PUBLIC RECORD

Dates: 17/07/2023 - 26/07/2023

Medical Practitioner's name:	Dr Mubashsher MUHAMMED
GMC reference number:	7546738
Primary medical qualification:	MUDr 2016 Universita Palackeho

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

Summary of outcome

Suspension, 9 months.
Review hearing directed

Tribunal:

Legally Qualified Chair	Ms Louise Sweet KC
Lay Tribunal Member:	Dr Matthew Fiander
Medical Tribunal Member:	Mr Julian Williams

Tribunal Clerk:	Miss Racheal Gill

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Peter Lownds, Counsel, instructed by Ms Joanna Flowers of MPS
GMC Representative:	Mr Christopher Hamlet, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 21/07/2023

Background

1. Dr Muhammed qualified with MUDr in 2016 from the Palackeho University, Czech Republic. Prior to the events which are the subject of the hearing, Dr Muhammed has held a variety of locum roles in Emergency Medicine. Dr Muhammed currently works as a Locum Doctor in Emergency Medicine at the Royal Albert Edward Infirmary, Wigan, since November 2019. Since 2020 he has also had a private clinic in Macclesfield ('the Clinic'), where he works three days a week, providing aesthetic and hair loss treatment.

2. At the time of the events Dr Muhammed was practising as a Bank Specialist Registrar in the Emergency Department of the Stepping Hill Hospital ('the Hospital'), administered by Stockport NHS Foundation Trust ('the Trust') between February 2021 and April 2021. Dr Muhammed has not worked at the Hospital after the allegations were made against him by Nurse A and Nurse B.

3. The allegation that led to Dr Muhammed's hearing can be summarised as follows. While Dr Muhammed was working as a locum doctor in the Emergency Department at the Hospital during April 2021, two XXX nurses made separate complaints about him. It is alleged that Dr Muhammed engaged in unwanted conduct with Nurse A and Nurse B. It is further alleged that that conduct was sexually motivated and amounted to unlawful sexual harassment.

4. The concerns were raised with the GMC on 2 August 2021 by Dr Muhammed.

The Outcome of Applications Made during the Facts Stage

5. The Tribunal granted the GMC's application, made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), in respect of amendments to the Allegation. Mr Hamlet, Counsel on behalf of the GMC, submitted that the amendments served to improve the quality and accuracy of the language of the Allegations. He submitted that the amendments did not change the underlying facts that the GMC and Dr Muhammed draw upon and they can be made without injustice to Dr Muhammed. The application was not opposed by Mr Lownds, Counsel on behalf of Dr Muhammed.

6. The Tribunal was satisfied that the proposed amendments could be made without injustice. It was also satisfied that the proposed amendments better reflected the evidence upon which the Allegation was based. It therefore decided to grant the application to amend the Allegation, as set out below.

The Allegation and the Doctor's Response

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

1. During April 2021, you engaged in unwanted ~~contact~~ conduct with Nurse A in that: **Amended under Rule 17(6)**

    a. on one or more occasions you:
        i. told her 'pull your mask down so I can see your face,' or words to that effect; **To be determined**
        ii. put your arm:
            1. around her back; **To be determined**
            2. on her waist; **To be determined**
    b. around XXX April 2021 you stated:
        i. 'what do you look like down there?' **To be determined**
        ii. 'I think I know anyway; I think you're shaved' **To be determined**

        or words to that effect;
    c. you stated 'I would like to have bent you over the hospital trolley' or words to that effect; **To be determined**
    d. on XXX April 2021:

i. you asked her for her telephone number; To be determined

ii. when she entered the changing room area you: To be determined

1. blocked her entry to the female changing room door;
   To be determined
2. placed your hand on the front of her throat;
   To be determined
3. tightened your grip around her neck;
   To be determined
4. kept her backed up against the wall;
   To be determined
5. asked her twice with your hand on her throat, 'when are you going to give in and give me your number' or words to that effect.
   To be determined

2. During April 2021, on one or more occasions you engaged in unwanted ~~contact~~ conduct with Nurse B in that you: Amended under Rule 17(6)

a. pinched her nose; To be determined

b. initially ignored her request to stop touching her nose and mask;
   To be determined

c. touched her shoulders and squeezed them; To be determined

d. went over to where she was sitting and:

i. ~~massaging~~ massaged her shoulders; Amended under Rule 17(6)
   To be determined

ii. ~~moving~~ moved your hands down her back; Amended under Rule 17(6)
   To be determined

iii. ~~pinching~~ pinched or ~~tickling~~ tickled her waist with your hands;
   Amended under Rule 17(6)
   To be determined

e. laughed in response to her request for you to stop touching her;
   To be determined

f. commented on how she could improve her looks;
   To be determined

g. told her 'you should get a botox' or words to that effect.
   To be determined

3. Your actions as set out at paragraph 1 were:

a. unlawful sexual harassment ~~related to sex~~ by virtue of Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct ~~related to sex~~ of a sexual nature which had the purpose or effect of violating the dignity of Nurse A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her; Amended under Rule 17(6)
To be determined

b. sexually motivated Amended under Rule 17(6)
To be determined

4. Your actions as set out at paragraph 2 were:

a. unlawful sexual harassment ~~related to sex~~ by virtue of Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct ~~related to sex~~ of a sexual nature which had the purpose or effect of violating the dignity of Nurse B, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her; Amended under Rule 17(6)
To be determined

b. sexually motivated Amended under Rule 17(6)
To be determined

The Facts to be Determined

8. No facts were admitted. In light of the above, the Tribunal had to determine all of the paragraphs of the Allegation.

Witness Evidence

9. The Tribunal received evidence on behalf of the GMC from the following witnesses:

- Nurse A, XXX Nurse in the Emergency Department at the Trust, in person, together with her witness statement dated 24 February 2022 and supplemental witness statement dated 2 July 2023.

- Nurse B, XXX Nurse in the Emergency Department at the Trust, in person, together with her witness statement dated 20 May 2022.

10. Dr Muhammed provided his own witness statement, dated 2 June 2023 and supplemental witness statement, dated 14 July 2023. He also gave evidence at the hearing.

Documentary Evidence

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

- Dr Muhammed's Facebook Activity Log, dated 28 April 2021
- Nurse A's WhatsApp messages, dated 9 April 2021
- Nurse A's Trust statement, dated 4 July 2021
- Nurse B's Trust complaint email to Matron C, dated 27 April 2021
- Testimonials in support of Dr Muhammed from colleagues, dated 2023.

The Tribunal's Approach

12. The following legal advice was given to the Tribunal by the legally qualified chair, upon it being agreed by counsel for both parties:

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

Direction Cross Admissibility: Propensity Limb

14. The Tribunal must consider each allegation separately.

15. Where the GMC rely on the evidence of Nurse A and Nurse B, if having considered their evidence the Tribunal are satisfied that that Dr Muhammed committed the acts alleged against either Nurse A or Nurse B (whichever is dealt with first) the Tribunal may then go on to consider whether that finding shows a tendency to commit acts of the kind alleged by the GMC.

16. Dr Muhammed is alleged to have committed acts of sexual misconduct against Nurse A and Nurse B. The GMC say that they show that the doctor has a tendency to commit acts of this type and so it is more likely that he has committed the sexual misconduct alleged.

17. The similarity in facts between the complaints made that the GMC rely on are:

a) Contact/ 'pinging' with face mask.
b) Massage of the shoulders with two hands
c) Touching/and or pinching of the waist
d) When asked to stop making a joke of it

18. The defence say the misconduct alleged is different and that they do not show that the doctor has any such tendency.

19. If the Tribunal are not satisfied of the facts relied upon or not satisfied that that they show that the doctor has such a tendency then the Tribunal must ignore them.

Contamination or collusion:

20. It is not suggested there has been any collusion in this case between Nurse A and Nurse B but the Tribunal should consider whether Nurse A or Nurse be might have learned what the other was saying and have been influenced knowingly or unknowingly to make her own allegations. If the Tribunal decide that may have happened then it will not take any similarities into account.

21. If the Tribunal is satisfied of the facts and that they demonstrate such a tendency then it may take them into account when reaching its decision on the facts.

22. Finally, regarding cross admissibility, the Tribunal bear in mind even if the doctor is demonstrated to have such a tendency he is not bound to do have done so. This is only part of the case and the Tribunal must not decide the case wholly or mainly on the strength of it.

First complaint and how to approach the fact that both Nurse A and Nurse B complained to others.

23. The Tribunal was told that Nurse A told her friend via WhatsApp of an incident in the corridor to the changing room. It was told that as it is entitled to ask when did she first make complaint? What was the complaint made? It may then make a judgement of the consistency

or otherwise of that complaint. It must bear in mind that the complaint comes from Nurse A and is not independent of her as her friend is not an eye witness to what happened. It is for the Tribunal to decide if the evidence shows consistency or not or does or does not support the truth of Nurse A's account.

24. The same direction was given concerning Nurse B regarding the complaint made via e mail to Matron C on the 27 April 2021.

