Dr Elmajee in that he was good from a clinical perspective and approachable. If I had to go to Dr Elmajee with concerns about patients, he would help and take it on board to give the best care to the patient. I had no clinical issues with Dr Elmajee at all.'*

41. During her oral evidence, Ms A accepted that she had not made reference to Incident 1, in Dr Elmajee's feedback form, when asked about '*behaviours that had raised concerns*'. In her first supplementary statement, she said that she had not mentioned Incident 1 because she did not believe that the feedback form was the '*right forum'* in which to do so. In addition, she stated that:

> '*The forum (sic) was asking about Dr Elmajee's clinical work, and I didn't have any problems with that. At the time of providing the feedback, there had been no further incidents with Dr Elmajee, and I assumed the incident on 21 December 2022 was a one off. I had no concerns that anything else was going to happen'.*

42. In her second supplemental statement dated 27 March 2026, Ms A said that she could not recall being provided with guidance notes for the purpose of completing Dr Elmajee's ISCP feedback, nor could she remember the specific feedback question about '*behaviours that had raised concerns*'.

<u>The WhatsApp Message</u>

43. In her third supplemental statement dated 5 August 2026, Ms A confirmed that on 4 August 2026, she sent a copy of the WhatsApp Message by email to the GMC. Ms A stated that the WhatsApp Message included a picture of her that had been taken from XXX a noticeboard at XXX at the Trust. She stated that underneath her photograph, Dr Elmajee had, in the WhatsApp Message, written '*irresistable (sic) lady*' followed by an emoji with '*love heart eyes*'.

44. Ms A asserted that Dr Elmajee had sent her the WhatsApp Message on 16 September 2023 XXX In her third supplemental statement she said:

> *'I recall thinking when I received and read the message that it was slightly odd and a little bit awkward'.*
> *'A few hours after receiving the Message I replied to Dr Elmajee with a crying laughing emoji … I imagine I responded like that as I wouldn't have wanted to be rude and would still need to work with him so I sent him something that was fairly innocuous. I didn't exchange any further messages with Dr Elmajee after the Message included in the screenshot … I didn't take any action regarding the Message from Dr Elmajee at the time and I didn't discuss this with anyone else'.*

45. Ms A stated that she had discovered the message during the weekend of 1/ 2 August 2026 when she had been searching her WhatsApp messages for something unrelated. She said that she had not recalled the WhatsApp Message at the time of her written complaint to the Trust, nor during the Trust's investigation. Ms A also acknowledged that the Whatsapp Message had not been referred to in her main GMC statement or two further supplementary statements.

46. Ms A stated that it was not uncommon for members of her team to have the personal telephone numbers of registrars in order to make contact regarding patients.

Incident 2

47. In her GMC witness statement, Ms A stated:

> *'10. The second incident with Dr Elmajee took place on 21 September 2023. I was taking annual leave for the rest of the day as I had a few things to do [XXX]. Other members of staff in my team said they would handle the ward whilst I sorted myself out.'*
>
> *11. I was in the [XXX] room. From what I understand Dr Elmajee had seen my colleagues ([Ms B] and [Ms D] – [XXX]) in the corridor when they were on their way to the ward and asked them where I was, and they explained I was [XXX] taking annual leave this afternoon. I know this because when I spoke to [Ms B] when I was back at work after [XXX], I disclosed to her that he had done the same thing with me again and*

she said she was sorry because she had told him that I was in the [XXX] room and that I was about to go home.

12. At the time of the incident, I was in the [XXX] room on the phone to my father… Again, no one else was present when the second incident occurred; it was only myself and Dr Elmajee in the [XXX] room at the time.

13. I was leaning against the desk on the phone. I had my back against the work surface. Dr Elmajee came in and sort of waved at me. When I finished on the phone he said something like, 'I've just heard [XXX]'. I said thank you. Then, he lunged towards me and he tried to kiss me on the lips. I had to physically push him away. I don't think he did manage make contact with my lips this time. He was very close - millimetres away.

14. I confirm that there was nothing that led to Dr Elmajee leaning in to kiss me beyond what I have mentioned in my statement. He was stood in front of me and as he kind of leaned into me, his body pushed me into the work surface. There was contact between our bodies, but it wasn't forceful as such. Our lips didn't make contact as he didn't quite get there. I don't think he said anything as he did this.

15. When I pushed him off, I didn't have to do this very hard. It was kind of just a block and a gentle push away, and he did move away. I think I might have said something like, 'what are you doing, [XXX]' or something like that.

16. At the time I felt more shock and confusion than anything. I didn't tell anyone about what happened on that day. Afterwards, when I returned to work after [XXX], I told [Ms B]. [Ms B] was the only person I told at this point.

17. I didn't report the incident as, again, I thought that it was over now. I did also have that feeling where, as a woman, your default reaction is 'it something I've done?' and I questioned myself. I thought about reporting it but realised it was his career and family I would be damaging. I also still had to work with him at that point.'

48. In her written statement to the Trust, dated 15 December 2023, Ms A stated:
'I had no further contact alone with Mr Elmajee until the 21st September 2023 at approximately 11:30, when I was in the [XXX] room. Another colleague had seen Mr Elmajee in the corridor and when he asked where I was, she informed him I was

leaving early as I was [XXX]. Mr Elmajee then came into the [XXX] room. I was stood up using the phone at the time and when I had finished, Mr Elmajee said that he had come to say [XXX]. Conversation continued and he then tried to press me against the work surface and kiss me on the lips again. I pushed him off and asked him to leave, which he did. That was my last contact alone with Mr Elmajee.'

49. In answer to questions from the Trust's Investigating Officer ('[Ms E]'), during the Trust investigation, it is recorded that Ms A said:

'[Ms A] …I hadn't seen him on my own at all until later last year when I was in the [XXX] room on my own waiting to go home and he came in because he heard [XXX]. I stood up, I was on the phone, I put then phone down, I turned around and the next thing he tried to press up against me so I pushed him off.'
[Ms E] Sorry to ask for more detail, but when he came in did he talk first? [Ms A] Yes he did, because he said "I heard [XXX]".
[Ms E] And he came towards you and tried to kiss you? [Ms A] Yes
[Ms E] Where did he try and kiss you? [Ms A] On the lips.
[Ms E] And then you pushed him away? [Ms A] Yes
[Ms E] And what did he say then? Or did you say anything?
[Ms A] I think it was just a case of he left then, I don't think we exchanged anymore words.
[Ms E] So at that point, how did you feel?
[Ms A] I did obviously feel more uncomfortable but I was off on annual leave then for a while, so I didn't think anymore of it. Then when I came back to work I was really thinking about it. I was more concerned about if he was with patients alone or young vulnerable people. That's when I thought I really need to say something. The first incident I thought ok I have dealt with it, but after the second I thought no I need to. Somebody else maybe wouldn't be open in saying.'

Ms B's evidence

50. In her witness statement dated 7 July 2025, Ms B confirmed that she has been employed by the Trust since approximately XXX. Ms B recalled first meeting Dr Elmajee in around 2019 and she described him as *'a little bit "in your face"'* and '*touchy feely'*. Ms B felt that Dr Elmajee would get 'too close' to her when they were speaking, although she could not recall any dates on which this occurred. Ms B said of Dr Elmajee, '*I suppose you could say*

he was a flirt', and she alleged that Dr Elmajee would look at Ms B and XXX when he was '*supposed to be concentrating on his work'*.

Incident 1

51. In her GMC witness statement dated 7 July 2025, Ms B stated:

> *'7. I recall that Ms A told me about an incident that happened in either December 2021 or December 2022 but I can't be certain on the date when Dr Elmajee was in the [XXX] room with Ms A and he tried to kiss her. I walked into the [XXX] room and Dr Elmajee left and that's when Ms A then said to me that Dr Elmajee had tried to kiss her. It was just me and Ms A when she told me this. I can't remember where she said he tried to kiss her but I am sure it was on her face somewhere. I wasn't in the room at the time it happened so I didn't witness this…'*

52. Ms B said that she could not recall how she had responded to Ms A's disclosure, but Ms B said that she probably replied with '*something like that's vile'*.

53. In her first supplementary witness statement dated 24 March 2026, Ms B said the following about the date of Incident 1:

> *'I had included in my earlier GMC statement about Ms A telling me that Dr Elmajee had tried to kiss her in either December 2021 or December 2022. At the time of providing this supplemental statement, I have re-read my earlier statement dated 7 July 2025 and I wish to confirm I can recall for definite now that the first incident [Ms A] reported to me was in December 2022.'*

54. In her oral evidence, Ms B told the Tribunal that she realised that Incident 1 had occurred in December 2022 because she had worked out the date by reference to XXX.

ISCP Feedback

55. In her first supplemental witness statement, Ms B confirmed that she provided ISCP feedback for Dr Elmajee on 16 June 2023. Although she could not remember the date, she recalled having been approached by Dr Elmajee to provide the feedback.

56. Ms B said she felt that Incident 1 was not relevant to the feedback she had provided for Dr Elmajee, because the feedback was about his clinical work. She stated that her feedback about Dr Elmajee's work was '*true*', and that she did feel able to approach Dr Elmajee. However, Ms B acknowledged that had the feedback included a question about Dr Elmajee being '*appropriate with staff*', she would have answered '*no*', because he '*let himself down by being touchy feely*'.

57. Ms B acknowledged that she had given Dr Elmajee '*outstanding ratings*' in the following areas - communication with patients and relatives, communication with colleagues, active involvement with the team, accessibility and reliability and overall rating compared to peers. During her oral evidence, Ms B stated that it had been her usual practice to give '*outstanding*' ratings to all Registrars.

58. In her first supplemental statement Ms B stated:

> *'I gave these ratings due to Dr Elmajee's work as he was ok in his job from what I saw whilst working with him [XXX]. In hindsight, if I had my time again, I would have either declined to give the Feedback and not completed the Feedback, as this Feedback helped Dr Elmajee in terms of his career as it was good feedback. In hindsight, I shouldn't have put those ratings in the Feedback, I was being nice at the time'.*

59. In her second supplemental statement dated 26 March 2026, Ms B said that she could not recall being provided with guidance notes for the purpose of completing Dr Elmajee's ISCP feedback, nor could she remember the specific feedback question about '*behaviours that had raised concerns*'.

Incident 2

60. In her witness statement, dated 7 July 2025, Ms B stated:

> *'8. In September 2023, Ms A [XXX] went on annual leave. When Ms A returned to work at the end of [XXX] from her annual leave [XXX], she told me in person in the [XXX] room about an incident where Dr Elmajee tried to kiss her on her mouth. It was just me and Ms A present during the conversation. She said it happened on the last day before she left for annual leave, [XXX]. I don't recall any other details that Ms A told me about the incident.*

9. I recall that on the last day of Ms A's annual leave, [Ms D] and I were called to the Outpatient's clinic whilst Ms A was about to go home for her annual leave. I remember that me and [Ms D] passed Dr Elmajee on the way to the Outpatient's clinic and Dr Elmajee asked us where Ms A was. I replied to say that she was in the [XXX] room and getting ready for her annual leave, [XXX]. Ms A said that after we had seen Dr Elmajee in the corridor on her last day that he, 'came onto her'. She told me this at the same time she told me about him trying to kiss her…'

61. Ms B stated that she did not recall exactly how she responded to Ms A about Incident 2. However, Ms B believed that she may have said '*something along the lines of I am sorry to hear that*'. Ms B said that she was '*not surprised*' about Incident 2 when Ms A told her about it. Ms B said that she did not report the matter, but may have advised Ms A to do so.

Dr Elmajee's evidence
Incident 1

62. The Tribunal took into account Dr Elmajee's witness statement, dated 1 April 2026, in which he stated:

'19. I am unable to recall my precise movements on 21 December 2022 at the time of making this statement given the lapse of time. However, I have seen a rota provided by the GMC and I understand that I would have been working at the Hospital on 21 December 2022.

20. I acknowledge that I would routinely access the [XXX] room as part of my role, as would Ms A in her role [XXX]. [XXX]. I may have accessed the room on 21 December 2022 based on my role but I am unable to confirm or deny this due to the lapse of time.'

63. Dr Elmajee stated that he vehemently denied Incident 1, which he said would have been entirely inconsistent with his professional values, personal circumstances, and the way he had conducted himself throughout his career. He confirmed that he is happily married and had not been made aware of Ms A's allegations at the time. He said in his witness statement that he was:

'…very surprised to hear that Ms A had raised these allegations against me which felt like a stab in the back given that I thought we had a strong professional working relationship during our time working together at the Hospital.'

ISCP Feedback

64. Dr Elmajee explained that he had sought ISCP feedback from Ms A, Ms B and another XXX because XXX and Dr Elmajee felt that Ms A and her colleagues would be best placed to provide positive feedback. He felt that he had helped to create a positive working environment at the Hospital and he hoped that this would be reflected in the feedback.

65. In his witness statement, Dr Elmajee explained that ISCP feedback is confidential and provided anonymously. He highlighted that those providing feedback are provided with guidance which they would be expected to read. Dr Elmajee felt that the feedback he had received from Ms A was in line with his recollection of their strong working relationship and how he understood that his conduct had been perceived by her. He said that he remained shocked and confused about her allegations.

The WhatsApp Message

66. In his supplemental witness statement, dated 18 August 2026, Dr Elmajee stated:
'I understand that the General Medical Council ['GMC'] seek to rely on a screenshot of a message said to have been sent from my WhatsApp account. I cannot verify this, as I have changed phones and no longer have access to messages from that time. I can recall that Ms A and I had exchanged telephone numbers, and it would not have been unusual for colleagues to communicate via WhatsApp at that time. However, I have no independent recollection of this particular message or of the circumstances in which it was allegedly sent.
Similarly, I do not recall the wider context in which the comment was made. I have no recollection of the surrounding conversation or the circumstances in which the message was sent.
I do not recall exchanging any further Whatsapp or text messages with Ms A beyond those shown in the screenshot'.

67. The Tribunal asked Dr Elmajee whether he had checked his telephone to see whether or not he had the WhatsApp Message or any other messages that he had sent to Ms A. Dr Elmajee said that he had not checked his telephone. He told the Tribunal that his mobile telephone had been hacked approximately two years ago resulting in him losing some of his contacts and messages. In addition, he said that he had changed his telephone on more than one occasion since the date of the WhatsApp Message, but had retained the same telephone number.

Incident 2

68. In his witness statement, Dr Elmajee stated that he was unable to recall 21 September 2023 clearly due to the lapse of time. However, he did remember walking down a corridor connected to the XXX room and speaking with Ms B and another colleague. Dr Elmajee stated that during that conversation he was made aware of XXX. He acknowledged that, on the same day as that conversation, he also spoke with Ms A although he could not recall the time of day nor whether their conversation took place in the XXX room.

69. Dr Elmajee stated that he had XXX. In his witness statement he said:

> *'36. …I have, in the past, offered brief [XXX] gestures such as a hug or a kiss on the cheek to colleagues when [XXX] and I may have done so as part of [XXX]. However, I cannot specifically recall doing either on this occasion.*
>
> *37. Notwithstanding, I categorically refute lunging towards Ms A as alleged, nor did I try to kiss Ms A on the lips. If a [XXX] gesture such as a brief hug or kiss on the cheek occurred, it would have been intended purely as a friendly and [XXX]interaction and certainly not in the manner described in the allegation…'*

70. Dr Elmajee believed that he had a '*good positive'* working relationship with Ms A and he denied any suggestion that he had behaved inappropriately towards her, or that his actions were sexually motivated. He added that he was in '*complete shock'* about the allegations when they were raised with him. He described the impact of the allegations on him both personally and professionally and said he could only assume that Ms A had '*misinterpreted what happened*'.