Good Character Direction

25. The Tribunal has heard that Dr Muhammed is of good character with no previous regulatory matters against him. Dr Muhammed has produced numerous testimonials as to his character and how he conducts himself. The Tribunal will consider that Dr Muhammed's good character does not automatically provide a defence to the GMC allegations but it is part of the facts of the case as a whole to be placed in the balance. His good character is relevant to the Tribunal's consideration in two ways:

a) *Propensity:* the doctor is less likely to have committed the allegations than a doctor who comes to the Tribunal with previous relevant misconduct.
b) *Credibility:* the doctor is likely to be more truthful than someone without such good character.

The Tribunal's Analysis of the Evidence and Findings

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

Nurse A

Paragraph 1a (i)

27. The Tribunal considered whether, during April 2021, Dr Muhammed engaged in unwanted conduct with Nurse A, in that on one or more occasions, he told her *'pull your mask down so I can see your face,'* or words to that effect.

28. The Tribunal first had regard to Nurse A's GMC witness statement, dated 24 February 2022, in which she described a pattern of behaviour from Dr Muhammed whereby he 'pinged' her face mask.

> *"Dr Muhammed 'pinged' my mask very often and it seemed like he thought it was a joke. I generally responded to this by giving Dr Muhammed a dirty look, or asking him to stop directly. Had he 'pinged' my mask one time only, I would have been annoyed but it may not have bothered me so much. But because Dr Muhammed 'pinged' my mask so frequently, during a pandemic no less, it felt very inappropriate. I would also add that on more than one occasion Dr Muhammed said to me 'pull your mask down so I can see your face,' or words to that effect, which made me uncomfortable."*

29. In his written and oral evidence, Dr Muhammed did not dispute that he had 'pinged' Nurse A's mask, however he stated that he did this only because she had done it to him first. He stated that was this was part of a general culture of mask pinging in the department.

30. Although the allegation regarding Nurse A's mask was not made in her original Trust statement, dated 4 July 2021, Dr Muhammed accepted he did pull her mask, albeit in a different context. However, Dr Muhammed denied saying the words *'pull your mask down so I can see your face'* to Nurse A.

31. The Tribunal noted that Dr Muhammed had acknowledged that "banter" was commonplace within the department and that he engaged in it because he wanted to fit in. The Tribunal considered that these words were consistent with the unwanted flirtatious behaviour from Dr Muhammed described by Nurse A.

32. It was particularly of note that this was occurring the time of COVID. The Tribunal found it unlikely in the circumstances that this was part of a widespread culture of mask pulling.

33. The Tribunal considered that it was more likely than not that Dr Muhammed had said *'pull your mask down so I can see your face,'* or words to that effect to Nurse A. This behaviour fitted the description of "banter" or flirting that was being complained about generally and specifically by Nurse A.

34. Therefore, on the balance of probabilities, the Tribunal found paragraph 1a (i) of the Allegation proved.

Paragraphs 1a (ii) (1 and 2)

35. The Tribunal considered whether during April 2021, Dr Muhammed engaged in unwanted conduct with Nurse A in that on one or more occasions he put his arm around her back and on her waist.

36. The Tribunal had regard to Nurse A's Trust statement, dated 4 July 2021, she stated that *"On several occasions he would touch me in a way I did not consider to be appropriate"* and in her GMC witness statement dated 24 February 2022 *"I would clarify that on more than one occasion, although I cannot recall exactly how many times this happened, Dr Muhammed put his arm around my back and on my waist which made me very uncomfortable..."*.

37. In her oral evidence, Nurse A maintained that Dr Muhammed would put his arm on her lower back. During Nurse A's physical demonstration to the Tribunal, she pointed to her lower back and waist area.

38. Dr Muhammed accepted in his witness statement that he may have touched Nurse A on the back on occasions, but he denied that he put his arm around her back or waist.

> *"However, whilst I may have squeezed Nurse A's shoulders (although I cannot recall doing so) this gesture is distinct from putting my arm around her back or on her waist. The gesture of putting an arm around the back, or on the waist, is in my view much more personal and is physical contact that I would have with only close family and friends. I am therefore confident that I would not have touched Nurse A, or any of my other colleagues, in the way described in this allegation.*
> *Therefore, whilst I cannot recall any specific time when I did touch Nurse A on the back, or if I squeezed her shoulder/s, I deny that I put my arm around her back or on her waist."*

39. He repeated this account during oral evidence that he may have lightly touched or tapped Nurse A on the back, above her waist band, and this was necessary to get past her to get equipment from under the computer desk, but he did not do it because he was sexually attracted to her. He denied any touching of the waist.

40. However, the Tribunal considered that Nurse A's account had been consistent throughout. Her complaint to the Trust and repeated in her GMC statement made plain her

discomfort at the unwanted contact with her torso. That discomfort was evident to the Tribunal when she gave her evidence.

41. The Tribunal found that it was not likely that a light tap could be confused with an arm around the back or touching the waist, which was more intimate and personal. The former would not be upsetting and probably go unnoticed, the latter would cause discomfort and be offensive especially when repeated.

42. It concluded that it was more likely than not that Dr Muhammed put his arm around Nurse A's back and on her waist.

43. Therefore, on the balance of probabilities, the Tribunal found paragraph 1a (ii) (1 and 2) of the Allegation proved.

Paragraphs 1b (i and ii)

44. The Tribunal considered whether around XXX April 2021, Dr Muhammed stated to Nurse A *'what do you look like down there?*' and *'I think I know anyway; I think you're shaved'.*

45. In her Trust statement, dated 4 July 2021 Nurse A stated:

> *"Around the XXX April I was sat at the main base computers documenting on a patient, when he came and sat next to me. He asked me what I 'looked like down below' I felt embarrassed and was worried what others would think if they had heard. I told him that was not appropriate and that I was busy in the hope he would leave me alone. He continued to go on by saying he thought he could guess and asked me if I was 'shaved'. It was at this point I got up and moved away."*

46. In her GMC statement, dated 24 February 2022, she repeated the detail of this experience:

> *"I recall that Dr Muhammed didn't greet me on this occasion and came straight up to me asking 'what do you look like down there?' or words to that effect. I think he may have made a similar comment prior to this interaction, but his comments to me were so relentless that I didn't always take everything he said in. Before I had a chance to react or respond, he immediately said, 'I think I know anyway, I think you're shaved,' or words to that effect. It felt like Dr Muhammed made these comments very loudly,*

and I felt extremely embarrassed that someone would hear him as there were several other doctors around at the time, but nobody turned around or seemed to notice that I can recall."

47. The documentary evidence showed that Nurse A's work shifts overlapped on the 3 April 2021 with Dr Muhammed's. It was evident to the Tribunal that both Nurse A and Dr Muhammed were working at the Hospital "around" XXX April 2021.

48. Dr Muhammed told the Tribunal that the area where the incident is alleged to have taken place was at the main base computers and was usually congested with staff. He invited the inference that, if he had said this, the area would have been busy with people and the conversations could have easily been overheard by others. Therefore, he asserted, it was unlikely that he would have said it. He stated he was shocked by the allegation and strongly refuted that he would ever say words like this.

49. The Tribunal had regard to Nurse A's WhatsApp message to her friend on the 9 April 2021, whereby she stated that *"…there's a locum doctor who's been flirting with me. However….It's only been like banter really…".* Whilst the Tribunal noted that there was evidence of a culture of '"banter" in the department, it considered that this comment in particular was rather graphic and explicitly sexual and did not fit the category of *"just banter really".*

50. The Tribunal noted the delay of 3 months before the Trust complaint was made and considered that this may have had an adverse effect on the memory of Nurse A.

51. The Tribunal considered the testimonials of Dr Muhammed which spoke of his conduct in glowing terms from female staff and nurses at other Emergency departments. The Tribunal considered his good character.

52. Looking at the evidence as a whole the Tribunal was not satisfied that the words alleged had been said by Dr Muhammed.

53. Therefore, on the balance of probabilities, the Tribunal found paragraphs 1b (i and ii) of the Allegation not proved.

<u>Paragraph 1c</u>

54. The Tribunal considered whether Dr Muhammed engaged in unwanted conduct with Nurse A in that he stated to her *'I would like to have bent you over the hospital trolley'* or words to that effect.

55. In her Trust statement, dated 4 July 2021 Nurse A stated "*…but on another occasion after attending to a patient he [Dr Muhammed] told me I was lucky there was a patient in the room as he would like to have "Bent me the hospital trolley"."*

56. She repeated this assertion in her GMC witness statement, *"I would also add that in my statement when I said that Dr Muhammed stated that he'd like to have 'bent me the hospital trolley,' I meant that he said he'd like to have 'bent me over the hospital trolley,' or words to that effect."*

57. Dr Muhammed stated "*I did not make this comment and would not speak to anyone like this even as a joke. I cannot think of any comment that I made to Nurse A that could possibly be misconstrued for me saying this."*

58. Again the Tribunal considered she made no mention of this to others at the time, the content of the WhatsApp to her friend on 9 April 2021 which does not contain a suggestion of anything said that she found offensive but said *"like banter really"* and the delay of 3 months before the complaint was first made to the Trust. The Tribunal had regard to Dr Muhammed's testimonials and good character.

59. Considering the evidence as a whole, on the balance of probabilities, the Tribunal found paragraphs 1c of the Allegation not proved.

Paragraphs 1d (i) and Paragraphs 1d (ii) (1,2,3,4 and 5)

60. The Tribunal considered whether Dr Muhammed engaged in unwanted conduct in that on XXX April 2021 Dr Muhammed asked Nurse A for her telephone number and that when she entered the changing room area he:

1. blocked her entry to the female changing room door;
2. placed his hand on the front of her throat;
3. tightened his grip around her neck;
4. kept her backed up against the wall;

5. asked her twice with your hand on her throat, 'when are you going to give in and give me your number' or words to that effect.

61. The Tribunal considered Paragraph 1d as a whole as it for a large part related to one short incident on XXX April 2021 in the changing room corridor.

62. In Nurse A's Trust statement, dated 4 July 2021, she provided a detailed account of the incident, she described Dr Muhammed's behaviour towards her before this incident was *"relentless"* and she was feeling *"extremely uncomfortable and found [herself] walking around the department the long way around just to avoid him*". She described the incident as follows:

> *"In the department there is a code to on the main door which then opens to both the male and female changing rooms along with the Doctors mess room. As I opened the door Dr Muhammed was there, he jumped and said a remark about him making me jump. As I continued towards the female changing room, he stood in front of me and placed his hand around my throat, my back was against the wall at this point. I recoiled he did not and with his hand still around my throat said, "when are you going to give in and give me your number."*

63. Nurse A provided another detailed account of the incident on XXX April 2021 in her GMC witness statement, dated 24 February 2022:

> *"When I opened the coded door to get to the female changing rooms on XXX April 2021, I was completely taken aback when Dr Muhammed was standing there in front of me. I had been so focused on getting out of the department that once I was off the main ward I almost felt I was in the clear and would no longer see Dr Muhammed. When I did see him I was shocked and I said something along the lines of 'oh, you scared me' and 'you made me jump.' Dr Muhammed responded, 'I was waiting for you,' or words to that effect, and I felt an immediate sense of dread. I got the feeling that I was being told off by Dr Muhammed because he'd been waiting."*

64. The Tribunal considered the WhatsApp complaint from Nurse A to a friend, XXX, on 9 April 2021, she referenced '"banter" and flirting by Dr Muhammed and described the specific act in the changing room. In her WhatsApp message she stated, *"As I got to the door …[Dr Muhammed] was coming out the doctors room he then put his hand on my throat and said so you gonna give me your number."* The Tribunal considered this complaint supported her

account. It was made close to the time and was consistent with her account to the Trust and in these proceedings. Her friend encouraged Nurse A to *"escalate it*". Nurse A stated in the same exchange of messages she was hesitant: *"I know I should but I just feel like it could cause major problem for me."*

65. The Tribunal was of the opinion there was no deviation as to the detail of the incident in her oral evidence. She was measured. She made appropriate concessions, for example, she accepted that she suffered no injury.

66. She sought to explain the inconsistency between her account to the Trust where she said that Dr Muhammed was surprised when she came through the door. In contrast to her GMC statement where she said the surprise was hers when she went through the door and asserted he had been waiting for her. She explained the Trust statement had been written in a hurry. She gave a time lapse of 30 minutes before she went to the changing area after her shift ended.

67. Before the incident in the changing room, Nurse A had described that during her shift that day, Dr Muhammed made a comment to her about getting her number. She said that she responded to his comment *"in a way that was a bit sarcastic, making reference to the fact that he had asked other nurses for their numbers and I knew this was his typical behaviour."*

68. Dr Muhammed strongly denied in his witness statement and oral evidence that the XXX April 2021 incident occurred. He stated that he cannot think of an incident that this could relate to, he has never blocked Nurse A's way or put his hand to her throat as she describes. At the most, he may have passed her and got in the way because of his "stature".

69. Dr Muhammed also denied that he asked for Nurse A's number. He relied on the fact that he if he wanted to contact her, he could have done so via Snapchat.

70. The Tribunal noted that Dr Muhammed had every reason to be coming out of the Doctor's mess. He was still on duty. The Tribunal was not satisfied that he was waiting deliberately for Nurse A. The Tribunal understood how this could be Nurse A's perception given his past conduct of physical touching and his conduct on the XXX April where she described him as "loitering" around her.

71. The Tribunal considered Nurse A's account to be genuine and consistent with other statements and her oral evidence of her perception of Dr Muhammed waiting for her around the department and the overall incident.

72. The Tribunal accepted the reason she gave for her delay in making a formal complaint to the Trust. Namely, her fear of causing trouble for herself.

73. The Tribunal was satisfied that Dr Muhammed had asked Nurse A "*if she was going to give in and give me your number".* This was part of her contemporaneous complaint to her friend via WhatsApp. There was no reason given for her to make this or any of the allegation up that he had touched her throat when asking for her phone number. Dr Muhammed stated in oral evidence there had been no falling out or animosity between them. The Tribunal could not see how this incident could have been misinterpreted by Nurse A.

74. Whilst the Tribunal bore in mind Dr Muhammed's good character and positive testimonials as to his normal conduct, it considered that he had taken advantage of the two of them being found in a small area outside the changing rooms. The Tribunal determined that he repeatedly asked for her phone number and he had placed his hand on her throat.

75. Whilst not condoning the conduct of Dr Muhammed, the Tribunal accepted his evidence that there was a culture of "banter" and that he had joined in. The Tribunal inferred his behaviour may well have arisen as Dr Muhammed had been emboldened by the "banter" and the culture of the department between other doctors and nurses, who were much more long standing colleagues. He was new. He had, however, taken it much further by behaving the way that he did.

76. The Tribunal determined that on the balance of probabilities Dr Muhammed had behaved toward Nurse A as alleged in these sub-paragraphs of the Allegation. The Tribunal therefore found sub-paragraphs 1d (i) and 1d (ii) (1,2,4,5) of the allegation proved.

77. The Tribunal considered whether on XXX April 2021 Dr Muhammed tightened his grip around Nurse A's neck.

78. The Tribunal determined that Dr Muhammed's behaviour towards Nurse A was meant in a flirtatious way. It found he meant to make physical contact with Nurse A by touching her throat. The Tribunal was not satisfied that he meant to hurt Nurse A or deliberately prevent her movement. Nurse A was candid that there was no mark on her neck

left behind. The Tribunal noted her first complaint in the WhatsApp message was *"he put his hand on my throat",* there was no suggestion in that complaint of her throat being gripped. The Tribunal was not satisfied on the evidence that Dr Muhammed tightened his grip.

79. The Tribunal found paragraph 1d (ii) (3) not proved.

Nurse B

80. Before the Tribunal went on to consider the particular paragraphs of the allegation it considered the evidence as a whole. It noted that in her oral evidence Nurse B agreed with the assertion made on behalf of Dr Muhammed that there was a general culture of "banter" in the department and *"gallows humour".* She agreed this was a high pressure working environment. She also told the Tribunal that there was a handful of staff who had known each other for a long time who were friendly and sometimes overfamiliar with each other. She said that Dr Muhammed's behaviour would be similar but that he was quite new in the department. She said he joined in with that behaviour. She said sometimes there was physical contact between colleagues. She stated it was known in the department she did not join in with this contact.

Paragraphs 2a and Paragraph 2b

81. The Tribunal considered whether during April 2021, on one or more occasions, Dr Muhammed engaged in unwanted conduct with Nurse B in that he pinched her nose and initially ignored her request to stop touching her nose and mask.

82. Nurse B explained in her GMC witness statement, dated 20 May 2022, that she and Dr Muhammed worked together frequently and *"nearly every shift that we both worked on for the first couple weeks, Dr Muhammed would pinch my nose and pull my surgical mask from my face when he came over to me. It felt like Dr Muhammed's way of greeting me, but it made me uncomfortable."*

83. Nurse B described this behaviour in her email to the Trust, dated 27 April 2021, where she complained to Matron C, that Dr Muhammed would *"consistently"* touch her face mask, which she said she found inappropriate due to the pandemic situation at the time.

84. She stated that the first few times Dr Muhammed would grab her nose and mask, she would walk away or smile politely so as to not cause a scene but after the first few times she

asked him *"explicitly to stop touching [her]… you realise we're in a pandemic, you really shouldn't be touching [her]".* Nurse B stated Dr Muhammed did not stop grabbing her nose and mask right away and that he *"often laughed in response to [her] asking him to stop, as if he thought it was all a joke. He would also say things like 'it's fine, it's not that serious,'."*

85. Dr Muhammed stated that he did not recall pinching her nose but may have done so whilst 'pinging' her mask. Dr Muhammed suggested that there was a general culture of mask 'pinging' in the department and his mask was often pinged by others.