The Tribunal's analysis of the evidence

Credibility
Ms A

71. For the reasons set out below, the Tribunal identified a number of inconsistencies in Ms A's evidence relating to Incidents 1 and 2, and had some concerns about her evidence in relation to her discovery of the WhatsApp Message. However, despite these matters, the Tribunal was satisfied that, broadly speaking, Ms A was a credible witness who gave clear and

cogent evidence. It considered that that there was an authenticity in the content of her responses to questions during her oral evidence, and that she answered openly when asked questions which might undermine her evidence. For example, she readily accepted in cross examination that the suggestion that Dr Elmajee's lips made contact with hers might amount to a kiss that '*connected'*, as opposed to an attempted kiss. However, she nevertheless maintained that a touching of lips could amount to an attempted kiss.

Ms B

72. Ms B appeared to the Tribunal to be a reluctant and, at times, somewhat defensive witness. She was able to assist the Tribunal in relation to Incidents 1 and 2 by corroborating Ms A's evidence of those matters that were reported to her by Ms A. Ms B provided evidence to the Tribunal about Ms A's reaction to Incident 2. She said that Ms A said something along the lines of '*oh no he's done it again'.* Ms B also stated that, at the time, Ms A appeared *'a bit worried'* and that '*she was bothered'* by the incident.

73. In her evidence Ms B described Dr Elmajee as '*touchy feely'* and a flirt, but the Tribunal gave limited weight to that evidence as Ms B provided few specific examples to support her assertions.

74. It was submitted on behalf of Dr Elmajee that Ms B may have colluded with Ms A in the preparation of her evidence for this hearing– for example by recalling with certainly the date of Incident 1 in her first supplementary witness statement, despite having been unable to recall the date in her first witness statement. However, on balance the Tribunal was satisfied with Ms B's explanation that she had, on reflection, worked out the date of Incident 1 by reference to the year in which XXX. The Tribunal found that there was insufficient evidence that Ms A and Ms B had colluded when preparing their evidence for the purposes of these proceedings.

Dr Elmajee

75. The Tribunal found Dr Elmajee's oral evidence to have been very guarded and at times lacking in openness. For example, he repeatedly maintained in oral evidence that the image in the WhatsApp Message '*appeared'* to be of Ms A, despite it being clear to the Tribunal that the image is of her. The Tribunal was also concerned by other aspects of Dr Elmajee's evidence – for example the claim that his mobile telephone had been hacked despite that issue not being referred to in his supplementary witness statement about the

WhatsApp Message. Further, the Tribunal found Dr Elmajee's claim that he had not checked his telephone upon being made aware of the WhatsApp Message to be lacking in credibility. When cross-examined on whether he had deleted Ms A's contact number from his phone, Dr Elmajee told the Tribunal, *'I can't remember whether I deleted Ms A after the allegation was made'*. The Tribunal found it highly unlikely that Dr Elmajee would not recall such an event given that Ms A had raised a complaint about him to the Trust.

76. In addition, the Tribunal found Dr Elmajee's evidence that he had forgotten the type of messaging system (iMessage) which he had used to communicate with Ms A about patient related matters whilst working at the Hospital, to be very unlikely given that he had worked at the Hospital for approximately two years.

77. In his oral evidence Dr Elmajee initially told the Tribunal that there had been no level of seniority between him and Ms A and he stated that he was '*in training'*. He subsequently accepted that he had been in a more senior position than her, and it appeared to the Tribunal that he was attempting to downplay his relative seniority and responsibility. The Tribunal took the view that Dr Elmajee appeared reluctant to accept anything which might have an adverse impact on his case, contrary to the approach of Ms A who openly accepted inconsistencies in her account.

<u>Paragraphs 1ai, ii and iii of the Allegation</u>

> *1. Whilst working at The Royal Orthopaedic Hospital NHS Foundation Trust, Birmingham, on:*
>
> *a. 21 December 2022, you went to the XXX room to speak to Ms A and you:*
>
> *i leant towards Ms A and tried to kiss her on the lips after she turned around in her chair to face you;*
>
> *ii kissed Ms A's cheek;*
>
> *iii said 'please one kiss', or words to that effect;*

78. The Tribunal noted that Ms A's various accounts of Incident 1 contained a number of different descriptions of what she alleged had taken place – for example in her witness statement dated 16 December 2024 she said that Dr Elmajee, *'…went to kiss'* her, and that he was touching her face with his lips, such that '*his lips were on mine*'. She added that Dr Elmajee then kissed her cheek. In Ms A's text message dated 21 December 2022, she reported that Dr Elmajee had '*tried to kiss'* her, without specifying where. In her statement to

the Trust dated 15 December 2023, Ms A described how Dr Elmajee '*began trying to kiss*' her on the lips and subsequently kissed her on the cheek. In contrast, within the notes of the Trust's investigation meeting on 3 January 2024, Ms A referred to Dr Elmajee attempting to kiss her on the cheek and then kissing her on the cheek. However those notes made no reference to Ms A's allegation that Dr Elmajee had made contact with, or had kissed, her lips.

79. The Tribunal noted that Ms A's various accounts of Incident 1 were made sometime apart. For example, whilst Ms A's text message was sent on the day of the alleged event, her written statement to the Trust dated 15 December 2023 was made almost a year later and her meeting with the Trust's investigation team occurred 54 weeks after the index event.

80. Incident 1 was supported by the evidence of Ms B to the extent that she confirmed that when she walked into the XXX room, Dr Elmajee was in there with Ms A, and that Dr Elmajee left the room thereafter. Ms B also confirmed that after Dr Elmajee had left the room, Ms A reported the incident to her.

81. The Tribunal took the view that Ms A's text messages dated 21 December 2022 provided powerful contemporaneous evidence that an unnamed doctor had tried to kiss her, and that Ms A had found the doctor's conduct to be unwelcome. They also corroborated Ms B's evidence that she had walked into the room and noted that Dr Elmajee and Ms A were together. It appeared to the Tribunal that the text messages were intended as a relatively brief update to her friend following an earlier conversation between them about the unnamed doctor, who Ms A said had previously flirted with her. The Tribunal concluded that, to the extent that there was any inconsistency between the text messages and Ms A's later accounts of Incident 1, any inconsistency could be explained by the fact that the text messages were not – and were not intended to be – an exhaustive or detailed account of Incident 1.

82. The Tribunal also contrasted the description, in Ms A's text messages, of an attempted kiss ('*he tried to kiss me*') with the assertions in her witness statement dated 16 December 2024 that Dr Elmajee's lips were on hers, and that he had been touching her face with his lips. Ms A acknowledged in cross examination that if Dr Elmajee's lips had made contact with her lips, then that amounted to a kiss that had '*connected*', albeit that the contact had made no '*sound*'. However, she asserted that if a person's lips were on another person's lips the action could nevertheless amount to an attempted kiss. The Tribunal did not accept that there was a material inconsistency in Ms A's evidence that Dr Elmajee had both tried to kiss her lips and had made contact with her lips. It took the view that the description

given by Ms A in her witness statement was of an attempted kiss that was unwelcome, and from which she withdrew, notwithstanding that Dr Elmajee may have briefly made contact with her lips. The Tribunal considered that the alleged temporary success of Dr Elmajee's action in making contact with Ms A's lips did not undermine Ms A's description of it as an attempted kiss.

83. The Tribunal next considered whether or not, on the balance of probabilities, the doctor referred to in Ms A's text message was Dr Elmajee.

84. In light of the evidence of both Ms A, Ms B and Dr Elmajee, the Tribunal concluded that Dr Elmajee was more likely than not to be the doctor referred to in Ms A's text message dated 21 December 2022.

85. The Tribunal was somewhat concerned by Ms A's description of Incident 1 as set out in the Trust's notes of the investigation meeting on 3 January 2024. The Tribunal took the view that that description did appear to be very different to Ms A's other accounts – for example by entirely omitting any reference to a kiss – or attempted kiss – on her lips, and by suggesting that Dr Elmajee's attempted kiss was on her cheek. Ms A confirmed in oral evidence that the Trust's notes were accurate.

86. However, the Tribunal took into account the stressful nature of participation in formal investigation meetings, that memory is fallible and that the investigation meeting took place over a year after Incident 1 had allegedly taken place. Further, it accepted Ms A's evidence that she had not been provided with an opportunity, at the time, to review or amend the Trust's notes. The Tribunal also accepted Ms A's evidence that she had not seen the investigation notes until the GMC provided them to her in preparation for these proceedings.

87. Whilst the Tribunal noted a number of inconsistencies between Ms A's various descriptions of Incident 1, the Tribunal concluded that such inconsistencies did not fundamentally undermine her evidence about Incident 1.

88. The Tribunal next considered the ISCP feedback about Dr Elmajee that Ms A had provided on 16 June 2023.

89. The Tribunal considered that it was somewhat unusual that Ms A had provided very positive feedback about Dr Elmajee given her concerns about his alleged conduct during Incident 1. In her text message dated 21 December 2022, Ms A said that, during Incident 1,

she had told the doctor to '*bugger off and I hope that's the end of it*'. On balance, the Tribunal accepted Ms A's evidence that, as far as she was concerned, Incident 1 had been '*nipped in the bud*' and that nothing further had occurred in the intervening period. The Tribunal considered it likely that Ms A had wanted to put the matter behind her and move on, XXX. The Tribunal was satisfied that whilst Ms A could have referred to Incident 1 as part of her feedback – or given Dr Elmajee a lower rating – she had focused on her assessment of his clinical abilities and that her feedback did not fundamentally undermine her account of Incident 1.

90. It was also argued on behalf of Dr Elmajee that Ms B's account of Incident 1 was inconsistent with that of Ms A. This was because Ms B had described being told of an attempted kiss somewhere on Ms A's face. However, the Tribunal did not consider that Ms B's evidence about Incident 1 contained any material inconsistency with Ms A's description of an attempted kiss. The Tribunal took into account that Ms B had not been present during Incident 1 and her evidence amounted to a report of what Ms A had told her of the event. The Tribunal also noted that Ms B's witness statement was dated 7 July 2025, over two years after Incident 1, and it considered that a lack of clarity and precision in the statement was therefore not unusual given the lapse of time.

91. The Tribunal noted that in her written statement to the Trust dated 15 December 2023 Ms A alleged that Dr Elmajee had said '*please one kiss*' or words to that effect. She repeated that claim during her meeting with the Trust on 3 January 2024. The Tribunal could find no reason why Ms A would fabricate that allegation and repeat it to her employer during their formal investigation.

92. Despite a number of inconsistencies in her various accounts, the Tribunal preferred the evidence of Ms A about Incident 1 and found her evidence to be plausible. Having considered the totality of the evidence, the Tribunal was satisfied, on the balance of probabilities, that Dr Elmajee did go into the XXX room on 21 December 2022 to speak to Ms A, leant towards her and tried to kiss her on the lips after she turned around in her chair to face him; that he kissed her on the cheek and said '*please one kiss*', or words to that effect.

93. The Tribunal has therefore found paragraphs 1ai, ii and iii of the Allegation proved.

<u>Paragraph 1A of the Allegation</u>

'On 16 September 2023, you sent a WhatsApp message to Ms A which contained a photograph of her with the comment 'Irresistable [sic] lady', followed by a heart eyes emoji'.

94. The Tribunal found it likely that the photograph of Ms A in the WhatsApp Message was one which had been on XXX at the Hospital. This is because underneath the photograph there were some words about Ms A having worked at the Trust for XXX. The Tribunal noted that the photograph had been sent in the WhatsApp Message with the comment and emoji as described in Paragraph 1A of the Allegation; the sender is described as '*Mo Elmajee*'. The Tribunal considered it likely that this was the first and only message from that sender to Ms A because the top of the message bore the following introductory words, *'…Messages and calls are end-to-end encrypted. Only people in this chat can read, listen to, or share them…'*

95. The Tribunal considered the late discovery of the WhatsApp Message. The Tribunal noted that the WhatsApp Message was dated 16 September 2023, five days before Incident 2, and that Ms A sent the WhatsApp Message to the GMC on 4 August 2026, less than two weeks before this hearing was due to commence.

96. The Tribunal was somewhat perplexed by Ms A's evidence that she had forgotten about the WhatsApp Message by the time of Incident 2. In addition, it seemed very unusual that Ms A had not been prompted to recall the WhatsApp Message by the Trust's investigation, or (until just before this hearing) by the GMC's investigation and preparation for these proceedings.

97. The Tribunal did however consider Ms A's reasoning for the late disclosure of the WhatsApp Message. In her email to the GMC, dated 4 August 2026, Ms A stated:

'Can I ask your advice on something? I was searching for something unrelated in my wats app (sic) messages and I found a message from Dr Elmajee that I had not remembered. It was picture of me that had been taken from a [XXX] and underneath he'd written "irresistible lady 😍". Do I need to declare this?'

98. The Tribunal considered the fact Ms A had genuinely appeared to have only recently discovered the message, was asking for advice and if she needed to declare it, added credibility to her explanation for the timing of its discovery. The Tribunal also took into account that she had received the WhatsApp Message a few days before XXX.

99. Ms A told the Tribunal that she tried to make light of the message and wanted to keep it light-hearted by providing an innocuous response with a *'laughing crying' emoji '* 😂'. She said that she did not think too much of the WhatsApp Message which she described as '*slightly odd and a little bit awkward'* and she had not thought about it further.

100. The Tribunal concluded that whilst it was very unusual for Ms A to have forgotten about the WhatsApp Message, it considered, on balance, that her explanation was plausible. Further, there was no evidence presented to the Tribunal that the WhatsApp Message was fraudulent or had been manufactured by Ms A. The Tribunal considered that the effort required to fabricate the WhatsApp Message – and make it appear to emanate from Dr Elmajee on 16 September 2023 - made that possibility highly improbable.

101. In addition, the Tribunal noted that Dr Elmajee's evidence about the WhatsApp Message was somewhat contradictory and guarded. When asked in oral evidence if he had sent the message he replied that he could not verify that fact because his telephone had been hacked and replaced. However, the Tribunal noted that in his supplementary witness statement dated 18 August 2026, he stated that he did not recall exchanging '*any further WhatsApp or text messages*' with Ms A, '*beyond those shown in the screenshot*'. This evidence appeared to the Tribunal to be tantamount to an admission by Dr Elmajee that he had in fact sent the WhatsApp Message.

102. On the balance of probabilities, the Tribunal was satisfied that Dr Elmajee did send the WhatsApp Message to Ms A.

103. The Tribunal therefore determined that paragraph 1A of the Allegation is proved.

<u>Paragraph 1bi and ii of the Allegation</u>

> *1. Whilst working at The Royal Orthopaedic Hospital NHS Foundation Trust, Birmingham, on:*
>
> *b. 21 September 2023, you approached Ms A in the XXX room, XXX and:*
>
> *i. lunged towards Ms A, pressing up against her body;*
>
> *ii. leant in and tried to kiss Ms A on the lips*

104. The Tribunal observed that there was a degree of agreement between Ms A and Dr Elmajee about the 'stem' of paragraph 1b because Dr Elmajee had acknowledged having approached Ms A XXX.

105. In her witness statement, Ms A said that on 21 September 2023, *'When I finished on the phone he said something like, "I've just heard [XXX]". I said thank you. Then, he lunged towards me and he tried to kiss me on the lips'.* In addition, she stated, *'He was stood in front of me and as he kind of leaned into me, his body pushed me into the work surface'.*

106. Ms A's initial, written account of Incident 2 to the Trust was that Dr Elmajee *'tried to press me against the work surface and kiss me on the lips again'*. The notes of the Trust investigatory meeting on 3 January 2024 record that Ms A said '*he came in because he heard [XXX]. I stood up, I was on the phone, I put then (sic) phone down, I turned around and the next thing he tried to press up against me so I pushed him off*'.