86. Nurse B fairly conceded in her oral evidence that the nose pinch may well have been an incidental part of pulling the mask rather than intentional. The Tribunal was of the view this concession and her concession regarding the culture in the department between colleagues gave her evidence credibility.

87. In contrast, the Tribunal was of the opinion that Dr Muhammed's credibility was undermined by his own evidence. Whilst in a general sense, he said that others were involved in mask pinging, he had not suggested, before the hearing, that Nurse B pinged his mask first. The Tribunal accepted the submission of the GMC that this was an important matter to specifically mention in his GMC statement, if it were true.

88. The Tribunal was of the view that Dr Muhammed's claim that the allegations as a whole were fabricated as Nurse B had been rebuffed by him, saying he was married, were unlikely. The Tribunal was of the view that she would have been unlikely to complain to the Trust about Dr Muhammed if she had been acting sexually inappropriately.

89. The Tribunal was satisfied that it was more likely on balance that Dr Muhammed did pinch Nurse B's nose by mask 'pinging' and that Dr Muhammed had ignored Nurse B's initial request to stop touching her mask.

90. The Tribunal therefore found paragraphs 2a and 2b of the Allegation proved.

Paragraphs 2c and Paragraphs 2d (i, ii, iii)

91. The Tribunal considered whether during April 2021, on one or more occasions Dr Muhammed engaged in unwanted conduct with Nurse B in that he touched her shoulders and squeezed them and went to over to where she was sitting and: massaged her shoulders; moved his hands down her back; and pinched or tickled her waist with his hands.

92. On 27 April 2021, Nurse B had emailed a complaint to Matron C, specifically regarding Dr Muhammed being *"over-personal"* in the workplace, noting that *"on several occasions Dr [Muhammed] has touched my face, shoulders and waist."*

93. Nurse B elaborated on this in her GMC witness statement, dated 20 May 2022, stating that it was very common for Dr Muhammed to touch her and other female staff member's shoulders and squeeze them *"as if to massage them".* Nurse B stated that she recalled multiple instances when she was sitting at a computer and he would come over and start massaging her shoulders and sometimes move his hand down her back and pinch or tickle her waist with his hands.

94. She maintained in her oral evidence this had happened.

95. Dr Muhammed denied that he behaved in the way described by Nurse B however, he conceded that it may have been possible that he did squeeze her shoulders in a "friendly gesture" but that he did so at the time with all colleagues, male and female. He stated that he was a *"tactile person"* and that he *"had not appreciated that this would be perceived to be inappropriate in the circumstances in which it was meant."*

96. As already observed, the Tribunal considered that Nurse B was fair and measured in her evidence, for the reasons already set out. The Tribunal considered that Nurse B was clear in her description of when and where Dr Muhammed touched her, including when sitting at the computer.

97. For the reasons set out, the Tribunal did not accept the evidence from Dr Muhammed. His description of a tap on the back to move a nurse aside to get blood equipment could not be confused by Nurse B. He had plainly touched Nurse B when she did not want it. This was on her face mask and also on her shoulders, back and waist.

98. For the reasons set out above, the Tribunal preferred the account of Nurse B over that of Dr Muhammed in all respects. The Tribunal considered that Dr Muhammed was more likely than not to have behaved as alleged.

99. The Tribunal found paragraph 2c and paragraph 2d (i, ii, iii) of the Allegation proved.

<u>Paragraph 2e</u>

100. The Tribunal considered whether Dr Muhammed laughed in response to Nurse B's request for him to stop touching her.

101. The Tribunal had already determined that it preferred Nurse B's account of events at paragraphs 2c and 2d.

102. Nurse B stated Dr Muhammed did not stop grabbing her nose and mask right away and that he *"often laughed in response to me asking him to stop, as if he thought it was all a joke. He would also say things like 'it's fine, it's not that serious,'."* Nurse B said that she asked him multiple times to stop touching her. He eventually did so.

103. Dr Muhammed further repeated that there was a culture of colleagues being jokey and overfamiliar and he had joined in with them but denied that he laughed in response to her requesting to stop touching her. His explanation for his behaviour was that he had a desire to fit in and therefore participate in the "banter" culture.

104. Dr Muhammed apologised in his Trust statement, dated 1 July 2021, for engaging in "banter" that had led to the discomfort of his colleagues. He also acknowledged that he had overstepped the mark and his actions caused his colleagues discomfort.

105. Having found that he ignored Nurse B's requests to stop touching her face and mask and having considered the evidence as a whole, the Tribunal considered that it was more likely than not that he had laughed when she asked him not to touch her elsewhere.

106. The Tribunal further considered that against the background of "banter" that seemed to pervade the department, that Dr Muhammed admitted he had joined in with, it was more likely than not that Dr Muhammed had laughed in response to her request for him to stop touching her.

107. The Tribunal found paragraph 2e of the allegation was proved.

<u>Paragraph 2f and Paragraph 2g</u>

108. The Tribunal considered whether Dr Muhammed commented on how Nurse B could improve her looks and told her *'you should get a Botox'* or words to that effect.

109. In her GMC statement, dated 20 May 2022, Nurse B stated that when Dr Muhammed had tickled her waist, she responded to him saying *"does your wife know you flirt with all the girls at work so much'.* She stated to the Tribunal that when she reminded Dr Muhammed that he had a wife, the jokes he made thereafter became personal.

> *"For example, he would comment on my looks and tell me how they could improve. Dr Muhammed also told me 'you should get Botox,' or words to that effect. I think his tone may have changed with me as a result of me talking back to him. Dr Muhammed also stopped touching my face, waist and shoulders after this."*

110. Nurse B elaborated during her oral evidence, she recalled *"… I recall that his face kind of dropped and he walked away after I made that comment."*

111. The Tribunal noted that in her email to the Trust, 27 April 2021, Nurse B said the inappropriate touching was still ongoing. There was no suggestion that it had been brought to a halt by a conversation that mentioned his wife.

112. Dr Muhammed did not dispute that he had discussed Botox with Nurse B and another named colleague, a senior nurse who has said *"what can you do for her"* or words to that effect.

113. The Tribunal was of the view that this had a ring of truth about it. Given his other area of work, it was likely there had been conversations about Botox between Dr Muhammed and colleagues but of an inconsequential nature.

114. The Tribunal was satisfied that a conversation about Botox did occur with Nurse B present. However, the Tribunal preferred the evidence of Dr Muhammed that this conversation was of an unremarkable nature and not provoked by him.

115. Accordingly, the Tribunal found paragraph 2f and 2g of the Allegation not proved.

Cross admissibility of the two complaints.

116. The Tribunal considered each of the complaints separately in the first instance. It went on to consider if the allegations bore any similarities and if so whether they supported a propensity to behave in the way alleged by the GMC. The Tribunal went on to consider what impact, if any, this had on its determinations.

117. The Tribunal noted that there was no evidence of contamination or collusion. The witnesses are not suggested to have communicated before their complaints. The Tribunal therefore were satisfied that the complaints were independent of each other.

118. When considering the evidence of both Nurse A and B the Tribunal was satisfied there were similarities between the complaints made and was of the view that they demonstrated a propensity to be physically overfamiliar by Dr Muhammed. Both nurses supported inappropriate contact with their face masks. Both nurses supported unwanted touching of the torso including the back and waist and both stated that their requests to stop were ignored and treated as a joke.

119. The Tribunal was of the view that this strengthened the adverse determinations made but also did not impact those paragraphs of the allegations it found not proved. There was otherwise little similarity between the complaints. The incident on the XXX April 2021 with Nurse A was distinct.

Paragraph 3a

120. The Tribunal considered whether Dr Muhammed's actions as set out in Paragraph 1 were unlawful sexual harassment by virtue of Section 26(2) of the Equality Act 2010, in that he engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of Nurse A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

121. The Tribunal considered the allegations found proved at Paragraph 1. It found that there was an escalation of unwanted behaviour by Dr Muhammed towards Nurse A. It found that there had been persistent touching of a female colleague in the bodily areas described which were personal and intimate. The Tribunal considered that this type of unwanted behaviour was inappropriate, especially in the workplace.

122. While Nurse A took some time to report Dr Muhammed's behaviour to the Trust, she provided a detailed and thorough account of the XXX April 2021 changing room incident to The Trust and she said she felt intimidated and deeply upset by the episode. She feared the consequences of reporting Dr Muhammed's behaviour.

123. It considered that Dr Muhammed's unwanted conduct overall constituted unlawful sexual harassment which had the purpose or effect of violating the dignity of Nurse A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

124. The Tribunal found that paragraph 3a of the Allegation was proved.

Paragraph 3b

125. The Tribunal considered whether Dr Muhammed's actions at paragraph 1 were sexually motivated.

126. The Tribunal found that Dr Muhammed's conduct was for his own sexual gratification and in pursuit of a sexual relationship with Nurse A. Dr Muhammed was persistent with his physical contact with Nurse A in general and especially in his pursuance of Nurse A on XXX April 2021.

127. The Tribunal has accepted Nurse A's evidence that Dr Muhammed had been loitering around the department on XXX April 2021. The Tribunal had determined that he took advantage of an encounter alone with Nurse A, placed his hand on her throat and asked repeatedly for her telephone number. This was supported by evidence as she reported it to her friend via WhatsApp. The Tribunal could not think of a logical reason why he would ask for her number unless in pursuit of a sexual relationship with Nurse A.

128. The Tribunal considered that given the nature of the conduct found proved, the touching behaviour, flirty language and the XXX April 2021 incident, the Tribunal could find no other possible credible explanation save that Dr Muhammed's conduct was sexually motivated.

129. Therefore, on the balance of probabilities, Dr Muhammed's behaviour was sexually motivated and Paragraph 3b was found proved.

Paragraph 4a

130. The Tribunal considered whether Dr Muhammed's actions as set out in Paragraph 2 were unlawful sexual harassment by virtue of Section 26(2) of the Equality Act 2010, in that he engaged in unwanted conduct of a sexual nature which had the purpose or effect of

violating the dignity of Nurse B, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

131. It found that there had been persistent touching of a female colleague in the bodily areas described which were personal and intimate. Nurse B had repeatedly asked Dr Muhammed to stop touching her. Dr Muhammed had repeatedly not taken her seriously and belittled her requests by laughing.

132. It considered that Dr Muhammed's unwanted conduct overall constituted as unlawful sexual harassment which had the purpose or effect of violating the dignity of Nurse B, or creating an intimidating, hostile, degrading, humiliating or offensive. environment for her. The Tribunal considered that this type of unwanted behaviour was inappropriate, especially in the workplace.

133. The Tribunal found paragraph 4a of the Allegation was proved.

Paragraph 4b

134. The Tribunal considered whether Dr Muhammed's actions at paragraph 2 were sexually motivated.

135. The Tribunal has found that Dr Muhammed touched Nurse B on her shoulders, massaged them, moved his hands down her back, tickled/touched her waist. This behaviour had led to her complaint to the Trust when he would not stop. This was conduct of a sexual nature, especially an act of massage or the tickling/touching of her waist. His conduct created an offensive environment for Nurse B to work in.

136. The Tribunal was of the view the only reason for him to do what is described was for his own sexual gratification.

137. The Tribunal found that Paragraphs 4a and 4b were proved.

The Tribunal's Overall Determination on the Facts

138. The Tribunal has determined the facts as follows:

1. During April 2021, you engaged in unwanted ~~contact~~ conduct with Nurse A in that: Amended under Rule 17(6)

2.

a. on one or more occasions you:
   i. told her 'pull your mask down so I can see your face,' or words to that effect; Determined and found proved
   ii. put your arm:
      1. around her back; Determined and found proved
      2. on her waist; Determined and found proved

b. around XXX April 2021 you stated:
   i. 'what do you look like down there?' Determined and found not proved
   ii. 'I think I know anyway; I think you're shaved' Determined and found not proved

   or words to that effect;

c. you stated 'I would like to have bent you over the hospital trolley' or words to that effect; Determined and found not proved

d. on XXX April 2021:
   i. you asked her for her telephone number; Determined and found proved
   ii. when she entered the changing room area you: Determined and found proved
      1. blocked her entry to the female changing room door; Determined and found proved
      2. placed your hand on the front of her throat; Determined and found proved
      3. tightened your grip around her neck; Determined and found not proved
      4. kept her backed up against the wall; Determined and found proved
      5. asked her twice with your hand on her throat, 'when are you going to give in and give me your number' or words to that effect. Determined and found proved

3. During April 2021, on one or more occasions you engaged in unwanted ~~contact~~ conduct with Nurse B in that you: Amended under Rule 17(6)

a. pinched her nose; Determined and found proved

b. initially ignored her request to stop touching her nose and mask;
Determined and found proved

c. touched her shoulders and squeezed them; **Determined and found proved**

d. went over to where she was sitting and:

i. ~~massaging~~ massaged her shoulders; **Amended under Rule 17(6)**
Determined and found proved

ii. ~~moving~~ moved your hands down her back; **Amended under Rule 17(6)**
Determined and found proved

iii. ~~pinching~~ pinched or ~~tickling~~ tickled her waist with your hands;
Amended under Rule 17(6)
Determined and found proved

e. laughed in response to her request for you to stop touching her;
Determined and found proved

f. commented on how she could improve her looks;
Determined and found not proved

g. told her 'you should get a botox' or words to that effect.
Determined and found not proved

4. Your actions as set out at paragraph 1 were:

a. unlawful sexual harassment ~~related to sex~~ by virtue of Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct ~~related to sex~~ of a sexual nature which had the purpose or effect of violating the dignity of Nurse A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her; **Amended under Rule 17(6)**
Determined and found proved

b. sexually motivated **Amended under Rule 17(6)**
Determined and found proved

5. Your actions as set out at paragraph 2 were:

a. unlawful sexual harassment ~~related to sex~~ by virtue of Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct ~~related to sex~~ of a sexual nature which had the purpose or effect of violating the dignity of Nurse B, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her; **Amended under Rule 17(6)**
Determined and found proved

b. sexually motivated **Amended under Rule 17(6)**
Determined and found proved

Determination on Impairment - 24/07/2023

139. 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, Dr Muhammed's fitness to practise is impaired by reason of misconduct.

The Evidence

140. The Tribunal has considered all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received further evidence from Dr Muhammed. In addition to testimonials adduced as part of the facts stage of the proceedings he relied on a bundle of additional documents that included:

- Continuing Professional Development ('CPD'), dated January-March 2023;
- Reflections and learning from CPD courses, various dates;
- Annual Appraisal, dated 26 October 2022;
- 53 Colleague feedback surveys, various dates from April to August 2022;

Submissions

On behalf of the GMC

141. Mr Hamlet, Counsel, submitted that the facts found proved in this case amount to serious misconduct and that Dr Muhammed's fitness to practise is impaired by reason of that misconduct. Mr Hamlet referred the Tribunal to the relevant case law when considering misconduct. He also referred the Tribunal to paragraphs of Good Medical Practice (2013 edition) (GMP) 35, 36 and 37, which he submitted had been breached by Dr Muhammed.

142. When considering whether Dr Muhammed's conduct amounted to misconduct, Mr Hamlet submitted that the findings in this case concern sexually motivated misconduct and sexual harassment of both Nurse A and Nurse B. He submitted the conduct included unwanted touching of Nurse A's face mask, repeatedly asking for her telephone number and subjecting her to what may be considered a frightening ordeal outside the changing room on

XXX April 2021, which she described as stunning her and leaving her shaken. In respect of Nurse B, Dr Muhammed's conduct included unwanted touching of her nose, shoulders, back and waist which he ignored or laughed at when she made requests to him to stop. He submitted that Dr Muhammed's conduct individually and collectively self-evidently amounted to serious misconduct.

143. Mr Hamlet invited the Tribunal to then consider whether any misconduct found impaired Dr Muhammed's current fitness to practise. Mr Hamlet again referred the Tribunal to the relevant and accepted legal principles and case law when considering impairment. In particular, the case of *Cohen v GMC [2008] EWHC 581 (Admin),* in which Silber J stated: *"It must be highly relevant in determining if a doctor's fitness to practice is impaired that first his or her conduct which led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated."* Mr Hamlet submitted that the conduct present in this case was not easily remediable, it has not been yet remedied and, therefore, was likely to be repeated.

144. Mr Hamlet submitted that, Dr Muhammed's conduct concerned two female colleagues, that he generated an environment that was intimidating, hostile, degrading, humiliating and offensive for them. He submitted that while no patients were directly affected by Dr Muhammed's behaviour, it had the potential to have a serious impact on trust and confidence between colleagues. He submitted that in the absence of remediation evidence, it was likely to have an ongoing impact on wider public trust and confidence, not only in Dr Muhammed but in the wider medical profession.

145. Turning to insight, Mr Hamlet submitted that there was a flat denial of a number of proven facts by Dr Muhammed. He submitted that Dr Muhammed has acknowledged that he misjudged the culture but he had not reflected adequately on the role that his misjudgement had and its impact on the department. Mr Hamlet submitted that, on the basis of this evidence, Dr Muhammed lacks any or any adequate insight into the matters which have been found proved, this added to the risk of repetition in this case.

146. Mr Hamlet invited the Tribunal to consider that the public interest demands a finding of impaired fitness to practise in order to uphold standards and public confidence. He referred to the case of CHRE v NMC and Grant [2011] EWHC 927 (Admin), where Mrs Justice Cox noted:

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

147. Mr Hamlet referred to the judgement by Dame Janet Smith in the 5th Shipment Report and submitted the second and third limbs are engaged in this case, namely the bringing the reputation of the profession into disrepute and breaching fundamental tenets of the profession.