107. The Tribunal took into account Dr Elmajee's evidence that the has in the past XXX colleagues with a gesture such as a hug or kiss on the cheek. However, he could not recall whether or not he had made such a gesture to Ms A XXX. The Tribunal considered whether it was possible that Dr Elmajee had lent in to Ms A to offer a [XXX] hug or kiss and that his actions and motives had been misinterpreted by Ms A.

108. The Tribunal took into account its finding that five days before Incident 2, Dr Elmajee had sent Ms A the WhatsApp Message, describing her as an *'irresistable (sic) lady*'. The Tribunal felt that this strongly suggested that Dr Elmajee was physically attracted to Ms A. In addition, the Tribunal reminded itself of its finding that during Incident 1, Dr Elmajee had tried to kiss Ms A on the lips, had kissed her on the cheek, and had said "*please one kiss*" or words to that effect. As a result of this evidence, the Tribunal considered on the balance of probabilities that Ms A had not misinterpreted an innocent gesture XXX from Dr Elmajee.

109. The Tribunal found it more likely than not that Dr Elmajee had pressed up against Ms A, as described by her. However, the Tribunal noted that Ms A's allegation that Dr Elmajee '*lunged*' appeared in her GMC witness statement, but not in her written statement to the Trust, or in the Trust's notes of the investigatory meeting on 3 January 2024. The Tribunal considered that Ms A's description of Dr Elmajee '*lunging*' towards her was inaccurate as it did not appear in her earlier accounts.

110. The Tribunal determined that on the balance of probabilities, Dr Elmajee did press up against Ms A's body. It was not satisfied however that there was sufficient evidence to demonstrate that Dr Elmajee had lunged towards Ms A.

111. The Tribunal therefore found paragraph 1bi of the Allegation not proved.

112. The Tribunal noted that, during her investigatory meeting with the Trust, Ms A did not mention about Dr Elmajee trying to kiss her until prompted by a question from a Trust investigator. Although Ms A had to be prompted in that way, Ms A had already made her allegation of an attempted kiss in her written statement to the Trust dated 15 December 2023. In addition, the Tribunal took the view that witnesses in investigation meetings often have to be prompted and that the fact that Ms A was prompted on 3 January 2024 did not fundamentally undermine her account of Incident 2.

113. The Tribunal considered that Ms A's accounts of Incident 2 were broadly consistent.

114. The Tribunal considered that whether or not Dr Elmajee had tried to kiss Ms A on the lips was a finely balanced decision given that there were no independent witnesses present. Taking all the evidence into account, including Incident 1 and the WhatsApp Message, the Tribunal preferred the evidence of Ms A and concluded, on balance, that Dr Elmajee had tried to kiss her on the lips.

115. The Tribunal therefore found paragraph 1bii of the Allegation proved.

Paragraph 2a of the Allegation

> *2. Your actions as set out at:*
> *a. paragraphs 1ai, 1aii, 1bi and / or 1bii were carried out without Ms A's consent*

116. The Tribunal took into account that there was no suggestion by Dr Elmajee that Ms A had consented to his actions, as described in paragraphs 1ai, 1aii and 1bii of the Allegation. The Tribunal noted that as it has found paragraph 1bi not proved, it falls in respect of this allegation.

117. The Tribunal therefore found paragraph 2a proved in respect of paragraphs 1ai, 1aii and 1bii but not proved in relation to 1bi.

Paragraph 2bi of the Allegation

> *2. Your actions as set out at:*
> *b paragraph(s) 1 and/or 1A:*

i *constituted sexual harassment as defined in Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms A*

ii *were sexually motivated;*

iii *were an abuse of your more senior position.*

118. The Tribunal considered whether Dr Elmajee's actions amounted to sexual harassment within the meaning of the Equality Act 2010. It first considered whether those actions amounted to 'unwanted conduct'.

119. In respect of Incident 1, Ms A said in her witness statement that:

> *'I felt flustered and was thinking 'what on earth has just happened'. Afterwards, I was a bit shaken. I wasn't terrified or anything, but I thought that it was a very strange interaction… I didn't report the incident at the time because I felt that I had dealt with it and I felt okay about it.'*

120. In respect of Incident 2, Ms A said in her written statement to the Trust that she pushed Dr Elmajee off and asked him to leave the XXX room, which he did.

121. The Tribunal was of the view that Dr Elmajee's actions towards Ms A during Incidents 1 and 2, amounted to unwanted conduct as his actions took place without Ms A's consent and led to her making a formal complaint to the Trust.

122. In relation to the WhatsApp Message, the Tribunal concluded that this had been sent to Ms A unsolicited. In her supplementary witness statement dated 5 August 2026 she described the WhatsApp Message as '*slightly odd and a little bit awkward*'. The Tribunal concluded from this description that sending the WhatsApp Message amounted to unwanted conduct on Dr Elmajee's part.

123. The Tribunal then considered whether Dr Elmajee's actions were of a 'sexual nature'. In respect of Incident 1, the Tribunal reminded itself of its finding that Dr Elmajee went to the XXX room to speak to Ms A, leant towards her, tried to kiss her on the lips after she turned around to face him and when she turned her head he kissed her on the cheek. He then said words to the effect, *'please one kiss'* (or words to that effect). The Tribunal considered that

attempting to kiss someone on the lips and asking for a kiss were intimate acts of a sexual nature.

124. In respect of Incident 2, the Tribunal concluded that Dr Elmajee's actions in trying to kiss Ms A on the lips, were also of a sexual nature. The Tribunal further concluded that the WhatsApp Message, in which Dr Elmajee described Ms A as an *'irresistable (sic) lady'* with a '*heart eyes'* emoji, was of a sexual nature because the message clearly conveyed his feelings of physical attraction towards her.

125. The Tribunal next considered whether Dr Elmajee's actions in relation to Incident 1, Incident 2 and the WhatsApp Message had the '*purpose or effect*' of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. The Tribunal took the view, on balance, that the '*purpose'* of Dr Elmajee's conduct had not been to violate Ms A's dignity or to create an environment for Ms A as described in s26(2) of the Equality Act 2010.

126. The Tribunal took into account those factors set out in s26(4) of the Equality Act namely the perception of Ms A, the other circumstances of the case and whether it was reasonable for Dr Elmajee's conduct to have the relevant effect on Ms A. The Tribunal noted that Incidents 1 and 2 had occurred in the workplace when Ms A was on her own, and that Dr Elmajee occupied a more senior position in the Trust than Ms A. The Tribunal took the view that it would be reasonable for Ms A to expect that she would not be subjected to unwanted conduct of a sexual nature whilst at work. The Tribunal considered that Dr Elmajee's conduct had been non-consensual, had led Ms A to feel that her personal space had been violated, and led her to make a formal written complaint to her employer. It took the view that Dr Elmajee's actions in relation to both Incident 1 and Incident 2 had the '*effect'* of violating Ms A's dignity and had created an offensive environment for her. Therefore, it concluded that Dr Elmajee's actions in relation to both Incident 1 and Incident 2 amounted to sexual harassment.

127. In respect of the WhatsApp Message the Tribunal was satisfied that Dr Elmajee's purpose in sending it had not been to violate Ms A's dignity or create the environment described in s26(2) of the Equality Act 2010. The Tribunal took into account Ms A's perception that the message was '*slightly odd and a little bit awkward*'. She accepted that she had responded with an innocuous response and told the Tribunal that she had forgotten about the message, until she inadvertently discovered it in August 2026, despite Incident 2, and the Trust and GMC investigations. Notwithstanding the sexual nature of the WhatsApp

Message, the Tribunal determined that in view of Ms A's response to it and her apparent indifference, it could not be said the WhatsApp Message had violated her dignity or had created an intimidating, hostile, degrading, humiliating or offensive environment for her.

128. The Tribunal therefore found paragraph 2bi proved in respect of paragraph 1 and not proved in respect of paragraph 1A of the Allegation.

129. When considering whether Dr Elmajee's actions were sexually motivated, the Tribunal reminded itself of the definition of that term set out in *Basson v General Medical Council [2018] EWHC 505* namely that "*sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship*."

130. The Tribunal was not satisfied that Dr Elmajee's actions at paragraph 1 were done in pursuit of sexual gratification. It did determine however that they were done in pursuit of a future sexual relationship given the sexual nature of his behaviour.

131. In respect of paragraph 1A, the Tribunal was satisfied that Dr Elmajee's actions were not in pursuit of sexual gratification. It was however of the view that the words and the emoji sent by Dr Elmajee were evidence that the WhatsApp Message was sent in pursuit of a future sexual relationship.

132. The Tribunal therefore found paragraph 2bii proved in respect of paragraphs 1 and 1A of the Allegation.

133. The Tribunal then considered whether Dr Elmajee's actions were an abuse of his more senior position. It was satisfied that Dr Elmajee was, as a senior registrar, in a more senior position than Ms A. The Tribunal concluded that Dr Elmajee's unwanted and sexually motivated conduct during Incidents 1 and 2, and by sending the unsolicited, sexually motivated WhatsApp Message to Ms A, was an abuse of his more senior position.

134. The Tribunal therefore found paragraph 2biii proved in respect of paragraph 1 and 1A of the Allegation.

The Tribunal's Overall Determination on the Facts

135. The Tribunal has determined the facts as follows:

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

1. Whilst working at The Royal Orthopaedic Hospital NHS Foundation Trust, Birmingham, on:
   a. 21 December 2022, you went to the XXX room to speak to Ms A and you:
      i. leant towards Ms A and tried to kiss her on the lips after she turned around in her chair to face you;
      Determined and found proved
      ii. kissed Ms A's cheek; **Determined and found proved**
      iii. said 'please one kiss', or words to that effect;
      Determined and found proved
   b. 21 September 2023, you approached Ms A in the XXX room, XXX and:
      i. lunged towards Ms A, pressing up against her body;
      Determined and found not proved
      ii. leant in and tried to kiss Ms A on the lips.
      Determined and found proved

1A. On 16 September 2023, you sent a WhatsApp message to Ms A which contained a photograph of her with the comment 'Irresistable [sic] lady', followed by a heart eyes emoji. **Determined and found proved**

2. Your actions as set out at:
   a. paragraphs 1ai, 1aii, 1bi and /or 1bii were carried out without Ms A's consent; **Determined and found proved in relation to 1ai, 1aii and 1bii. Found not proved in relation to 1bi.**
   b. paragraph(s) 1 and / or 1A:
      i. constituted sexual harassment as defined in Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms A; **Determined and found proved in respect of paragraph 1, and found not proved in respect of paragraph 1A**
      ii. were sexually motivated; **Determined and found proved**
      iii. were an abuse of your more senior position.
      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 - 26/08/2026

136. 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 Elmajee's fitness to practise is impaired by reason of misconduct.

The evidence

137. The Tribunal has reviewed its findings of fact as well as all the evidence previously provided.

Submissions on behalf of the GMC

138. Mr Garside reminded the Tribunal that the question at this stage is whether or not Dr Elmajee's fitness to practise is impaired by reason of his misconduct. He submitted that such a decision is not about either side proving anything, but is a decision for the Tribunal to make, having considered all the relevant factors. He referred the Tribunal to the *MPTS Guidance for Tribunals > Introduction* ('the Guidance Introduction') and in particular those parts of the Guidance Introduction which refer to sexual misconduct. Mr Garside reminded the Tribunal to keep in mind the overarching objective, all three limbs of which he submitted were engaged.

139. Mr Garside stated that the Tribunal must first decide whether or not there has been misconduct within the meaning of the Medical Act. He submitted that paragraphs 35 to 37 and paragraph 65 of *Good Medical Practice ('2013')* ('GMP') had been breached in this case. He said that misconduct is judged conventionally in a two-stage process. Firstly, whether there has been any breach of the behaviours expected of the doctor. Mr Garside stated that he did not intend to highlight the obvious findings of the Tribunal. However, he submitted that to make any other finding than that there had been a breach of the expected standards of behaviour by Dr Elmajee would be completely '*absurd*'. Secondly, he said, was whether the breach was serious. Mr Garside said that all the guidance and relevant knowledge of the Tribunal could only lead to a conclusion that Dr Elmajee's misconduct was serious. He submitted that any other finding would be '*absurd*'.

140. Mr Garside then referred the Tribunal to relevant paragraphs of the Guidance Introduction which he said were engaged in this case. He submitted that the Guidance Introduction confirms that most allegations of sexual misconduct have a starting point of a high level of seriousness and, therefore, fall at the higher end of the spectrum of seriousness. Further, he said that this meant that the starting point for assessing the current and ongoing risk to public protection will usually be high; where this was the case, the Tribunal could go on to consider evidence of relevant context known about the doctor. Mr Garside submitted that the only relevant context might be that XXX. He said that if this was a relevant factor, then it would come under the heading of context but he did not urge the Tribunal to put too much weight on it. Mr Garside submitted that this was just a factor which was not common to all such cases.

141. Mr Garside then referred the Tribunal to the relevant paragraphs of the *MPTS Guidance for Tribunals (Section three: MPT Hearings > Part B > Stage 2: Impairment > Steps 2(a) to (e)* ('the MPT Guidance'). He reminded the Tribunal that the first question it should answer is whether there is a legal basis for assessing whether the doctor is fit to practise i.e. whether there was misconduct in this case within the meaning of the Medical Act. He submitted that there was, for the reasons he had already set out. He stated that the Tribunal should consider the seriousness of the facts found proved and that this kind of sexual behaviour was clearly likely to be disruptive. He said that these were serious allegations.

142. Mr Garside stated that there was a time when female staff were almost expected to put up with bad behaviour by male staff, but that was no longer the case and that the GMC has made considerable efforts to tighten up its toleration of inappropriate behaviour. Further, he stated that the GMC had sought to bring to the attention of the profession that such behaviour is serious, both in its effect on the individuals who are targeted, and on the general ethos of hospitals and of medical practice.

143. Mr Garside submitted that Dr Elmajee has responded to the allegations against him by denying them. Mr Garside stated that if Dr Elmajee continued to deny the allegations, there may be doubts about the level of his insight, the effectiveness of his remediation, and the reality of any remorse. In respect of deciding where on the spectrum of seriousness the allegation lies, Mr Garside again reminded the Tribunal of the Guidance Introduction. He highlighted that the Guidance Introduction advises that cases of this type are always serious, and have an enormous potential for damage of various kinds, including to public confidence in the medical profession and the way in which the medical profession is regulated. In addition, Mr Garside said that the MPT Guidance states that *'certain types of behaviour*

represent such a serious departure from the professional standards that they will usually fall at the higher end of the spectrum of seriousness. This is often because the departure from the professional standards amounts to an abuse of or interference with an individual's dignity'. Mr Garside reminded the Tribunal that this was what it found existed in this case, including breaches of the fundamental tenets of the profession.

144. Mr Garside said that he was conscious of the fact that there was no *'hard cut-off'* between high-end seriousness and medium seriousness. He submitted that the Tribunal would need to consider where the borderline lay in this case. He referred the Tribunal to the MPT Guidance which sets out features which may increase the seriousness of the allegation. Mr Garside submitted that Dr Elmajee's behaviour was persistent or repeated, and that it was premeditated behaviour. Mr Garside said that premediated behaviour was characterised by the doctor having acted intentionally and with planning. He submitted that this applied in this case because sending the WhatsApp Message involved taking a photograph, '*doctoring it'*, and then sending the photograph to Ms A. Further, Mr Garside submitted said that Dr Elmajee's conduct had been predatory in that he had waited until Ms A was alone. Mr Garside also said that there was an abuse of professional position, for the reasons determined by the Tribunal, and that this had undermined collaborative working.

145. Mr Garside submitted that Dr Elmajee has avoided taking responsibility, hiding under the cloak of *'I do not remember'*. Mr Garside said that Dr Elmajee's approach had been to say that he was sure that he did not do anything, but if he did, he did not remember. Mr Garside stated that whilst it was possible that the first incident could have been forgotten by Dr Elmajee, the '*doctoring'* and sending of the photograph and the second incident, occurring later in time, are very unlikely to have been forgotten. He submitted that the conclusion of the Tribunal was likely to be that there was a high starting point for assessing risk, first, because of the repetition of Dr Elmajee's conduct, and second, because of '*damage'* to the medical profession.

146. Mr Garside submitted that Dr Elmajee has not shown any insight or taken any effective steps to mitigate the risk of similar events happening again. He said that Dr Elmajee was no longer working in the same Trust as Ms A and that it would be a matter for the Tribunal to decide whether the doctor was a risk to her, or to other female staff. Mr Garside submitted that there was little or no evidence that Dr Elmajee understands what happened and accepts how he could have acted differently. He said that the allegation might be capable of remediation, but that it would be hard to do so. Mr Garside submitted that Dr Elmajee had not remedied his misconduct and that it was likely that there would be a repetition. He

stated that there was no suggestion that Dr Elmajee had not kept his knowledge and skills up to date, as it was clear that he had done so.

147. Mr Garside submitted that in all the circumstances, all three limbs of the overarching objective were engaged. He said that there was nothing to persuade the Tribunal, on the evidence, that nothing like this was ever going to happen again. He submitted that Dr Elmajee's fitness to practise is clearly impaired, both on public interest grounds and on the grounds that a risk of repetition remained. Mr Garside stated said that this submission was supported by the fact that this case falls at the high end of the spectrum of seriousness. Mr Garside said that the robustness of Ms A's character, and the fact that she has moved on, should not be something which mitigates the risk to other members of the public.

Submissions on behalf of Dr Elmajee

148. Ms Chesnutt referred the Tribunal to the case of *Mallon v GMC [2007] CSIH17* which stated that there was no precise definition of misconduct, and that this enabled a panel to exercise its own independent judgement as to misconduct in any given case. She submitted that she did not shy away from the core proposition, which was that sexual touching was objectively serious. She stated, however, that sexual touching has various levels and degrees of seriousness, such that examples of sexual touching could be placed on a sliding scale. Ms Chestnutt invited the Tribunal to consider that it was dealing with one complainant only and two occasions of touching. She submitted that the most serious aspect of the conduct was, perhaps, the context in which it took place, i.e. that Ms A was alone in a room with Dr Elmajee. Ms Chestnutt said that the touching itself amounted to, at its height, kissing on the lips. She said it appeared that on each occasion the conduct was short-lived, there was no apparent attempt to escalate the sexual touching beyond kissing, or the embraces associated with kissing, and there was no evidence from Ms A that Dr Elmajee became angry when she rebuffed him. Ms Chestnutt submitted that this was relevant as it spoke to the overall seriousness of the conduct and the effect that it would have had upon Ms A.

149. In respect of Incident 2, Ms Chestnutt submitted that the Tribunal's determination that Dr Elmajee did not in fact lunge towards Ms A and pressed up against her - that is to say the only fact proved was around Doctor Elmajee leaning in and trying to kiss her - is what renders his conduct less serious. Ms Chestnutt submitted that Ms B was the recipient of information regarding both incidents and her view was that it had, '*bothered Ms A'*. Ms Chestnutt submitted that the assessment of Ms A's demeanour spoke not only to the level of seriousness, but whether in fact Dr Elmajee's actions did amount to misconduct.

150. Ms Chestnutt reminded the Tribunal that it had determined that the WhatsApp Message did not constitute sexual harassment. She said that the Tribunal was therefore entitled to treat it as a separate issue when assessing whether it amounted to misconduct. She submitted that a message which was sent in order to complement Ms A's appearance, and to which she responded with a crying/ laughing emoji, did not cross the threshold into misconduct.

151. Ms Chestnutt referred the Tribunal to the definition of misconduct as set out in the case of *Nandi v GMC [2004] EWHC 3217 Admin*, namely conduct that would be considered deplorable by fellow practitioners. She said that the word *'deplorable'* evoked a specific reaction that other practitioners would find the conduct truly shocking. Ms Chestnutt submitted that when assessed on the spectrum of seriousness, even cumulatively, the Tribunal should assess these matters as not amounting to misconduct. Ms Chestnutt also referred the Tribunal to the case of *Cohen v GMC [2008] EWHC 581 Admin* in which it was said that a finding of misconduct does not lead inexorably to a finding that a registrant's fitness to practise is impaired. She reminded the Tribunal that it was assessing two different tests at the impairment stage before deciding whether Dr Elmajee's fitness to practise is currently impaired.

152. Ms Chestnutt reminded the Tribunal that the matters found proved date back to September 2023 and that, since that time, Dr Elmajee has continued to practise within his specialism of orthopaedic surgery. She said that Dr Elmajee has been practising without restrictions throughout these proceedings, which she submitted was highly relevant to the question of whether his fitness to practise is currently impaired. Ms Chestnutt referred the Tribunal to the anonymous ISCP feedback Dr Elmajee had received from multiple individuals, and to his testimonial evidence which states that Dr Elmajee is very professional in dealing with his colleagues, XXX. Further, she highlighted that the testimonial said that there were no concerns about Dr Elmajee's clinical skills, performance, behaviour or conduct.

153. Ms Chestnutt conceded that this was not the sort of case where she could address the Tribunal on remorse or insight as Dr Elmajee denied all matters before the Tribunal. However, she highlighted an excerpt from Dr Elmajee's witness statement in which he has reflected, to the extent that he was able to. She said that Dr Elmajee had stepped back from voluntarily hugging or kissing colleagues XXX. She submitted that this was relevant to any risk of repetition and may also enable public trust and confidence to be maintained in the profession, insofar as Dr Elmajee was more focused than ever in maintaining his professionalism. In addition, Ms Chestnutt submitted that this demonstrated some steps

taken in mitigation by Dr Elmajee. She said that when taking all of this together and assessing whether or not Dr Elmajee's fitness practise is impaired, the lack of evidence of any recurrence, between the second incident and now, provided a level of confidence that Dr Elmajee is a safe and effective practitioner.

The relevant legal principles

154. There is no burden or standard of proof at this stage of the proceedings, and the decision of impairment is a matter for the Tribunal's judgment alone. Further, it should determine whether the doctor's fitness to practise is impaired today, taking into account their conduct at the time of the events and any relevant factors since then, such as whether the matters are remediable, have been remedied and if there is any likelihood of repetition.

155. The Tribunal will only make a finding of impairment where there is a legal basis for doing so and where a decision is reached that the doctor poses a current and ongoing risk to one or more of the three parts of public protection which is likely to require restrictive action in response. The three parts of public protection are to protect, promote and maintain the health, safety and well-being of the public; to promote and maintain public confidence in the profession; and to promote and maintain proper professional standards and conduct for members of the profession.

156. In approaching the decision on Dr Elmajee's alleged misconduct, the Tribunal was mindful of the two-stage process to be adopted: first, whether the facts as found proved amounted to misconduct, and whether the misconduct was serious, and second, whether that serious misconduct poses a current and ongoing risk to public protection requiring restrictive action in response and therefore could lead to a finding of impairment.

157. To assess whether Dr Elmajee poses any current and ongoing risk to public protection which may require restrictive action in response, the Tribunal will consider:

- where on the spectrum of seriousness the allegation lies, based on the facts found proved, the impact of any relevant context known about Dr Elmajee and/or his working environment, and
- how Dr Elmajee has responded to the allegations.

The Tribunal's determination on impairment

<u>The MPTS Guidance on impairment: Steps 2A to 2E</u>

158. At all times, the Tribunal had regard to the *MPTS Guidance for Tribunals (Section three: MPT Hearings > Part B > Stage 2: Impairment > Steps 2(a) to (e) ('the MPT Guidance').*

Step 2a: legal basis for considering impairment

159. The Tribunal had regard to the MPT Guidance which sets out grounds of impairment. It states:

> *'Misconduct*
> *This is about behaviour. It could consist of acts and/or omissions arising in or outside of a doctor's working life and includes failing to act appropriately or demonstrating behaviour that falls short of what can reasonably be expected…'*

160. The Tribunal then reminded itself of its findings at Stage 1, namely that, in respect of Incident 1, Dr Elmajee leant towards Ms A and tried to kiss her on the lips after she turned around in her chair to face him, kissed her on the cheek and said, '*please one kiss'*, or words to that effect. Further, in respect of Incident 2, that Dr Elmajee approached Ms A in the XXX room on 21 September 2023, XXX, and leant in and tried to kiss Ms A on the lips. The Tribunal determined that Dr Elmajee's actions in relation to both incidents were carried out without Ms A's consent, constituted sexual harassment, were sexually motivated, and were an abuse of Dr Elmajee's more senior position.

161. The Tribunal also found that the WhatsApp Message was sexually motivated, unsolicited and was an abuse of Dr Elmajee's more senior position.

162. The Tribunal considered whether the conduct it has found proven against Dr Elmajee amounted to misconduct. It had regard to GMP and was of the view that Dr Elmajee had breached paragraphs 1, 35, 36, 37 and 65:

> *'1. Patients need good doctors. Good doctors … maintain good relationships with … colleagues, are … trustworthy, and act with integrity and within the law.'*
>
> *'35. You must work collaboratively with colleagues, respecting their skills and contributions.*
>
> *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.'

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

163. The Tribunal was mindful that the Guidance Introduction and MPT Guidance came into effect in November 2025, was not in place at the time of events, and refers to versions of GMP and GMC guidance about Maintaining Professional Boundaries that were also not in force at the relevant time. However, the Tribunal took the view that the following paragraph of the Guidance Introduction was relevant and was accurate at the time of the events, notwithstanding more recent and updated GMC guidance:

'62. All forms of sexual misconduct in medicine, including all forms of sexual harassment, are always unacceptable and can be criminal in nature.'

164. The Guidance Introduction also sets out:

'*Seriousness*
63. Whilst a range of behaviour can be seen, the nature of the departure from the professional standards usually means these concerns or allegations fall at the higher end of the spectrum of seriousness. Even a single incident of sexual misconduct can have a significant harmful impact and pose a high level of risk to public protection.'

165. The Tribunal reminded itself that Dr Elmajee's conduct towards Ms A took place within a work environment, whilst she was alone. In addition, that Dr Elmajee's conduct was sexually motivated, repeated, amounted to an abuse of his more senior position and (in relation to Incidents 1 and 2) amounted to sexual harassment. The Tribunal also noted that Dr Elmajee sent the WhatsApp Message to Ms A, which was unsolicited and sexually motivated, albeit falling short of the statutory definition of sexual harassment. The Tribunal was of the view that individuals working in the medical profession had the right to attend work and not be subject to this type of behaviour. Further, that members of the profession would justifiably regard repeated, unwanted and uninvited sexually motivated behaviour towards a junior colleague to be deplorable.

166. The Tribunal had regard to the Guidance Introduction in which it set out the impact on public protection:

'Protecting, promoting and maintaining the health, safety and well-being of the public (patient safety)

Sexual misconduct can cause serious harm to the physical, emotional and/or psychological wellbeing of a patient or member of the public, including colleagues… Where sexual misconduct is directed towards colleagues in addition to the harm it causes the individual(s) concerned, it may impact on patient safety as it can cause breakdowns in communication and/or in the collaborative working needed to deliver safe patient care…

The nature of the behaviour means it often gives rise to a risk of repetition of similar behaviour towards the individual(s) concerned, and of the behaviour being directed at patients and other members of the public.

Promoting and maintaining public confidence in the profession (public confidence)

Patients must have confidence in doctors to behave professionally towards them, especially during consultations and where a doctor needs to carry out an intimate examination. Sexual misconduct arising inside a doctor's professional practice will result in a breakdown of trust and undermine public confidence.'

Promoting and maintaining professional standards and conduct (uphold professional standards)

Sexual misconduct towards any individual will undermine the doctor's integrity and amount to a significant breach of professional standards.'

167. The Tribunal was of the view that whilst there was no specific evidence that Dr Elmajee's conduct had caused serious harm to Ms A, it nevertheless had the potential to do so. The Tribunal considered that whilst Ms A appeared to be a robust character and, for example, had quickly forgotten about the WhatsApp Message, this did not diminish the inappropriateness of Dr Elmajee's conduct either in relation to that message or Incidents 1 and 2. In addition, the Tribunal reminded itself of Ms A's evidence that she had been prompted to raise her concerns in writing to the Trust because of her fear that Dr Elmajee might repeat his conduct with others. The Tribunal also took into account the impact of Dr Elmajee's conduct on Ms B (who was made aware of Incidents 1 and 2) and, more generally, the impact on collaborative working XXX.

168. The Tribunal considered that any member of the public would be concerned to learn of Dr Elmajee's conduct. Therefore, the Tribunal determined that such conduct risked undermining trust and confidence in the medical profession. Further, the Tribunal took the

view that Dr Elmajee's conduct had undermined his professional standing and had amounted to a significant breach of GMP.

169. Having considered Dr Elmajee's conduct, the relevant paragraphs of the Guidance Introduction and MPT Guidance, and the breaches of GMP, the Tribunal determined that his actions amounted to serious professional misconduct.

170. The Tribunal was therefore satisfied that there was a legal basis for considering impairment.

Step 2b Where on the spectrum of seriousness does the allegation lie?

171. The Tribunal had regard to the relevant paragraphs of the MPT Guidance, in particular paragraphs 15, 17, 18, 23, 24, 26, 27 and 31:

> *'15. Within the range of matters that are serious enough to pose a current and ongoing risk to one or more of the three parts of public protection, some matters are more serious than others. This means that allegations about a doctor's fitness to practise fall on a spectrum of seriousness (the lower end, mid-range or higher end).*
>
> *17. The assessment of where on the spectrum of seriousness the allegation lies is based on the facts found proved at stage one of the hearing. To reach a view on where on the spectrum of seriousness an allegation lies (the lower end, mid-range or higher end), an MPT will need to consider the nature of the allegation and any features of the allegation that increase seriousness.*
>
> *18. Where the allegation relates to a doctor's behaviour … the MPT needs to consider the extent of any departure from the professional standards expected. These can be found in Good medical practice and the more detailed guidance.*
>
> *23. The risk to patients and members of the public arising from the doctor's departure from the professional standards will be the primary consideration to the MPT's assessment of where on the spectrum of seriousness an allegation lies (the lower end, mid-range or higher end). This means the actual consequences or outcome for an individual patient should not be considered in isolation and the MPT should attach more weight to evidence about the risk to patients and members of the public associated with the specific departure from the professional standards.*

The nature of the allegation

24. A view on the starting point for assessing the seriousness of a proven allegation should be reached based on the nature of the allegation by looking at the individual circumstances of the case.

26. Certain types of behaviour or poor performance represent such a serious departure from the professional standards that they will usually fall at the higher end of the spectrum of seriousness. This is often because the departure from the professional standards amounts to an abuse of, or interference with an individual's dignity, and/or breaches the fundamental tenets of the professions such as failing to act with honesty, integrity and uphold the law.

27. The MPT's initial view on the apparent seriousness based on the nature of the allegation can then change in light of the full evidential picture, including the presence of any features which may increase seriousness.'

'Allegations usually falling at the higher end of the spectrum of seriousness

31. Allegations that are likely to fall at the higher end of the spectrum of seriousness include, but are not limited to:

- *sexual assault, indecency or sexual harassment*

  …
- *an improper sexual or emotional relationship with a colleague, often seen where there is a close working relationship with an imbalance of power'*
-

172. The Tribunal also considered paragraphs 66 and 69 of the Guidance Introduction to be engaged:

'66. Most allegations relating to sexual misconduct have a starting point of a high level of seriousness and therefore fall at the higher end of the spectrum of seriousness. This means the starting point for assessing current and ongoing risk to public protection will usually be high.'