On behalf of Dr Muhammed

148. Mr Lownds, Counsel, accepted it was a matter for the Tribunal to consider misconduct.

149. Mr Lownds accepted that the changing room incident (XXX April 2021), was the most serious part of the misconduct but he submitted that it was a short-lived episode and an isolated incident. Nurse A has told the Tribunal that she was shocked, and it was an unpleasant experience, but he submitted Nurse A suffered no physical injury. He referred to the Tribunal's facts determination whereby it found that the changing room incident was consistent with it being an opportunistic event, rather than premeditated.

150. When considering the gravity of the conduct in this case, Mr Lownds referred to the general disinhibited working environment Dr Muhammed uniquely found himself working in. He submitted the Tribunal could consider the extent that the behaviour it found proved may have arisen because he was emboldened by that disinhibited environment.

151. Whilst there were significant findings against Dr Muhammed, Mr Lownds submitted that this case was at the lower end of the scale of seriousness of sexual misconduct. He submitted that this was not a case that involved sexual misconduct towards patients. He submitted that this was not a case where there had been contact with breasts or below the waist or under clothing.

152. Mr Lownds referred the Tribunal to Dr Muhammed's previous good character and submitted that his positive testimonials are of substantial weight in the Tribunal's

consideration of impairment. He submitted that the positive testimonials are directed at the very issues of this case, in terms of the way Dr Muhammed conducts himself with female colleagues. These colleagues have worked with Dr Muhammed for significant lengths of time, in other hospitals and were provided by them with full knowledge of the allegations he faced. Mr Lownds submitted the positive testimonials demonstrated a "completely clean bill of health" in terms of Dr Muhammed's appropriateness working with colleagues. He submitted that this was highly valuable evidence of Dr Muhammed's previous good character.

153. Mr Lownds submitted that there has been a period of two years since the behaviour occurred, and there has been important self-remediation evidenced by Dr Muhammed's remediation bundle the Tribunal has received. He referred to Dr Muhammed's most recent annual appraisal, CPD course attendance and his reflections on those courses. He submitted that Dr Muhammed has recognised that he needs to review his attitude, his approach and his conduct and reflect upon his behaviour so that he is not misconstrued in the future.

154. Mr Lownds submitted that this was a case where the Tribunal can properly conclude that the conduct found proved is out of character, occurred in a relatively short, isolated period in his career, and that the risk of repetition is so remote that Dr Muhammed's fitness to practise is not currently impaired.

155. Mr Lownds took the Tribunal through the criteria for Warnings and submitted that a Warning might be an appropriate outcome for the case.

The Relevant Legal Principles

156. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision on impairment is a matter for the Tribunal's judgement alone.

157. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct, and that the misconduct was serious, and then whether the finding of that misconduct which was serious, leads to a finding of impairment.

158. The Tribunal must determine whether Dr Muhammed's fitness to practise is impaired today, considering Dr Muhammed's conduct at the time of the events and any relevant

factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

159. The Tribunal had regard to paragraph 76 of the judgment in the case of *CHRE v NMC & Paula Grant [2011] EWHC 927 (Admin)*, in which Mrs Justice Cox provided a helpful approach to the determination of impairment:

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

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

b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or…

d. …'

The Tribunal's Determination on Impairment

Misconduct

160. In determining whether Dr Muhammed's fitness to practise is currently impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amounted to misconduct.

161. The Tribunal had regard to all the facts outlined in this case. The Tribunal found that Dr Muhammed had engaged in sexually inappropriate behaviour towards two nurses. The conduct involved the repeated and unwanted touching of both nurses. He had pulled at Nurse A mask and asked, *"to see her face",* he had invaded her personal space and, on the XXX April 2021, had taken the opportunity, when he found himself alone with her outside the changing rooms for staff, to physically touch her neck and ask for her phone number. This was conduct that any professional would know was wholly unacceptable. More than that it could readily be described as deplorable.

162. The Tribunal had found that Dr Muhammed behaved in similar inappropriate ways to Nurse B. He had touched her face mask, he had touched her shoulders and massaged them, he had moved his hands down her back and touched her waist.

163. Dr Muhammed's behaviour towards both nurses amounts to sexual harassment. He created an intimidating, hostile, degrading, humiliating and offensive environment for them to work in. Dr Muhammed treated both nurses' requests to stop as a joke, he did not stop and both nurses complained to the Trust.

164. The Tribunal had regard to Good Medical Practice (2013) (GMP) and considered the following paragraphs were not met by Dr Muhammed in this case:

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

165. The Tribunal considered that repeated, unwanted sexualised contact is evidently deplorable, especially with a work colleague where there is an imbalance of power in a working relationship. The Tribunal also considered that Dr Muhammed's refusal to stop touching both Nurse A and Nurse B, despite their requests, made the conduct more serious. Nurse A feared not being believed if she reported Dr Muhammed.

166. The Tribunal determined that Dr Muhammed's behaviour, taken both individually and together, constituted a serious departure from GMP. The Tribunal has concluded that Dr Muhammed's conduct fell far short of the standards of conduct reasonably to be expected of a doctor and amounts to serious misconduct.

Impairment

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

168. The Tribunal considered that Dr Muhammed had repeatedly put his own satisfaction before the dignity and feelings of both Nurse A and Nurse B. His conduct towards Nurse A during the incident in the changing room was an escalation of the same pattern of unacceptable behaviour. He ought to have realised that his behaviour left both nurses feeling harassed. They will have felt they had little choice to go along with his unwanted touching. By his actions, he made their work environment an unpleasant place to be.

169. The Tribunal has accepted that there was a culture amongst more long-standing staff of *"banter"* and familiarity that included touching. Dr Muhammed was new to the department. The Tribunal make no comment as to whether this wider culture was appropriate or not. Dr Muhammed was asked to stop by Nurse A and Nurse B but he carried on, nonetheless.

170. Dr Muhammed has previously stated in his GMC witness statement that he was unaware at the time that some of the interactions were unwelcome by Nurse A and Nurse B and he has apologised that he misjudged the position. He stated that he recognised, with the benefit of hindsight that, his actions were wrong.

171. On the evidence presented to the Tribunal, the misconduct is confined to a short period of less than two months. It is also confined to only when he worked in this particular emergency department.

172. The Tribunal has received a good body of evidence that demonstrated that this is not Dr Muhammed's usual deportment. The testimonials from females, some of whom have worked with him a long time before, during and in the years after this incident, from other emergency departments, speak of him in glowing terms. Dr Muhammed provided the Tribunal with 53 colleague surveys, a large majority from female colleagues whom consistently said that he was "good" or "very good" when working with his colleagues. It was clear that Dr Muhammed is otherwise highly regarded and this feedback, along with the positive testimonials, placed his misconduct in its proper context.

173. It is evident that Dr Muhammed can and does normally behave in a way that causes no concern to his colleagues. Dr Muhammed has been working unrestricted for two years since the allegations were made. He has shown, therefore, he is able to exercise self-control. Balancing all the evidence the Tribunal was of the view that Dr Muhammed's behaviour was not part of a more worrying, deeply entrenched personality trait.

174. The Tribunal have also received documentary evidence that Dr Muhammed has completed CPD courses on 'Mastering Professional Interactions', 'Maintaining Professional Boundaries' and 'Difficult Interactions with Colleagues' in early 2023. It has read his reflections on completing the courses. The Tribunal acknowledged that Dr Muhammed has taken steps towards remediation. The Tribunal considered that Dr Muhammed's reflections on these courses indicated that he is developing insight into his misconduct.

175. However, the Tribunal considered that he was in the early stages of his remediation efforts and that he requires further time and experience to fully address the issues in this case to restore public confidence in him. The Tribunal determined that Dr Muhammed's process of remediation remains incomplete.

176. Whilst the Tribunal was satisfied that Dr Muhammed's misconduct was confined to a short time period in a particular context, it has, nonetheless, caused great damage to his reputation and that of the wider medical profession.

177. The Tribunal bore in mind that this was not a single incident. Two nurses were forced to complain about him. The incident outside the changing rooms was especially shocking. He caused Nurse A to be frightened. She was obviously vulnerable and feared the consequences of raising a complaint. He had seriously undermined the reputation of the medical profession as a whole.

178. The Tribunal was of the view that a warning would be wholly inappropriate in this case.

179. In light of its findings on insight and remediation, the Tribunal considered that whilst it could not currently rule out repetition, it determined that it was unlikely given the facts, as set out, and the passage of two years since these incidents when Dr Muhammed had been working, unrestricted, since these incidents.

180. Applying the key legal principles in the case of Grant and considering the Statutory Overarching Objective, the Tribunal concluded that Dr Muhammed's conduct was serious as his actions had brought the medical profession into disrepute and breached fundamental tenets of GMP.

181. The Tribunal acknowledge the interests of the wider medical profession as a whole are more important than that of an individual doctor. The Tribunal considered that a finding of impairment by reason of misconduct was necessary in this case to uphold the second and third limbs of the overarching objective, namely, *to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of the profession.*

182. The Tribunal considered that a reasonable and well-informed member of the public hearing of Dr Muhammed's behaviour was bound to be both shocked and appalled and would expect a finding of impairment to be made in this case, both to mark the seriousness of the misconduct and to uphold the overarching objective. In addition, the Tribunal determined that public confidence in the profession would be undermined if a finding of impairment was not made, given the sexually motivated misconduct found proved.