'69. The level of risk associated with a sexual misconduct allegation will generally be medium or high'.

173. Having considered relevant parts of the Guidance Introduction and the MPT Guidance, the Tribunal was of the view that the starting point was that Dr Elmajee's misconduct fell at the higher end of the spectrum of seriousness. This was because Dr Elmajee's conduct had involved repeated instances of sexually motivated behaviour in the workplace, sexual harassment, and an abuse of position towards a more junior colleague.

174. The Tribunal then considered features which may increase the seriousness of an allegation as set out in the MPT Guidance. It was of the view that the following features were relevant. Dr Elmajee's behaviour had been persistent or repeated. In addition, he had demonstrated a degree of premediated behaviour in connection with the creation and sending of the WhatsApp Message. The Tribunal was also of the view that Dr Elmajee's conduct could be regarded as predatory, given that he had taken advantage of Ms A, on two occasions, whilst she was alone at work. In addition, the Tribunal considered that Dr Elmajee had abused his professional position as there had been a power imbalance between himself and Ms A, and that his actions had the potential to undermine collaborative working.

175. Further, the Tribunal took the view that Dr Elmajee has attempted to avoid taking responsibility for his behaviour. It agreed with Mr Garside's submission that Dr Elmajee has hidden under the cloak of *'I do not remember'*, and that Dr Elmajee's approach had been to say that he was sure that he did not do anything, but if he did, he did not remember.

176. In view of these factors, the Tribunal maintained its finding that Dr Elmajee's misconduct in this case remained at the higher end of the spectrum of seriousness.

<u>Step 2c - What is the impact of any relevant context known about Dr Elmajee and/or their working environment?</u>

177. The Tribunal then had regard to paragraphs 44 and 46 of the MPT Guidance, which states:

> '*44. In all cases where the allegation falls at the higher end of the spectrum of seriousness, the starting point for assessing current and ongoing risk to public protection will be high. Evidence of relevant context known about the doctor and/or their working environment and evidence of how the doctor has responded to the concern that decrease risk, will usually have less impact and carry less weight. This is because the risk to public protection arising from allegations at the higher end of the spectrum of seriousness are generally more difficult to mitigate and address.*

46. The MPT should consider information known to it about relevant context and consider if, and how, it has impacted the doctor's behaviour, performance, or health. The impact that relevant context might have on a doctor can be negative or positive so, where it does have an impact, it can increase or decrease the level of current and ongoing risk posed to public protection.'

178. XXX

179. The Tribunal noted that Dr Elmajee has no previous fitness to practise history and there was no evidence of any other complaints about him before the Tribunal. The Tribunal also took into account the positive feedback about Dr Elmajee from colleagues, and the positive testimonial from his former supervisor. This evidence suggested to the Tribunal that Dr Elmajee is a good clinician. The Tribunal reminded itself however that the matters before it did not relate to Dr Elmajee's clinical competence and that good clinical skills did not mitigate repeated instances of sexual misconduct towards a more junior colleague.

180. It also had regard to paragraph 67 of the MPT Guidance:

'67. In cases where there is evidence about the doctor's role and experience which may decrease the level of risk the doctor poses to one or more of the three parts of public protection, this will usually have less impact, and therefore carry less weight, where the allegation falls at the higher end of the spectrum of seriousness and therefore the starting point for assessing current and ongoing risk to public protection is high. This is because the risk to public protection arising from these concerns is generally more difficult to mitigate'.

181. Aside from the feedback and testimonial evidence, the Tribunal could identify no other relevant context that might affect its assessment of where on the spectrum of seriousness Dr Elmajee's misconduct lies. Therefore, the Tribunal maintained the view that Dr Elmajee's misconduct remained at the higher end of the spectrum of seriousness.

Step 2d - How has Dr Elmajee responded to the allegation(s)?

182. In determining how Dr Elmajee has responded to the allegations, the Tribunal had regard to Paragraph 74 of the MPT Guidance, which sets out:

'74. The MPT should consider the evidence available to them to establish if the doctor has:

a. shown insight into their own practice, behaviour and/or impact of a health condition

b. taken steps which have reduced the risk of similar allegations occurring again (remediation), such as participating in training, supervision, coaching or mentoring relevant to the allegation, and

c. kept their knowledge and skills up to date.'

183. The Tribunal first considered the level of Dr Elmajee's insight. The MPT Guidance at paragraph 77 defines insight as follows, *'Does the doctor understand what happened and accept how they could have acted differently?'* Paragraph 81 of the MPT Guidance states that insight involves a practitioner showing, where relevant, that they have:

- *'considered the allegation, understanding what went wrong and accept they should have acted differently*
- *fully understood the impact or potential impact of their behaviour…*
- *empathy for any individual affected, for example by apologising*
- *taken, or are taking, steps to remediate and to identify how they will act differently in the future to avoid similar issues arising*
- *…*
- *co-operated with earlier investigations into the allegation (if they had the opportunity to do so) and engaged with the GMC's investigation, and/or*
- *self-referred to their employer and/or the GMC'.*

184. The Tribunal had regard to the following comments made by Dr Elmajee in his witness statement:

'…I do not wish to speculate why Ms A has raised those allegations against me but I can only assume she has misinterpreted what happened…'
'…I have reflected on my actions historically when I would on occasions physically hug colleagues or kiss them on the cheek [XXX]. I confirm I have taken a step back to avoid doing this in the future to avoid this being misconstrued and to better protect professional boundaries. My intentions have always been to create a happy positive working environment with strong relationships with colleagues [XXX]…'

185. The Tribunal considered that whilst this demonstrated a degree of reflection, it did not provide meaningful evidence that Dr Elmajee understood why his actions towards Ms A were inappropriate, nor any real reflection on how he could have acted differently towards her. The Tribunal concluded that the issue was not about Dr Elmajee needing to adjust his approach to innocent interactions with colleagues (albeit ones that that could be misconstrued). Rather, Dr Elmajee needed to remediate his sexually motivated conduct towards Ms A and to develop insight into why he had behaved towards her in that way. The Tribunal took the view that there was an element of 'victim blaming' in Dr Elmajee's statement insofar as he was suggesting that Ms A may have misconstrued his intentions. This was particularly given that Dr Elmajee said that he did not recall any specific actions by him towards Ms A that may have led to any such misunderstanding.

186. The Tribunal had before it no evidence of any genuine regret, remorse or apology. The Tribunal took into account that Dr Elmajee has denied the allegations against him and is entitled to advance a robust defence to these proceedings. However, it noted that Dr Elmajee had not even apologised to Ms A for the possible misunderstanding to which he had referred in his witness statement.

187. The Tribunal considered the second bullet point of paragraph 93 of the MPT Guidance to be engaged:

> *'93. In some circumstances, it may be reasonable to conclude that a doctor lacks genuine, or any, insight. This may be because there is evidence they have:*
> *…*
> - *Tried to minimise the seriousness or impact of their behaviour…'*

188. The Tribunal was of the view that Dr Elmajee has demonstrated a lack of openness about the index events and had tried to minimise the seriousness of his behaviour saying it either did not happen or that he could not remember. In addition, the Tribunal recalled Dr Elmajee's oral evidence in which he repeatedly declined to confirm that the photograph in the WhatsApp Message was of Ms A, and had initially refused to accept that he had been in a more senior role at the Trust than her.

189. The Tribunal concluded that Dr Elmajee has developed no insight into the index events or how he could have acted differently.

190. The Tribunal also noted that paragraph 94 of the MPT Guidance which states:

'94. Where there is a lack of insight, this may have the impact of increasing the level of current and ongoing risk to public protection posed by the doctor.'

191. The Tribunal next considered the issue of remediation.

192. The Tribunal had regard to paragraph 109 of the MPT Guidance and was of the view that they were all engaged in this case:

'109 Cases involving the following features can be more difficult to remediate:

- *there is a high risk of harm to patients due to the doctor's deliberate, reckless, persistent, or repeated behaviour*
- *the nature of, or circumstances giving rise to, the allegation suggests there is an underlying issue with the doctor's attitude, and/or*
- *the allegation falls at the higher end of the spectrum of seriousness and is capable of damaging public confidence in the professions.'*

193. The Tribunal took the view that Dr Elmajee's misconduct is potentially remediable, but that is difficult to remediate, particularly in view of its repeated and sexually motivated nature.

194. The Tribunal had before it no evidence of any training courses or other learning undertaken by Dr Elmajee to better understand his behaviour or to develop insight into why he acted as he did.

195. The Tribunal reminded itself that Dr Elmajee had provided positive testimonial evidence, colleague feedback including from Ms A and Ms B, has kept his knowledge and skills up to date, and has no previous fitness to practise history. However, the Tribunal was of the view that these factors carried little weight in Dr Elmajee's case, and did not remediate his misconduct, which consisted of behaviour carried out without Ms A's consent, sexual harassment, sexually motivated behaviour and an abuse of his more senior position.

196. It took the view that Dr Elmajee had not yet started to reflect upon his misconduct nor had he taken any meaningful steps towards remediation that would help him develop insight and therefore reduce the risk of repetition.

197. The Tribunal next considered the risk of repetition and had regard to paragraphs 117, 118 and 128 of the MPT Guidance:

'117. Whether the allegation is highly unlikely to be repeated and the impact of this will need to be assessed based on the individual circumstances of the case. In many cases, a conclusion that the allegation is highly unlikely to be repeated will have the impact of decreasing the level of current and ongoing risk to public protection posed by the doctor. However, where the allegation falls at the higher end of the spectrum of seriousness and therefore the starting point for assessing current and ongoing risk to public protection is high, a conclusion that an allegation is highly unlikely to be repeated may be given less weight and therefore have less impact on the assessment of current and ongoing risk.

118. Where there is no evidence of a doctor having completed or started any remediation, it will often be reasonable to conclude that a risk of repetition exists. This may increase the level of current and ongoing risk to public protection posed by the doctor.'

'128. However, where the allegation falls at the higher end of the spectrum of seriousness and therefore the starting point for assessing current and ongoing risk to public protection is high, these factors may carry less weight and therefore have less impact on the MPT's assessment of current and ongoing risk.'

198. In the absence of any sufficient evidence of insight, remediation, or steps taken to reduce the risk of repetition, the Tribunal determined that there remains a significant risk of repetition and, consequently, a continuing risk to public protection.

Step 2e - Tribunal's decision as to whether Dr Elmajee poses any current and ongoing risk to public protection which may require restrictive action in response and its finding on impairment

199. The Tribunal next had to consider, overall, whether Dr Elmajee poses any current and ongoing risk to public protection which may require restrictive action on his registration, and make its decision on impairment.

200. The Tribunal reviewed its conclusions at Steps 2(a) to (d) above. It has found that Dr Elmajee's misconduct, which involved sexual harassment, sexually motivated behaviour and an abuse of his professional position, lies at the high end of the spectrum of seriousness.

201. The Tribunal had regard to paragraph 134 of the MPT Guidance, which states:

'134. In cases where the allegation falls at the higher end of the spectrum of seriousness, the starting point for assessing current and ongoing risk to public protection will be high. Evidence of relevant context that decreases risk and evidence of insight and remediation that decreases risk may have less impact and carry less weight because these types of allegations can be more difficult to remediate. Evidence of the doctor having kept their knowledge and skills up to date may also be less relevant. This should be considered by the MPT when they are reaching a view on risk and a conclusion that the doctor poses a current and ongoing risk to one of more of the three parts of public protection requiring restrictive action in response may be needed, particularly as the allegation is likely to engage public confidence.'

202. The Tribunal reminded itself of the table in paragraph 36 of the MPT Guidance under the heading *'undermining collaborative working'* which states that *'Behaviour that undermines colleagues or is otherwise obstructive to effective team working, can directly or indirectly have a negative impact on patient safety'*. The Tribunal took the view that Dr Elmajee's misconduct had impacted upon Ms A and Ms B and the working dynamics of the XXX team in which they worked alongside Dr Elmajee. Whilst there is no evidence that Dr Elmajee's misconduct directly impacted upon patient care, the Tribunal was of the view that it had the ability to do so indirectly by undermining collaborative working that is needed to deliver safe patient care.

203. In respect of public confidence in the profession, the Tribunal was of the view that Dr Elmajee's misconduct has brought the profession into disrepute and that he has breached one of the fundamental tenets of the medical profession. His actions have risked damaging the reputation of the profession and undermining trust in the profession.

204. The Tribunal took into account that patients must have confidence in doctors to behave professionally towards them, especially during consultations and where a doctor needs to carry out an intimate examination. It considered that a reasonable member of the public, aware of all the circumstances in this case, would be very concerned by Dr Elmajee's misconduct. The Tribunal determined that public confidence would be undermined if a finding of impairment was not made in this case.

205. In respect of upholding proper professional standards and conduct, the Tribunal was of the view that Dr Elmajee's misconduct represented a serious departure from the standards of conduct expected of medical practitioners. The Tribunal considered that a finding of

impairment is required to send a clear signal to Dr Elmajee, the profession, and the public of the unacceptability of his misconduct.

206. The Tribunal concluded that Dr Elmajee has in the past acted and is liable in the future to act so as to put patient care at unwarranted risk of harm as a result of disruptive collaborative working; has in the past brought and is liable in the future to bring the medical profession into disrepute; and has in the past breached and is liable in the future to breach one of the fundamental tenets of the medical profession.

207. In all the circumstances, the Tribunal concluded that the current and ongoing risk posed by Dr Elmajee to public protection is high. A finding of impairment is necessary to uphold all three elements of public protection.

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

Determination on Sanction - 28/08/2026

209. This determination will be handed down in private pursuant to Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 ('the Rules') as matters in respect of XXX form part of this determination.

210. Having determined that Dr Elmajee'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.

Applications at this stage of the hearing

211. At the start of the sanction stage, Ms Chesnutt made an application pursuant to Rule 41 of the Rules for matters which relate to XXX to be heard in private. Mr Garside made no objection and the Tribunal granted the application.

Submissions on behalf of the GMC

212. Mr Garside referred the Tribunal to its determination on impairment which, he said, he adopted regarding seriousness, remediation, remorse and insight which were relevant to

sanction. He then referred the Tribunal to the relevant paragraphs of the Guidance Introduction in respect of sexual misconduct, including paragraph 73, which states, '*Because the level of current and ongoing risk to public protection will generally be medium or high, this will require consideration of suspension or erasure. In cases where sexual misconduct is found to be sexually motivated, the inherent seriousness is likely to be high and make any outcome short of erasure inappropriate*.' Mr Garside submitted that this is a case where any outcome short of erasure would be inappropriate.

213. Mr Garside referred the Tribunal to the case of *GMC and Anor v Gilbert [2026] EWCA CIV 53.* He stated that in that case, the original Tribunal had imposed a sanction of eight months suspension without a review, and that the matter proceeded to the Court of Appeal even though, by that time, Mr Gilbert's suspension had been extended to 12 months by the High Court and in 2025 an MPT found Mr Gilbert was no longer impaired. Mr Garside reminded the Tribunal however, that in that case, the Courts and the original Tribunal were dealing with a different set of guidelines to those before this Tribunal. He submitted that the Gilbert case provided that a sanction of erasure is not inevitable on every occasion, although Mr Garside stated that it was the right sanction in this case. In addition, he said that there was a substantial difference between *Gilbert* and this case because, in *Gilbert*, the doctor was found to have at least partial insight, had taken some (albeit incomplete) steps to remediate, and had accepted some wrongdoing. Mr Garside reminded the Tribunal that, in contrast, Dr Elmajee has never accepted that he did anything wrong and that the Tribunal had addressed his level of insight, remediation and remorse at the impairment stage.

214. Mr Garside invited the Tribunal, when considering sanction, to remind itself of its finding that there is a real risk of repetition, which makes this case different to the case of *Gilbert*. Mr Garside stated that the Tribunal should consider the situation going forward when considering all three limbs of public protection. He submitted that allowing Dr Elmajee back into practice with or without conditions, or with or without a review, would undoubtedly lead to a risk of further inappropriate behaviour. Mr Garside said that it might also *'raise eyebrows'* amongst members of the public who are interested in the regulation of the medical profession, and might also fail to send the right message to medical practitioners. Mr Garside added that this kind of behaviour cannot be tolerated and was a fundamental breach of the rules and standards to be expected of a doctor, rather than a case of *'teasing'* or '*banter*'.

215. Mr Garside submitted that the general thrust of what the Court of Appeal were considering in *Gilbert* appears in paragraph 8 of its judgment. Mr Garside acknowledged that

there were more instances of 'bad behaviour' in *Gilbert*, than in this case, but the original Tribunal in *Gilbert* had determined that the conduct was capable of remediation. Mr Garside highlighted that Mr Gilbert had also produced a reflective statement that demonstrated that he had, to some extent, remediated. Further, Mr Garside highlighted although Mr Gilbert had shown some insight about the impact of his behaviour on others, the original Tribunal cast doubt on one particular aspect of his reflective statement and was not satisfied that Mr Gilbert's insight was fully developed. Mr Garside submitted that in this case matters were more serious as there has been no remediation, insight has not even begun, and Dr Elmajee has not shown sufficient remorse so as to apologise to Ms A. Mr Garside referred the Tribunal to the relevant sanctions banding in the Guidance Introduction which, given the Tribunal's findings, indicates a sanction of suspension for 12 months or erasure. Mr Garside concluded in saying that, in light of all the circumstances the Tribunal have found to exist, the only appropriate sanction is erasure and anything less would be inappropriate.

Submissions on behalf of Dr Elmajee

216. Ms Chestnutt reminded the Tribunal that it would primarily be concerned with where the public interest lies in terms of imposing the appropriate level of sanction against Dr Elmajee. She submitted that the public interest cuts both ways. She referred the Tribunal to the case of *Giele v GMC [2005] EWHC 2143 (Admin)*, in which Collins J stated, *'the existence of a public interest in not ending the career of a competent doctor will play a part'.* Ms Chestnutt reminded the Tribunal that there were no concerns whatsoever about Dr Elmajee's clinical practice. She said that Dr Elmajee has been working towards becoming a consultant for 12 years, which has been a long-standing career ambition, and which was very much within his reach, if he were allowed to continue in clinical practice.

217. Ms Chestnutt referred the Tribunal to the Sanctions Guidance which, she said suggests that sexual harassment is high on the spectrum of seriousness. She acknowledged that the Tribunal's starting point was a high assessment of risk when considering whether there was an ongoing risk to the public, and she confirmed that she was not inviting the Tribunal to '*go behind that*'. Ms Chestnutt did however invite the Tribunal to temper the guidance with other core facts about Dr Elmajee, namely, that he has been practising without restriction since September 2023 and the nature of the contact with Ms A, i.e. that it involved kissing and embraces associated with kissing, which were less serious than other forms of sexual contact. Ms Chestnutt said that there may be some scenarios where hugging and / or kissing a colleague, albeit perhaps on the cheek, might be considered appropriate in a professional context. She said that there were many shades of grey. Ms Chestnutt added that

Dr Elmajee has also voluntarily desisted from such contact, which went a long way to maintaining the public's trust and confidence in the profession.

218. Ms Chestnutt submitted that when assessing the appropriate sanction, the impact of erasure from the register would be particularly severe upon Dr Elmajee. She provided the Tribunal with his current personal, family and financial circumstances and said that his family are dependent on him and on his income. Ms Chestnutt submitted that Dr Elmajee has XXX. In respect of proportionality, Ms Chestnutt acknowledged that it would be '*absurd*' for her to suggest that no sanction would be appropriate. She reminded the Tribunal that each sanction must be considered in turn from the least serious in order to achieve what was a proportionate outcome.

219. Ms Chestnutt referred the Tribunal to the following extract from the GMC's Sanctions Guidance, which has now been superseded by the MPT Guidance:

> *'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…'*

220. Whilst Ms Chestnutt acknowledged to the Tribunal that this quotation was guidance that had been superseded, she nevertheless submitted that the principle still holds true in that a short suspension could still have the effect of maintaining the public's trust and confidence in the profession, it being a sufficiently punitive sanction in order to send that message. She said that this was because, as the Tribunal has found, there has been a marked departure from GMP. Ms Chestnutt submitted, however, that the matters in this case were not the most serious form of sexual misconduct encountered before a Tribunal of this sort. She urged the Tribunal to give serious consideration to a short period of suspension on Dr Elmajee's registration, as opposed to immediate erasure.

221. Ms Chestnutt acknowledged that, based on the seriousness of this type of misconduct, the MPT Guidance suggests a range of a 12-month suspension to erasure. She said that she was not shying away from the '*thorny*' topics of remediation and insight, given Dr Elmajee's denial of these matters. She stated however that Dr Elmajee has been reading all relevant guidance with care, '*which says a great deal about the standards expected of a registered doctor*'. Ms Chestnutt added that Dr Elmajee has refreshed his understanding, in particular of GMP, and has been reminded, in very clear terms, through the evidence in this case, what does and does not amount to acceptable professional conduct.

222. Ms Chestnutt invited the Tribunal to consider a suspension with a review, as Dr Elmajee would require relevant training around appropriate behaviours in the workplace and sexual harassment. She said that this would serve as a *'final safety valve'* to satisfy any future Tribunal that Dr Elmajee's fitness to practise was no longer impaired, before allowing him to return to practice.

The Tribunal's determination on sanction

223. At the impairment stage, the Tribunal determined that all three parts of public protection were engaged in this case. It is for the Tribunal now to consider what regulatory action, if any, is needed to protect the public.

224. The Tribunal accepted the Legally Qualified Chair's legal advice and also the procedure to be adopted under the MPT Guidance *(MPT Hearings > Part C: stage three – sanction > Step 3: decide on sanction)*. It has borne in mind that 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.

225. The Tribunal also had regard to the Guidance Introduction *(Guidance introduction > Protecting the public in specific case types > Case type 1: sexual misconduct).* It had particular regard to paragraphs 72, 73 and 75 of the Guidance which state:

> *'72. The proportionate sanction in response to an allegation of sexual misconduct will depend on the extent of the doctor's behaviour and the impact it's assessed to have on each of the three parts of public protection.*
>
> *73. Because the level of current and ongoing risk to public protection will generally be medium or high, this will require consideration of suspension or erasure. In cases where sexual misconduct is found to be sexually motivated, the inherent seriousness is likely to be high and make any outcome short of erasure inappropriate.'*
>
> *'75. In sexual misconduct cases, evidence about the impact of a specific type of sanction and references and testimonials will have limited, if any, relevance to the MPT's decision about what sanction is appropriate'*

226. In this case, the Tribunal determined that Dr Elmajee's sexual misconduct posed a high level of risk to public protection and that the relevant sanctions banding in the Guidance Introduction and MPT Guidance indicated a sanction of *'12 months suspension to erasure'*.

227. The Tribunal reminded itself that the sanctions bandings are intended to provide a guide, and that there may be evidence relevant to the individual circumstances of the case that indicates a sanction which is more or less restrictive than that suggested in the bandings.

228. The Tribunal considered each of the available sanctions in turn, starting with the least restrictive.

No action

229. The Tribunal considered that there were no exceptional circumstances in this case which would justify the taking of no action in the context of the facts found proved and the Tribunal's determination on impairment. It considered that taking no action would not be sufficient, proportionate, or in the public interest.

Conditions

230. The Tribunal was mindful that conditions should be appropriate, proportionate, workable and measurable. The Tribunal had regard to paragraph 22 of the Guidance which states:

> *'22. Conditions are likely to be workable where:*
> *a. the doctor has shown insight*
> *b. time is needed for the doctor to take steps to address the findings (remediate), for example through retraining, study, supervision and/or seeking medical treatment.*
> *c. the doctor is willing to remediate, and*
> *d. the MPT is satisfied the doctor will comply with them.'*

231. The Tribunal considered that Dr Elmajee has not yet demonstrated any insight into his misconduct. It also took the view that Dr Elmajee did need time to take steps to address the Tribunal's findings and to remediate his misconduct.

232. XXX

233. The Tribunal acknowledged that Dr Elmajee had not yet remediated his misconduct and would need time to do so. It concluded however that no workable conditions could be formulated given Dr Elmajee's current lack of insight and that no conditions could be adequately formulated to address the concerns about Dr Elmajee's sexual misconduct.

234. The Tribunal had regard to paragraph 30 of the Guidance, which stated:

'30. Conditions are unlikely to be a proportionate response in cases where the nature of the allegations about the doctor's behaviour fall at the higher end of the spectrum of seriousness and/or suggest an underlying problem with their attitude.'

235. In all of the circumstances, the Tribunal concluded that a period of conditional registration would not be an appropriate or proportionate sanction given that Dr Elmajee's conduct fell at the higher end on the spectrum of seriousness. It also considered that conditions would not satisfy the public interest concerns.

Suspension

236. The Tribunal then went on to consider whether imposing a period of suspension on Dr Elmajee's registration would be appropriate and proportionate.

237. The Tribunal reminded itself that Dr Elmajee leant towards Ms A and tried to kiss her on the lips after she turned around in her chair to face him, kissed her on the cheek and said, '*please one kiss'*, or words to that effect (Incident 1). He also approached Ms A on 21 September 2023, XXX, and leant in and tried to kiss Ms A on the lips (Incident 2). Both incidents were carried out without Ms A's consent, constituted sexual harassment, were sexually motivated, and were an abuse of Dr Elmajee's more senior position. Dr Elmajee's conduct towards Ms A took place within a work environment, whilst she was alone.

238. The Tribunal also reminded itself of its findings that the WhatsApp Message was unsolicited, sexually motivated and was an abuse of Dr Elmajee's more senior position.

239. The Tribunal took the view that whilst Dr Elmajee's misconduct fell at the higher end of the spectrum of seriousness, there was a sliding scale of sexual misconduct within that higher band of the spectrum. This is because some albeit serious, factual circumstances are inevitably more serious than others and have a potentially more serious impact. It was

mindful that conduct at the high end of that band could include, for example, extremely serious sexual misconduct. The Tribunal was of the view that whilst Dr Elmajee's conduct had been serious and deplorable, it fell at the lower end of the higher band of the spectrum, which meant that it could be possible for Dr Elmajee to develop insight and remediate.

240. The Tribunal noted paragraph 41, 44, and 45 of the relevant section of the Guidance, which states:

> *'41. Suspension is for those cases where the doctor's behaviour, performance, or the impact that a health condition is having on their ability to practise safely and effectively, is currently incompatible with unrestricted registration. This means the current and ongoing risk to public protection posed by the doctor needs to be managed by restricting their registration for a period, with the aim they should be able to safely return to unrestricted practice in the future.*
>
> *'44. Restrictive action of suspension is intended to address the level of current and ongoing risk to public protection and is not intended to be punitive. However, as it prevents a doctor from working and earning a living within that profession, it can have this effect. Suspension can also have a deterrent effect and be used to send a signal to the individual doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor.'*
>
> 'When is suspension likely to be proportionate?
>
> *45. Suspension may be proportionate in cases where some, or all, of the following factors are present:*
>
> *a. conditions are not appropriate, measurable and/or workable*
> *b. the level of current and ongoing risk to public protection is such that it cannot be safely managed with conditions and suspension is necessary to stop the doctor from working and putting patients at risk while they gain insight into any deficiencies and remediate, or undergo medical treatment, and/or*
> *c. the level of current and ongoing risk to public protection is such that, although patient safety is not an issue, suspension is needed to maintain public confidence in the profession and/or maintain professional standards.'*

241. The Tribunal was satisfied that paragraphs 41, 44 and 45 were all engaged in this case. It reminded itself of its finding that Dr Elmajee's misconduct was potentially remediable and that a period of suspension could enable him to demonstrate remorse, develop insight and remediate. In addition, the Tribunal took the view that whilst Dr Elmajee's misconduct had created an indirect risk to patient care, a period of suspension would maintain public confidence in the profession and maintain professional standards and conduct.

242. The Tribunal had regard to paragraphs 46 and 47 of the Guidance, which stated:

> Imposing suspension on a doctor's registration
>
> *46. The MPT will need to decide the appropriate length of time that suspension should be put in place for, up to the maximum of 12 months. The following factors will be relevant:*
>
> *a. the assessment of the level of current and ongoing risk to public protection posed by the doctor*
> *b. the reasons for assessing suspension as being the proportionate response*
> *c. the amount of time the doctor is likely to need to remediate, complete treatment for and/or recover from a health condition that is having, or is likely to have, an impact on their ability to practise safely and effectively, and/or*
> *d. the amount of time the parties will reasonably need to prepare for any review of whether the doctor continues to pose a current and ongoing risk to public protection requiring restrictive action in response or is safe to return to unrestricted practice.'*
>
> *47. A short suspension may be appropriate in cases where: the doctor's behaviour fell at the higher end of the spectrum of seriousness; there was evidence of relevant context and/or evidence of insight and remediation that decreased the level of current and ongoing risk to public protection such that there are no outstanding patient safety considerations; and suspension is being imposed on public confidence grounds and/or to maintain professional standards. It might also be appropriate in relation to a very small number of clinical cases where a doctor's performance was such that although*

unlikely to recur, the nature of the allegation was so serious as to undermine the public's trust in the profession.'

243. The Tribunal considered Ms Chestnutt's submission of whether a short suspension was an appropriate response in this case. It had before it no evidence of any relevant context and/or evidence of insight and remediation that decreased the level of current and ongoing risk to public protection. The Tribunal was of the view that the risk of recurrence was significant, given the lack of current insight or remediation. It therefore determined that a short period of suspension was not an appropriate or proportionate response.

244. When considering proportionality, the Tribunal was mindful of Dr Elmajee's personal, financial XXX circumstances which Ms Chestnutt outlined in her submissions. It reminded itself, however, that the impact on a doctor is outweighed by the Tribunal's need to uphold public protection.

Erasure

245. Before determining whether or not to suspend Dr Elmajee's registration, the Tribunal considered whether erasure would be an appropriate response. It had regard to paragraphs 55, 56 and 57 of the Guidance:

'55. Erasure is action available for those cases where a doctor's behaviour, performance, or the impact that a health condition is having on their ability to practise safely and effectively, is incompatible with continued registration at this point in time. It means the level of current and ongoing risk the doctor poses to public protection is so significant that they should not be allowed to practise.

What is erasure?

56. Erasure takes away a doctor's registration which means they are no longer entitled to practise in the UK at all, or anywhere else where they are required to hold GMC registration. It is used to protect the public in the most serious cases. It also has a deterrent effect as it sends a signal to the individual doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor.

When will erasure be the only proportionate response?

57. Erasure may be the proportionate response where:

a. conditions are not appropriate, measurable and/or workable and suspension is not sufficient to protect the public

b. the doctor's behaviour or performance is such that it caused serious harm, and the risk of harm recurring cannot be mitigated sufficiently through putting conditions or suspension in place

c. the doctor has shown a persistent lack of insight into the seriousness of the allegation about their behaviour or performance and the potential or actual consequences, and/or

d. the seriousness of the facts found proven and/or impact of any relevant context that increased the current and ongoing risk to public protection mean the effect of the doctor continuing to hold registration is such that it will undermine public confidence in the profession.'