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

Determination on Sanction - 26/07/2023

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

The Evidence

185. The Tribunal has considered all the evidence received during the earlier stages of the hearing, where relevant, in reaching its decision on sanction. Neither party presented any additional evidence at the sanction stage.

Submissions

On behalf of the GMC

186. Mr Hamlet submitted that a period of suspension is the most appropriate sanction in this case and referred the Tribunal to the relevant paragraphs of the Sanctions Guidance (2020)('SG').

187. Mr Hamlet referred to the mitigating features in this case and submitted that Dr Muhammed has no prior disciplinary record, his misconduct is out of character with his usual behaviour and it was confined to a period of less than two months. As for aggravating features, he submitted that Dr Muhammed's conduct was repeated and continued even after he was asked to stop. It involved a power imbalance in respect to his relationship with both Nurse A and Nurse B. He submitted that Dr Muhammed caused great damage to his reputation and to that of the wider profession.

188. Mr Hamlet took the Tribunal through the sanctions available. He submitted that there are no exceptional circumstances in this case to justify taking no action and that it would not be an appropriate course for the Tribunal to take. He submitted that conditions need to be appropriate, proportionate workable and conditions might be appropriate where clinical failings are concerned. However, given the serious nature of the conduct, imposing conditions in this case would be both inappropriate and inadequate.

189. Mr Hamlet invited the Tribunal to look at the particular circumstances in this case and consider whether suspension is the appropriate sanction or whether, in the Tribunal's judgement, the misconduct necessitated erasure.

190. Mr Hamlet submitted that Dr Muhammed's actions were a reckless disregard and serious departure from the principles set out in GMP. However, he referred to the Tribunal's finding that Dr Muhammed's behaviour was found not to be part of a deeply entrenched personality trait and was unlikely to be repeated. He accepted that there has been no identified risk to patients. He accepted that Dr Muhammed has made some progress towards remediation. He submitted that suspension would be proportionate in addressing the public confidence issues, upholding standards and would allow Dr Muhammed time to reflect, gain further insight and remediate.

191. Mr Hamlet submitted that suspension would be appropriate for conduct that is serious but fell short of being fundamentally incompatible with continued registration. Therefore, he submitted, erasure would be disproportionate to impose.

192. Whilst the conduct merited an order of suspension, Mr Hamlet submitted that given the seriousness of the Tribunal's findings, the nature of the conduct meant it fell at the upper end of the scale of seriousness and warranted a suspension of a length towards the upper end of maximum.

On behalf of Dr Muhammed

193. Mr Lownds submitted that, in deciding the issue of sanction, the principle aims for the Tribunal are to protect the public, uphold standards and maintain public confidence. He submitted that there was a necessity to strike a balance between imposing the right sanction and the effect of the sanction on Dr Muhammed. Mr Lownds submitted that the necessary and proportionate sanction in this case was one of suspension and not erasure.

194. Mr Lownds submitted that, whilst it has been found that Dr Muhammed engaged in sexually motivated and harassing conduct, it was conduct that can be viewed at the lower end of the spectrum of its type. He submitted that the most serious incident outside the changing room involved inappropriate placing of the hand on the neck. However, no physical injury occurred, it was for a relatively short duration, and it was found to be a spontaneous rather premeditated. Mr Lownds reminded the Tribunal of the general disinhibited culture within the department that Dr Muhammed joined as a participant for a relatively short period of about two months. He submitted that there was no serious harm to others and there are no patient safety risks.

195. Mr Lownds submitted that there was evidence that Dr Muhammed has shown insight and does not pose a significant risk of repeating the behaviour. He reminded the Tribunal that Dr Muhammed has apologised in relation to the extent in which his behaviour involved misjudgement, miscalculation and inappropriateness. He submitted that the Tribunal has received evidence in the form of testimonials and colleague surveys that support Dr Muhammed's previous good character. He reminded the Tribunal that in the two years that have passed since the events, Dr Muhammed has conducted himself in an exemplary manner in different emergency departments.

196. Mr Lownds stated that Dr Muhammed has also attended relevant boundaries courses and has made efforts to produce reflective documents of his learning. He invited the Tribunal to consider extracts from Dr Muhammed's reflective documents which, he submitted, demonstrated Dr Muhammed's refined approach to interactions in the workplace:

"The index issues that I identified were non-clinical contact, allegation of commenting on appearance, participation in banter and the allegation of unwanted contact. To address these, I will immediately limit the contact to clinical only and avoiding any form of banter, comments on others appearance and any form of unwanted contact. I recognise that receiving feedback from colleagues will help maintain to the values of maintaining professional boundaries.

At times, I found myself as a tactile individual struggling to balance empathy and compassion with the maintaining appropriate distance and objectivity. The rapport that I have built with my colleagues lead to personal connections, and while I know it's essential to show genuine care, I will limit my interaction to a verbal reassurance than that of touch."

197. Mr Lownds submitted that the Tribunal should also consider the significant impact of an order of suspension on Dr Muhammed. He submitted that Dr Muhammed and his family would suffer a financial impact as he is the "main earner" in his household.

198. Mr Lownds accepted that the Tribunal's findings constitute serious misconduct, however, having considered the factors in this case, including Dr Muhammed's insight, significant remedial steps taken and the low risk of repetition, the conduct was not fundamentally incompatible with continued registration. Therefore, Mr Lownds submitted, suspension was the proportionate response on the basis of the Tribunal's findings and erasure would be disproportionate and therefore, not appropriate.

199. Finally, Mr Lownds submitted that if the Tribunal was minded to impose a sanction of suspension, a suspension length towards the lower end would be the proportionate outcome.

The Relevant Legal Principles

200. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal exercising its own judgment by reference to the SG. It must consider the least restrictive sanction first and then, if necessary, consider the other sanctions. The Tribunal must consider its determination on impairment and take those matters into account during its deliberations on sanction.

201. The Tribunal recognised the purpose of a sanction is not to be punitive but to protect patients and the wider public interest, although it may have a punitive effect. If the Tribunal departs from the SG, it must give reasons for departing from relevant part of the SG.

202. The Tribunal will apply the principle of proportionality, balancing the wider public interest with that of Dr Muhammed's. The Tribunal bore in mind the reputation of the profession as a whole was more important than the interests of an individual member.

The Tribunal's Determination on Sanction

Aggravating and Mitigating Factors

203. The Tribunal has already found the misconduct serious and has set out its decision on the facts and impairment stages. Before considering what action, if any, was appropriate in this case, the Tribunal considered and balanced the aggravating and mitigating factors.

204. The Tribunal considered the following to be aggravating factors in this case:

a) There were two separate Nurses who complained about Dr Muhammed,
b) This was behaviour that continued, despite requests by both nurses to stop,
c) The XXX April 2021 incident, when Dr Muhammed placed his hand on Nurse A's throat, in order to persuade her to give her telephone number to him, was an escalation of his misconduct,
d) The XXX April 2021 incident left Nurse A frightened,
e) There was an imbalance of power between Dr Muhammed and both Nurses,
f) Dr Muhammed's behaviour, taken as a whole, amounted to sexual harassment, involved serious departures from GMP and is not compatible with being a good doctor.

205. Having identified the aggravating factors in the case, the Tribunal identified the following mitigating factors:

a) The XXX April 2021 incident was not planned but opportunistic in nature,
b) Dr Muhammed did not intend to hurt Nurse A and it is not suggested he physically harmed her (emotional harm is accepted)
c) The said incident was the most serious part of Dr Muhammed's conduct, however it was isolated in character,

d) Dr Muhammed's conduct involved no direct contact with sexual parts,
e) The misconduct occurred in a department where, it was accepted, there was a wider culture of disinhibited behaviour, amongst more long standing colleagues, that Dr Muhammed was emboldened to join in with (he agrees that he should not have),
f) There was a good deal of evidence to demonstrate his misconduct was wholly out of character and not part of a more deeply entrenched personality trait. Dr Muhammed was held in high regard by other female colleagues with whom he had worked, some for many years, some during these incidents but at different emergency departments and some since these incidents.
g) Dr Muhammed had worked two years unsupervised since the incident, without repetition.

No action

206. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Muhammed's case, the Tribunal first considered whether to conclude the case by taking no action. It noted that taking no action may be appropriate where there are exceptional circumstances.

207. The Tribunal determined that there were no exceptional circumstances in this case. It determined that, given the misconduct and the Tribunal's findings on impairment, action was required in order to uphold and maintain public confidence in the profession, and it would not be sufficient, proportionate or in the public interest, to conclude this case by taking no action.

Conditions

208. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Muhammed's registration. The Tribunal has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

209. The Tribunal noted that neither party submitted that an order of conditions was an appropriate sanction in this case. The Tribunal had regard to the various paragraphs of the SG which indicate the cases in which conditions might be appropriate. The Tribunal found that as the nature of Dr Muhammed's sexual misconduct, was not specifically related to performance or health issues, conditions were not appropriate.