246. The Tribunal concluded that erasure was not an appropriate or proportionate sanction in this case and that a significant period of suspension, with a review, would be sufficient to protect the public. It had been presented with no evidence that Dr Elmajee's conduct had caused serious harm, albeit that it had the potential to do so. Whilst Dr Elmajee currently lacks insight, he was entitled to defend the Allegation robustly and it was unrealistic to expect that he would develop sufficient insight over the course of this hearing. The Tribunal considered that Dr Elmajee's lack of insight was not yet *'persistent'*, and that a period of suspension could allow him to reflect upon the Tribunal's findings and develop insight into his misconduct.

247. The Tribunal was mindful of paragraph 73 of the Guidance Introduction which advises that where sexual misconduct is found to be sexually motivated, the inherent seriousness is likely to be high and make any outcome short of erasure inappropriate. However, the Tribunal also took into account the need to apply the principle of proportionality and that any sanction should do no more than is necessary to achieve public protection, approaching the question by considering if the least restrictive action is appropriate. In addition, the Tribunal accepted Mr Garside's submission that erasure was not an inevitable sanction in all cases of sexual misconduct, and the Tribunal was of the view that any sanction had to fairly reflect the particular circumstances of each case.

248. The Tribunal was of the view that if Dr Elmajee's registration was subject to a significant period of suspension with a review, given the facts found proved, public

confidence would not be undermined. A period of suspension would also promote proper professional standards and conduct by sending a strong message to Dr Elmajee, the public, and the wider profession that Dr Elmajee's conduct had been deplorable. In addition, a period of suspension would allow Dr Elmajee to demonstrate remorse, remediate his conduct and develop insight. The Tribunal also considered that a review hearing would also provide further reassurance to the public about the regulatory response to Dr Elmajee's misconduct. This is because the onus will be on Dr Elmajee to satisfy the reviewing Tribunal that he has demonstrated remorse, gained insight and has remediated. Further, Dr Elmajee will need to evidence that he has kept his clinical skills and knowledge up to date and is fit to resume unrestricted practice.

249. In considering the appropriate and proportionate sanction to be imposed in this case, the Tribunal carefully balanced the three distinct parts of public protection against all the other features of this case, including the interests of Dr Elmajee. The Tribunal first considered the need to protect, promote and maintain the health, safety and wellbeing of the public. It reminded itself that Dr Elmajee had created an indirect risk to patient care by acting in a way that impacted upon collaborative working at the Trust. The Tribunal noted that, in her feedback for Dr Elmajee Ms A had rated him as 'outstanding' in relation to 'communication with colleagues' and active involvement with the team'. The Tribunal took into account that this feedback was provided prior to Incident 2 and the WhatsApp Message, but it noted that other reviewers had also provided positive feedback for Dr Elmajee under those categories. In addition, the Tribunal noted the testimonial from Mr C, which stated that Dr Elmajee was very professional when dealing with colleagues. The Tribunal therefore concluded that its concerns about Dr Elmajee having created a risk to patient care were capable of remediation.

250. The Tribunal also reminded itself that the evidence before it had suggested that Dr Elmajee was a good clinician. It took into account that Dr Elmajee has been working without restriction since September 2023 with no repetition of the misconduct. The evidence also suggested that he has maintained his clinical skills and knowledge, and he had received positive ISCP feedback for the period of 21 August 2024 to 25 August 2025. In addition, Dr Elmajee has produced a positive testimonial from his supervisor (who was aware of the Allegation) with no concerns raised about his conduct or competence subsequent to these events. The Tribunal was mindful that testimonials may have limited, if any, impact where allegations fall at the higher end of the spectrum of seriousness because the need to protect the public will outweigh any relevant evidence about the doctor's character. Nevertheless, the Tribunal took into account the public interest in retaining the skills of a competent

clinician such as Dr Elmajee once he has potentially remediated his misconduct and gained insight.

251. In addition, the Tribunal considered that a significant period of suspension would also send a powerful signal to Dr Elmajee, the public and the profession, that sexual misconduct in the workplace is totally unacceptable and will not be tolerated within the medical profession.

252. The Tribunal was satisfied that whilst Dr Elmajee's conduct fell at the higher end of the spectrum of seriousness, it was at the lower end of that banding category and was not fundamentally incompatible with continued registration. The Tribunal was therefore satisfied that erasure would be a disproportionate response in all the circumstances of this case.

253. The Tribunal determined that a period of suspension was the appropriate and proportionate response in this case. It had regard to paragraph 63 of the Guidance, which stated:

> *'63. In all cases, once the MPT has identified the level of banding, they will need to decide the appropriate length of sanction to impose within that range provided they are satisfied it is the most proportionate type of action considering the individual circumstances of the case. The following factors will be relevant to deciding the appropriate length of time that conditions or suspension should be put in place for:*
>
> *a. the reasons for assessing conditions or suspension as being the proportionate response*
> *b. the amount of time the doctor is likely to need to remediate, complete treatment for and/or recover from a health condition that is having, or likely to have, an impact on their ability to practise safely and effectively*
> *c. where a condition has been imposed that requires a doctor to complete an assessment of their performance, health or knowledge of the English language, the time needed to complete the assessment, and/or*
> *d. the amount of time the parties will reasonably need to prepare for a review of whether the doctor continues to pose a current and ongoing risk to public protection requiring restrictive action in response or is safe to return to unrestricted practice.'*

254. The Tribunal considered that Dr Elmajee required sufficient time to address the concerns of the Tribunal, to start taking steps to demonstrate remorse, remediate the misconduct and develop insight. It was also of the view that the length of suspension should be sufficient to meet the need to uphold all three parts of public protection, which are engaged, when there has been a finding of impaired fitness to practise and where there has been sexual misconduct at the higher end on the spectrum of seriousness. The Tribunal therefore determined to impose a period of suspension on Dr Elmajee's registration for a period of 12 months.

Review

255. The Tribunal had regard to paragraphs 52 of the MPTS Guidance which states:

> *'52. The question of whether the doctor can safely return to unrestricted practice will need to be considered before a period of suspension concludes and so a review should be directed. The exception to this is where a short suspension (usually three months or less) has been imposed on public confidence grounds and/or to maintain professional standards.'*

256. The Tribunal has determined to direct a review of Dr Elmajee's case because of the nature of the misconduct, and because it was necessary to see that he has developed insight into the proven allegations and taken steps to remediate. 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 Elmajee to demonstrate evidence of his remorse, insight and remediation.

257. The Tribunal determined that it may assist the reviewing Tribunal to receive evidence of the following:

- A reflective statement from Dr Elmajee which demonstrates his understanding, acceptance, and ownership of the misconduct found, the root causes of it, and the impact of his actions on Ms A, other colleagues, the public and the wider profession;
- Evidence of personal development, which may include for example, evidence of further courses he has attended in relation to maintaining professional boundaries, and/or a course on communication skills, and/or equality and diversity, and/or sexual harassment and/or maintaining effective relationships

with colleagues, together with written reflections as to his learning, how he has implemented this, and of any mentoring support;

- Evidence of Continuing Professional Development, including any courses with written reflections of his learning;
- Evidence of how he has kept his medical knowledge and skills up to date;
- Any testimonials or references he may wish to provide; and /or
- Any other information Dr Elmajee may consider relevant to his case, which may include a report from any mentor.

258. This list is not exhaustive, and it will be for Dr Elmajee to provide sufficient evidence to the reviewing Tribunal.

259. XXX

Determination on Immediate Order - 28/08/2026

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

Submissions

261. Mr Garside submitted that this is a case where an immediate order ought to be made in the light of the Tribunal's findings in this case. He referred the Tribunal to the relevant paragraphs of the Guidance and its power to impose an immediate order, namely where it is necessary to protect members of the public, or is otherwise in the public interest. He said he did not rely on whether it was in the best interests of the doctor. He said that in respect of public protection, this is a doctor who has been found culpable in the ways described by the Tribunal and there is no interim order in place and he would be allowed to go back into unrestricted practice. He submitted that the public needed to be reassured that Tribunals will take robust action in cases like this. He reminded the Tribunal to consider the seriousness of the proved allegation and the level of current and ongoing risk to public protection posed by the doctor, which included all three of the elements public protection which apply in this case. He submitted that paragraphs 83 and 84 of the Guidance were engaged in this case (set out below), and that immediate action is needed to maintain public confidence in the medical profession.

262. Ms Chestnutt submitted that when any given stage of training is complete, a certificate of completion, otherwise known as a CCT, is issued to a doctor. She said that Dr Elmajee was currently at a point in his training whereby he has completed all of the relevant steps, but is yet to be issued with his CCT. She requested that an immediate suspension was not imposed in order to allow Dr Elmajee time to speak with the Deanery in order to certify his training. She said he may be able to then take that back into clinical practice at the appropriate point as evidence of training that he has completed thus far. She submitted that the public's perception would be that if training simply needed to be accredited and authorised, and that being the reason for the delay in any suspension, that would maintain the public's trust and confidence in the profession. She said that Dr Elmajee did not intend to practise clinically within that time. She cited:

> *'A Reference Guide for Postgraduate Foundation and Specialty Training in the UK The Gold Guide 10th edition*
>
> *3.100 The training number/contract will be withdrawn when a postgraduate doctor in training:*
>
> *...*
>
> *vi. has their name erased or suspended from the medical register, or where restrictions are applied to their registration and where such measures are incompatible with continuing in a medical training programme at their level of training'*

263. Following a question from the Tribunal, Ms Chestnutt told the Tribunal that she was unclear as to whether that the certificate of completion of the CCT training could be issued during the suspension period. She was also unable to provide detail on what exactly Dr Elmajee could achieve in the matter of his training at this stage whether or not he was suspended.

264. Mr Garside also provided a letter from Dr Elmajee's Responsible Officer, dated 16 March 2026, which stated:

> *'…If Dr Elmajee's employment were to be terminated by his employer as a consequence of any sanction imposed by the Tribunal, the implications for his training number and/or contract would similarly be considered in line with the* ***Gold Guide (10th Edition)****.*

In the event that Dr Elmajee's training number and/or contract were withdrawn, any future application to re-enter training would be assessed at that time and in accordance with the policy in force at the point of re-application.
I am unable to comment on the options available to Dr Elmajee to progress his career towards his intended outcome at this stage, as this will depend on the determination of the Medical Practitioners Tribunal…'

The Tribunal's Determination

265. Pursuant to section 38(1) of the 1983 Act, on giving a direction for suspension, the Tribunal may impose an immediate order if it considers it necessary for the protection of members of the public or if it is otherwise in the public interest or is otherwise in the best interests of the doctor.

266. The Tribunal had regard to the relevant paragraphs of the MPTS Guidance, including:

- *'83The decision whether to impose an immediate order is at the discretion of the MPT based on the facts of the case. When deciding if an immediate order is needed the MPT should consider the seriousness of the proved allegation and the level of current and ongoing risk to public protection posed by the doctor.*

84 It will not usually be appropriate for a doctor to hold unrestricted registration until a sanction takes effect in cases where:

a. the doctor poses a risk to patient safety
b. the risk to one or more parts of public protection is high, and/or
c. immediate action is needed to maintain public confidence in the medical profession.'

267. The Tribunal took into account the submission of Ms Chestnutt and the Gold Guidance in respect of Dr Elmajee's certificate of completion. It considered that it was unclear as to whether or not Dr Elmajee's training would be paused during the period of his suspension or indeed what precise effect it would have. The Tribunal also took the view that it was incumbent on Dr Elmajee to have investigated the possible consequences of these proceedings on his training in good time. It took into account that if an immediate order were not imposed Dr

Elmajee would be able to resume unrestricted practice including during any period in which he might exercise his right of appeal.

268. The Tribunal considered its findings at previous stages in relation to Dr Elmajee's misconduct. It assessed the level of current and ongoing risk posed to public protection to be high and that it engaged all three limbs of public protection. It has balanced Dr Elmajee's interests against the three limbs of public protection.

269. The Tribunal considered that an immediate order is necessary in this case to protect, promote and maintain the health, safety, and wellbeing of the public; to maintain public confidence in the profession; and to promote and maintain proper professional standards and conduct for members of the profession. The Tribunal considered that the only way to manage the current and ongoing risk is to impose an immediate order of suspension.

270. This means that Dr Elmajee's registration will be made subject to an immediate order of suspension 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 on him, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

271. The Tribunal noted that there is no interim order to be revoked.

272. That concludes the case.

ANNEX A - 17/08/2026

Application to Application to admit evidence

1. At the outset of the hearing, Mr Charles Garside KC made an application to adduce into evidence a third supplementary witness statement from Ms A, together with an exhibit of a screenshot of a WhatsApp message dated 16 September 2023, and purportedly sent from Dr Elmajee to Ms A.

Submissions on behalf of the GMC

2. Mr Garside submitted that there was no dispute that the Tribunal should not admit any evidence which would be unfair to admit. He said that fairness was something which has to be judged from both sides, and the Tribunal would have to bear in mind the relevant chronology of events, and the importance of the public interest in these proceedings.

3. Mr Garside submitted that the first incident of which complaint was made, allegedly took place on 21 December 2022. He said that the incident which gave rise to Ms A's further statement and the WhatsApp message took place on 16 September 2023. He said that, at the time, Ms A was on holiday XXX. Mr Garside stated that the second alleged incident, which took place on 21 September 2023, was closely related to the date of XXX. Mr Garside submitted that Ms A had reported her concerns to two other people, who both told her to write down what had happened. He stated that on 15 December 2023, Ms A wrote an account of what she said happened and she was subsequently interviewed by the Trust as part of disciplinary proceedings, on 3 January 2024. Mr Garside said that Ms A did not mention the WhatsApp message on either 15 December 2023 nor 3 January 2024. Mr Garside submitted that Ms A discovered the WhatsApp message on her telephone on 1 or 2 August 2026 (a weekend) and informed the GMC of its existence on 4 August 2026. He said that the GMC started to act on that information, and the witness statement relating to the WhatsApp message, on 5 August 2026.

4. Mr Garside submitted that in these circumstances, there can be no suggestion of any default or mistake on the part of the GMC. He accepted that the GMC's receipt of this evidence was a long time after the events with which the Tribunal are concerned. He submitted however that fairness to the GMC did not require more than reasonable efforts to

discover evidence, and upon discovering it, reasonable efforts had been made to act upon that discovery with speed.

5. In respect of fairness, Mr Garside submitted that this was not evidence created afresh by Ms A, rather that it was a WhatsApp message created by Dr Elmajee. Mr Garside asserted that the GMC were currently unaware of whether Dr Elmajee can still access his Whatsapp messages but suggested that Dr Elmajee could check these if he so wished. He also submitted that Ms A had an explanation as to why she had only recently discovered it, and why she had forgotten about it. He said that fairness and the public interest in general require that all relevant evidence should be considered by the Tribunal and that the weight of that evidence was entirely a matter for it. He said that it was conceded by Dr Elmajee that it was relevant evidence. He acknowledged that this case has been adjourned on at least two occasions but that those adjournments were granted for proper reasons.

Submissions on behalf of Dr Elmajee

6. Ms Anna Chestnutt, Counsel on behalf of Dr Elmajee, provided a written skeleton argument and made oral submissions. She submitted that the chronology provided by Mr Garside was not disputed and that Dr Elmajee had been fully compliant with the GMC's processes. Ms Chestnutt also agreed that the GMC had not been tardy in their approach in respect of this new evidence and had provided it promptly, indicating their intention to rely upon it. Ms Chestnutt also conceded that the evidence in question was relevant.

7. Ms Chestnutt submitted that none of that detracted, however, from the fact that the process by which the evidence came about only began on 4 August 2026, mere days before the substantive hearing was due to commence. She said that the evidence and updated Notice of Allegation had been provided so close to this hearing as to create unfairness to Dr Elmajee because of how long ago the message itself was sent. Ms Chestnutt submitted that ordinary common sense would suggest that any context or information around the sending of a message will have been forgotten three years after the event, which would not be the case if reported contemporaneously or closer in time to when the complaints were made.

8. Ms Chestnutt submitted that a core principle of natural justice was that anyone in a case should know the case they have to meet, in good time, so that they may prepare their defence fully. She said that there may be some incidental technical matters pertaining to the message which simply cannot be explored. Further she stated that, on the one hand, it could

be said that Ms A and Dr Elmajee were in contact for professional reasons and that they would have had each other's number in the course of an ordinary working relationship. On the other hand, it appears that the WhatsApp message provided, was the only message sent and received between them, and there may be issues about the whereabouts of the other messages that were sent and received between them. She said that none of this could realistically be explored other than by making very vague observations.

9. Ms Chestnutt said that any suggestion about Dr Elmajee having access to his old messages was a 'red herring', as he did not bear the evidential burden in this case. She stated that in any event, even if he could go and have a look, it would be extremely difficult for Dr Elmajee to recall the context of a conversation that took place three years ago. She said that if this evidence was admitted, instead of preparing for his hearing, Dr Elmajee would be put in a position where essentially he was going to have to prepare a final witness statement, scramble around with his legal team, making sure that he was expressing himself clearly, rather than focusing on the hearing itself. She said that this would create irremediable unfairness and that it would therefore be unfair to admit this evidence.

The Tribunal's Decision

10. The Tribunal did not have sight of the evidence in question when determining this application, albeit that the nature of the WhatsApp message in question had been broadly described in the GMC's proposed amendment to the Allegation which was before the Tribunal).

11. In determining whether to admit Ms A's further supplemental witness statement with the WhatsApp message, the Tribunal had regard to Rule 34(1) of the General Medical Council (Fitness to Practise) Rules Order of Council 2004 (as amended) ('the Rules'), which states:

> *'The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.'*

12. The Tribunal noted that both Ms Chestnutt and Mr Garside were in agreement that the evidence in question was relevant to the case before it. The dispute however was whether it was fair to admit the evidence.

13. The Tribunal also had regard to the relevant paragraphs of the Guidance for MPTS tribunals Section one: Procedural matters relating to tribunal hearings (24 November 2025) ('the Guidance'), in particular:

> *'Refusal to admit evidence*
> *169. To decide whether to exclude evidence, the MPT should consider the following questions:*
> - *Has a party failed to comply with a Rule or direction relating to the evidence in question?*
> - *Does the party have a reasonable excuse for that failing?*
> - *Has the party deliberately sought to disrupt the proceedings by the manner or timing of the production of the evidence?*
> - *What issues in the case does the evidence go to?*
> - *Will the other party be prevented from, or be significantly disadvantaged in, addressing the material issues raised by the evidence in question?'*

14. The Tribunal had before it no evidence to suggest that any specific case management directions had been breached, albeit that earlier case management decisions may have been issued of which the Tribunal were unaware. It also did not know the reason for the lateness of this evidence but it was not being argued by Dr Elmajee that there was any attempt to deliberately disrupt the proceedings by the manner or timing of the production of the evidence.

15. The Tribunal was of the view that, given the submissions from parties, this evidence was relevant to the case before it and in particular as to the nature of the relationship between Dr Elmajee and Ms A, which was central to the Allegation. The Tribunal also considered that if the WhatsApp message was sent between the two alleged incidents, and just prior to the second incident, it might be relevant to the issue of Dr Elmajee's alleged sexual motivation.

16. The Tribunal acknowledged that the late production of evidence is highly undesirable and it was regrettable if Dr Elmajee had to consider evidence shortly before the hearing was due to begin and prepare his response to it. However the Tribunal considered that Dr Elmajee would not be materially disadvantaged by the admission of the new evidence. That was because, despite its lateness, the evidence being admitted was relatively discrete – Dr Elmajee either sent the WhatsApp message in question or he did not or he might not recall. In addition, Dr Elmajee had received the new evidence, albeit only a week before the

commencement of this hearing, and had therefore already been afforded an opportunity to consider it.

17. In addition, the Tribunal also took into account that Ms Chestnutt will have the opportunity to cross examine Ms A in respect of the evidence. In addition that Dr Elmajee will have the opportunity to provide a written statement regarding the evidence, provide oral evidence, and make submissions in response to the evidence.

18. The Tribunal also noted that the Guidance advises that, 'Excluding evidence is a draconian step which should only be taken where necessary'.

19. The Tribunal was satisfied that Ms A's third supplementary witness statement and the screenshot of the WhatsApp message were relevant and should be admitted into evidence. The Tribunal determined that it was fair and in the public interest to have such evidence before it and that it would assist the Tribunal in determining the facts of the case.

20. The Tribunal therefore determined that it was fair and relevant to admit this evidence pursuant to Rule 34(1).

ANNEX B - 17/08/2026

Application for witness anonymity

1. This determination will be handed down in private as it relates to the name and role of a witness which could lead to jigsaw identification of Ms A, an already anonymised witness.

2. On day 1 of the hearing, Mr Garside KC made an application for the anonymity of the GMC's second witness pursuant to rule 35(4) of the GMC (Fitness to Practise) Rules 2004.

Submission on behalf of the GMC

3. Mr Garside submitted that the facts relating to the Allegation had taken place in the XXX room at the Royal Orthopaedic Hospital, Birmingham, where both of the GMC's witnesses worked. He said that this was a XXX of the Hospital and that the XXX, who has been granted anonymity from the public. Mr Garside stated that Ms A XXX is a vulnerable witness

because of the nature of the Allegation. He said that agreement had been reached that Dr Elmajee would turn his camera off during her evidence and that Dr Elmajee had been entirely cooperative with the process of managing Ms A's evidence.

4. Mr Garside submitted that the problem was that the GMC's next witness would be asked what her precise relationship was with Ms A, and that she would confirm that Ms A XXX. Mr Garside stated that it was entirely foreseeable that, when being cross-examined, Ms A would be asked questions about her precise relationship with the next GMC witness, and her job role was obviously part of that relationship. Mr Garside submitted that this was key information and that fairness to Dr Elmajee required that his counsel was entitled to cross-examine both of the GMC witnesses with a view to establishing if they 'put their heads together'. He submitted that in reality, their names should not be made public. Mr Garside said the GMC's second witness was not the subject of any allegation and could be described as Witness B. He stated that if Ms Chestnutt was content with the admission that they both worked in the same area and XXX, any other cross examination about their relationship did not need to mention those matters.

5. Mr Garside clarified that XXX.

Submissions on behalf of Dr Elmajee

6. Ms Chestnutt submitted that she did not disagree with the spirit of the GMC's application in order to prevent the inadvertent identification of Ms A through jigsaw identification. Ms Chestnutt stated that as long as the second witness is referred to, for example, as Ms B, she ought to be permitted to ask questions about the relative roles of Ms A and Ms B within the team, and as to the reporting structures. Ms Chestnutt also proposed that prior to asking questions about the structure of Ms A's team, she could simply invite the Tribunal to move into private session so as to protect everyone's identity.

7. Mr Garside said that he did not have a problem with Ms Chestnutt's proposal about dealing with matters in private session.

The Tribunal's Decision

8. The Tribunal considered that naming the GMC's second witness, and any disclosure of her role and professional relationship with Ms A could lead to jigsaw identification of Ms A, a vulnerable witness, who has been granted anonymity. As a result, the Tribunal was satisfied

that granting anonymity to the GMC's second witness was a reasonable and justified departure from the usual principle of open justice and the free reporting of Tribunal proceedings.

9. The Tribunal was also in agreement with Ms Chestnutt's proposal that any questions to Ms A or Ms B about their respective status at work, and working relationships, should be in private session. It considered that the proposal was a further, appropriate safeguard against the inadvertent or jigsaw identification of Ms A. This was particularly in view of XXX.

10. The Tribunal therefore determined to grant the application and that the GMC's second witness should be referred to as 'Ms B'.

ANNEX C - 17/08/2026

Application to amend the Allegation

273. Mr Garside made an application to amend the Allegation following the Tribunal's determination to grant the GMC's application to admit Ms A's third supplementary witness statement, dated 5 August 2026, together with an exhibited WhatsApp message purporting to be sent by Dr Elmajee on 16 September 2023 (Annex A).

274. Mr Garside provided the Tribunal with a draft proposed amendment to the Allegation, the effect of which was to insert a new paragraph 1A and to amend paragraph 2b:

1. Whilst working at The Royal Orthopaedic Hospital NHS Foundation Trust, Birmingham, on:
   a. 21 December 2022, you went to the XXX room to speak to Ms A and you:
      i. leant towards Ms A and tried to kiss her on the lips after she turned around in her chair to face you;
      ii. kissed Ms A's cheek;
      iii. said 'please one kiss', or words to that effect;
   b. 21 September 2023, you approached Ms A in the XXX room, XXX and:
      i. lunged towards Ms A, pressing up against her body;
      ii. leant in and tried to kiss Ms A on the lips.

1A. On 16 September 2023, you sent a WhatsApp message to Ms A which contained a photograph of her with the comment 'Irresistable [sic] lady', followed by a heart eyes emoji.

2. Your actions as set out at:
   a. paragraphs 1ai, 1aii, 1bi and 1bii were carried out without Ms A's consent;
   b. paragraph(s) 1 and 1A:
      i. constituted sexual harassment as defined in Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms A;
      ii. were sexually motivated;
      iii. were an abuse of your more senior position.

275. Mr Garside submitted that given the evidence the Tribunal now had before it, it ought to be treated as a separate part of the case. He said that the newly admitted evidence was relevant to the Allegation regarding 'incident two'. In addition, Mr Garside submitted that the new evidence should be put in the form of an allegation so that the Tribunal could formally reach conclusions about it.

276. Ms Chestnutt submitted that as the Tribunal had determined to admit the new evidence, she did not oppose the application to amend the Allegation as proposed by the GMC.

The Tribunal's Decision

277. In determining the application to amend the Allegation, the Tribunal had regard to Rule 17(6) of the Rules, which states:

'17.

(6) Where, at any time, it appears to the Medical Practitioners Tribunal that—
   (a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and
   (b) the amendment can be made without injustice,

it may, after hearing the parties, amend the allegation in appropriate terms.'

278. The Tribunal noted that the GMC's application to amend the Allegation was unopposed. The Tribunal took into account that the newly admitted evidence included a WhatsApp message which it was alleged that Dr Elmajee had sent to Ms A shortly before the alleged events set out in paragraph 1b of the Allegation. The Tribunal considered that if it was proven that Mr Elmajee had sent the WhatsApp message to Ms A then it might, depending upon the circumstances and context, amount to inappropriate and/ or sexually motivated behaviour. As a result, the Tribunal considered that it was consistent with the public interest and overarching objective for the Allegation to be amended to refer to the WhatsApp message so that the Tribunal could determine the issue.

279. The Tribunal was satisfied that the amendment could be made without any injustice to Dr Elmajee. The Tribunal noted that his representatives had been in receipt of the WhatsApp message since 7 August 2026, and he had therefore been given an opportunity to consider the message prior to the commencement of the hearing. Further, the Tribunal took into account that Dr Elmajee will have the opportunity to provide evidence about the WhatsApp message, and to cross examine Ms A about the matter.

280. The Tribunal was therefore of the view that it was fair and in the public interest to amend the Allegation as proposed by the GMC. In addition, it was satisfied that there would be no injustice to Dr Elmajee in amending the Allegation.

281. The Tribunal therefore determined to grant the application to amend the Allegation as proposed by Mr Garside pursuant to Rule 17(6) of the Rules.

ANNEX D - 18/08/2026

Application to allow Ms B to have a supporter present when giving her evidence

282. Prior to Ms B giving her oral evidence, Mr Garside informed the Tribunal that she would like to have a supporter present when giving her evidence. Mr Garside indicated the name of that supporter and confirmed that she was a colleague of Ms B at the Hospital.

Submissions on behalf of Dr Elmajee

283. Ms Chestnutt submitted that Dr Elmajee had worked alongside both Ms B and her supporter. She stated that the supporter was therefore known to Dr Elmajee. Ms Chestnutt

said that, although Dr Elmajee had left the Trust, he still had a good relationship with Ms B's supporter; he held her in high regard and believed that to be reciprocal. Ms Chestnutt acknowledged that MPT hearings take place in public, but that Dr Elmajee felt that it was *'something quite different'* to have a former colleague, who he held in very high esteem, to be witnessing the evidence in his case. She submitted that Dr Elmajee did not consider Ms B's supporter to be a neutral bystander.

284. Ms Chestnutt submitted that Dr Elmajee acknowledged and was sympathetic to the need to ensure that Ms B is as comfortable as possible when giving her evidence. Ms Chestnutt made a counter proposal, namely that Ms B's supporter should not attend the hearing alongside Ms B, but that Dr Elmajee would keep his camera switched off during Ms B's evidence, in the same way as he did during Ms A's evidence. Ms Chestnutt suggested that this could be a sufficient safeguard to ensure that Ms B feels able to give her best evidence.

Submissions on behalf of the GMC

285. Mr Garside submitted that this was a public hearing. He accepted that Dr Elmajee and Ms B's supporter were on good terms. Mr Garside stated that Ms B's supporter would not be playing any part in the hearing and that Ms B has been told not to discuss her evidence with anyone, including the supporter, until the hearing has concluded. He said that this was a question of '*comfort'* and that it would not be appropriate for the Tribunal to expel Ms B's supporter from the hearing. Mr Garside said that the supporter was a member of the public and the Tribunal's power under Rule 42 of the Rules to expel individuals from the hearing applied when a person was being disruptive. Mr Garside submitted that the Tribunal could order Ms B's supporter to be removed, or for them to remove themselves, but that circumstance had not yet arisen. Mr Garside said that it was therefore for the Tribunal to decide whether the presence of the supporter was likely to disrupt the orderly conduct of the proceedings. He submitted that there was absolutely no basis for such a finding.

The Tribunal's Decision

286. The Tribunal bore in mind that Ms B's supporter would not be attending as a member of the public, was known to Dr Elmajee and may not therefore be impartial. It was mindful however that this was a public hearing and that, under Rule 42, it did not have the power to exclude Ms B's supporter unless she was likely to disrupt the orderly conduct of the

proceedings. The Tribunal considered that it had been presented with no evidence to suggest that Ms B's supporter was likely to be a disruptive influence.

287. The Tribunal acknowledged that giving evidence can be stressful and that, whilst she was not a vulnerable witness as defined in the Rules, it was not unreasonable for Ms B to request that she be accompanied by a supporter. The Tribunal considered, in the particular circumstances of this case, what impact the presence of Ms B's supporter would have on Dr Elmajee. However, it could not identify any particular detriment to Dr Elmajee. Whilst Dr Elmajee was concerned about the supporter being a former colleague, who he respected, the Tribunal considered that Ms B's supporter had the right to attend the hearing, as a member of the public, if she wished. In addition, Ms B's supporter was an employee of the Trust, had worked alongside Dr Elmajee, Ms A and Ms B. Therefore she was well aware of their respective job roles at the Trust and the Tribunal concluded that there would be no detriment or unfairness to Dr Elmajee in Ms B's supporter remaining in the hearing whilst those issues were being discussed in private session.

288. The Tribunal considered Ms Chestnutt's counter proposal that Dr Elmajee could have his camera turned off during Ms B's evidence, as an alternative to Ms B's supporter being present. However, the Tribunal took the view that the issue was not about Ms B being able to see Dr Elmajee but rather to ensure that Ms B had a reasonable level of support such that she could give her best evidence.

289. The Tribunal determined to exercise its inherent case management powers to allow Ms B's supporter to be present at the hearing in a supportive capacity for Ms B when she provides her evidence. It determined however, that the supporter could not speak or otherwise actively participate in the hearing, and that she should be in view of the Tribunal and others so to ensure that she is not in anyway influencing Ms B's evidence.