210. The Tribunal did not consider that conditions would mark the seriousness of the misconduct found. Further, the Tribunal did not consider that conditions would be appropriate, proportionate or satisfy the demands of the Overarching Objective.

Suspension

211. The Tribunal then went on to consider whether imposing a period of suspension on Dr Muhammed's registration would be appropriate and proportionate. It bore in mind the SG in relation to suspension, including paragraphs 91, 92, 93 and 97 which state:

> *91 Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.*
>
> *92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (i.e. for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession)*
>
> *93 Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions.*
>
> *97 Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.*
>
> *a A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.*

…

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

f *No evidence of repetition of similar behaviour since incident*

g *The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.*

212. The Tribunal has determined Dr Muhammed's actions included serious breaches of GMP and sexually motivated behaviour and fell short of the standards of conduct reasonably expected of a doctor.

213. When considering insight and remediation the Tribunal noted that there was evidence that Dr Muhammed was capable of engaging in a learning process. It acknowledged that Dr Muhammed had made an early apology to the Trust for the harm his conduct had caused. Dr Muhammed has taken steps to mitigate his actions by completing relevant CPD courses including a Maintaining Boundaries Course. Dr Muhammed provided reflective pieces on the courses.

214. The Tribunal considered that Dr Muhammed should further reflect on the Tribunal's findings to remediate fully. It acknowledged that Dr Muhammed's efforts so far showed some insight and showed he was now holding himself to higher standards and that he intends to continue to do so in the future.

215. The Tribunal also accepted that, in all other respects, Dr Muhammed was a good doctor. Testimonials, his latest appraisal and the colleague feedback surveys show that he is clinically well regarded and has had no other complaints about his behaviour. The Tribunal was satisfied that there was no evidence of patient safety risks.

216. The Tribunal considered that it is also in the public interest to retain a valuable doctor on the register, who normally works collaboratively with his colleagues and who serves his patients and the wider public well. The Tribunal was of the view that a member of the public with full knowledge of the facts, including the usual way in which Dr Muhammed conducts himself and the fact he has worked unrestricted for two years since the incidents without repetition, would not want the public to be deprived of a good doctor.

217. The Tribunal reminded itself of its findings in relation to the risk of repetition of the misconduct in that although it could not rule out the risk of repetition, it was unlikely, based on the evidence it has heard.

218. The Tribunal was of the view that these proceedings had been taken seriously by Dr Muhammed and would serve as a reminder to him of the high standards expected of him to maintain public trust.

219. Having considered the reasons in favour of suspension, the Tribunal went on to consider whether erasure was appropriate and proportionate in this case. It reminded itself of paragraphs 108 and 109 of the SG.

> *108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.*
>
> *109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).*
>
> *a A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.*
>
> *b A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.*
>
> *…*
>
> *d Abuse of position/trust (see Good medical practice, paragraph 65: 'You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession').*
>
> *e Violation of a patient's rights/exploiting vulnerable people (see Good medical practice, paragraph 27 on children and young people, paragraph 54 regarding expressing personal beliefs and paragraph 70 regarding information about services.*
>
> *….*

220. The Tribunal carefully looked at the factors indicating when a doctor's misconduct was likely to be fundamentally incompatible with continued registration as set out in

paragraph 109 of the SG. Sexual misconduct must always be treated seriously. The Tribunal considered that when Dr Muhammed gave no thought to the feelings or dignity of Nurse A and Nurse B, his actions were a reckless disregard of, and a serious departure from the principles set out in GMP. He had a duty to act with respect to all of his colleagues and create a collaborative working environment.

221. However, the Tribunal was also of the view that Dr Muhammed's misconduct is not so engrained or he is so incapable of remediation that it is fundamentally incompatible with his continued registration.

222. In conducting its balancing exercise, the Tribunal concluded that its decision was finely balanced between suspension and erasure. The Tribunal was of the view that the sexual misconduct was serious and had obvious consequences for his Nurse A and Nurse B, his own reputation and that of the medical profession as a whole. It also accepted that there was no patient safety concerns in this case.

223. The Tribunal was of the view that the public trust in the medical profession and maintenance of high professional standards were at the heart of the decision on sanction in this case. The Tribunal considered that a serious sanction was required to have a deterrent effect and to remediate the adverse impact on public confidence but accepted that a sanction as severe as erasure would be disproportionate.

224. The Tribunal therefore determined that the protection of the public, the public interest and maintenance of professional standards could be achieved by a lengthy period of suspension rather than erasure. A sanction of suspension will reflect the gravity of Dr Muhammed's misconduct and send a clear message to Dr Muhammed, the profession and the wider public that such misconduct is unbefitting of and unacceptable in a registered doctor.

Duration of Suspension

225. Having decided that the appropriate sanction was one of suspension, the Tribunal went on to consider the length of suspension.

226. In determining the length of the suspension, the Tribunal took account of the need to mark the seriousness of Dr Muhammed's misconduct and also to declare and uphold proper

standards of behaviour. The Tribunal considered paragraphs 99, 100 and 101 of the SG in that regard:

> *99 The length of the suspension may be up to 12 months and is a matter for the tribunal's discretion, depending on the seriousness of the particular case.*
>
> *100 The following factors will be relevant when determining the length of suspension:*
> - *the risk to patient safety/public protection.*
> - *the seriousness of the findings and any mitigating or aggravating factors (as set out in paragraphs 24–60).*
> - *ensuring the doctor has adequate time to remediate.*
>
> *101 The tribunal's primary consideration should be public protection and the seriousness of the findings. Following any remediation, the time all parties may need to prepare for a review hearing if one is needed will also be a factor.*

227. The Tribunal considered the following matters set out in paragraph 102 of the SG which are also relevant to the length of the suspension:

- *The seriousness of the findings;*
- *The subsequent steps taken by Dr Muhammed; and*
- *The extent to which he had complied with requirements.*

228. The Tribunal has already considered the aggravating and mitigating factors and determined that the risk of repetition was low. It was of the view that Dr Muhammed will make efforts to complete his remediation process. The Tribunal had acknowledged that Dr Muhammed had begun to address the serious concerns raised by his misconduct, by both the way he conducts himself and by seeking to learn from professional courses directly relevant to his misconduct.

229. The Tribunal noted Dr Muhammed had been in unrestricted practice since the allegations and so had shown himself to be making efforts to restore public trust and therefore a suspension of the maximum period was not necessary or proportionate.

230. Having considered the facts and the factors set out in the SG, the Tribunal concluded that a 9 month suspension was the appropriate and proportionate sanction. It was satisfied the length marked the seriousness of Dr Muhammed's misconduct and upheld the demands of the over-arching objective. Further, the Tribunal considered that a 9 month suspension

would also give Dr Muhammed adequate time and opportunity to complete his process of insight and remediation and enable him, in due course, to return to practise.

Review Hearing Directed

231. The Tribunal determined to direct a review of Dr Muhammed's case. A review hearing will convene shortly before the end of the period of suspension. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Muhammed to demonstrate how he has remediated, addressed his insight and is safe to return to unrestricted practice. It therefore may assist the reviewing Tribunal if Dr Muhammed provided:

Evidence of his reflection on the Tribunal findings:

a) *To further demonstrate insight.*
b) *To further seek to remediate the consequences of those findings on public confidence.*

232. Dr Muhammed may provide any information he considers will assist him and another Tribunal at a review hearing.

Determination on Immediate Order - 26/07/2023

233. Having determined that Dr Muhammed's registration is to be suspended for a period of 9 months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Muhammed's registration should be subject to an immediate order.

Submissions

234. On behalf of the GMC, Mr Hamlet submitted that no immediate order was necessary as there are no identified risks to the public.

235. On behalf of Dr Muhammed, Mr Lownds agreed that no immediate order was necessary.

The Tribunal's Determination

236. The Tribunal was mindful that an immediate order is not an automatic decision, and if one were to be made it needed to be proportionate and meet the overarching objective.

237. In deliberating on the matter, the Tribunal considered the paragraphs of the SG which set out the criteria for imposing an immediate order, in particular paragraphs 172 and 173 which state:

> *172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.*
>
> *173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.*

238. The Tribunal determined that an immediate order was not necessary to protect members of the public, nor is it in the interests of Dr Muhammed. Neither party suggested that Dr Muhammed is a risk to patients. The Tribunal determined that there is low risk of repetition. The overarching objective has been satisfied with the sanction that has been imposed.

239. The Tribunal therefore determined not to impose an immediate order of suspension on Dr Muhammed's registration.

240. This means that Dr Muhammed's registration will be suspended 28 days from the date on which written notification of this decision is deemed to have been served unless he lodges an appeal. If Dr Muhammed does lodge an appeal, he will remain free to practise unrestricted until the outcome of any appeal is known.

241. There is no interim order to revoke.

242. This concludes this case.