

PUBLIC RECORD

Dates: 19/02/2024 – 15/03/2024; 09/04/2024; 23/04/2024 – 27/04/2024

Medical Practitioner’s name: Dr Oluwafemi ESHO
 GMC reference number: 6118773
 Primary medical qualification: MB ChB 2005 University of Leicester

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

Summary of outcome

Erasure
 Immediate order imposed

Tribunal:

Legally Qualified Chair	Miss Deborah Gould
Lay Tribunal Member:	Mr Mark O’Brien
Medical Tribunal Member:	Mr Gulzar Mufti

Tribunal Clerk:	Ms Maria Khan (19 & 20 Feb; 26 – 29 Feb; 4 – 6 Mar) Ms Jemine Pemu (19 Feb; 7 - 8 & 11 Mar) Mr John Poole (21 – 23 Feb) Ms Jennifer Coakley (28 Feb) Mr Matt O’Reilly (14 – 15 Mar) Mr Laurence Millea (9 April) Mr Sewa Singh (26 Feb; 23 – 27 April)
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Attendance and Representation:

Medical Practitioner:	Present, represented - 19/02/2024 – 15/03/2024; 09/04/2024 Not present, not represented - 23/04/2024 – 27/04/2024
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Medical Practitioner’s Representative:	Mr Marios Lambis, KC, instructed Kingsley Napley LLP
GMC Representative:	Ms Chloe Hudson, Counsel Mr Ryan Donoghue, Counsel (23 – 27 April)

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 09/04/2024

Background

1. Dr Esho qualified in 2005 from the University of Leicester. In 2007, he passed the Membership of the Royal College of Surgeons (MRCS) and in 2008 he began Core Surgical Training (CST) with the Yorkshire Deanery, completing ST1 and ST2 posts between 2008 - 2011. It was around this time that Dr Esho developed an interest in Aesthetic Medicine.
2. Between 2011-2014, Dr Esho completed the General Practitioner Vocational Training Scheme (VTS) in Newcastle. In 2015, following completion of the VTS, he was awarded a Certificate of Completion of Training (CCT) by the GMC. Dr Esho has been a Member of the Royal College of General Practitioners (RCGP) since 2015.
3. In 2015, Dr Esho founded the ‘Esho MD Clinic Group’, of which he is the CEO and Lead Medical Aesthetics Doctor. In 2015, Dr Esho opened his first aesthetics clinic, Le Beaux Ideal, in Newcastle. In 2016, he opened his second clinic in Harley Street, London. In 2018, Dr Esho took up self-funded international residency at The Nova Clinic in Dubai.
4. In 2019, Dr Esho rebranded his clinics as the ‘The ESHO Clinic’. In December 2019, he moved his Harley Street clinic to Wimbledon. In 2022, Dr Esho opened his third clinic in ‘Flannels’ store in Liverpool. Dr Esho also has a media presence, acting as a medical adviser on a number of television programs.

5. In summary, the allegation resulting in this hearing is that between June 2019 and May 2022, Dr Esho engaged in an improper emotional relationship with Patient A and behaved in a sexually inappropriate way towards her on a number of occasions during clinic appointments. It is also alleged that Dr Esho's conduct was sexually motivated. Finally, it is alleged that Patient A was vulnerable as a result of being a sex worker.

6. Patient A is a sex worker who provides sexual services through various online platforms XXX. Much of her work involves performing in front of a camera, however, she also offers face to face sexual services and services as an escort. Patient A first contacted Dr Esho for aesthetic treatment having heard about him through his media profile and her own research. She was seeking a procedure she believed was called 'the designer lip'.

7. On 17 July 2019, Patient A attended an appointment with Dr Esho. She also began to follow his professional clinic Instagram. Patient A posted about attending that appointment XXX on her own professional Instagram account. Dr Esho responded to Patient A's post with a private Instagram message of four love heart emojis. After Patient A responded thanking him for his advice, Dr Esho sent a further private message, *'Looking [three fire emojis]'*.

8. On 26 August 2019, Patient A messaged Dr Esho stating that she was concerned about asymmetry of her lips. She enquired about an early review appointment. After further conversation between the two about the issue, Dr Esho messaged Patient A saying, *'No bjs during this time of healing'*. Patient A replied with laughing face emojis *'oh really it might help strengthen my cheek'*. Dr Esho replied, *'Lmao nope put the cock down lol'*.

9. After that Dr Esho visited Patient A's professional Instagram site and commented (by use of emojis) on her story. He made a number of sexualised comments about Patient A's stories commencing with, *'So juicy'*. Private messaging between Patient A and Dr Esho then followed. This contained a mixture of strong sexual content and a discussion of clinical issues regarding Patient A. This included Patient A sending photographs and videos of herself in various states of undress and sexual poses. Dr Esho responded to these with messages indicating sexual arousal and sexual interest in Patient A. Dr Esho continued to visit and comment upon Patient A's professional Instagram stories through private messaging. This continued until 23 February 2022.

10. On 6 December 2019, after Dr Esho messaged Patient A, *'Me you champagne and nipples lol,'* Patient A proposed a *'skill swap'* between herself and Dr Esho. Specifically she suggested, *'you give me free mls I give u da titty'*. Dr Esho responded, *'Ha free mls I'd need the whole booty and more'*.

11. Further mention of the *'skill swap'* was made on 30 December 2019, when Dr Esho sent Patient A a private Instagram message, *'Need you and your nipples here lol'*. Patient A responded, *'...lets talk business and sort something out if u r up for it I am.'* She then sent Dr Esho erotic images of herself and messaged, *'think about it just cutting out the middle man really makes total sense'*. Dr Esho replied, *'I want'*. Patient A proposed a direct swap of 1ml a

month in return for *'How do I say. One of me a month?'* Dr Esho responded, *'I thought you just wanted me for me and not my mls lol. I want it all lol'*.

12. Following this thread of messaging Dr Esho communicated that he was apprehensive about the consequences of engaging in sexual activities with a patient in return for free treatment saying, *'but if we do it for mls I break the doctors code and I'd be a dead man x lol'*. He then sent his personal WhatsApp number to Patient A with the message, *'Easier x'*.

13. On 18 January 2020, Patient A advised Dr Esho that she had had sex with a black male as part of her work. Dr Esho requested the video of this. Patient A provided this, stating it was for, *'Lip inspiration purposes'*.

14. On 5 June 2020, after directing Patient A to a website where she could purchase a mist gun, Dr Esho responded, *'Thank me with some loving lol'*. When Patient A contacted Dr Esho again on 27 June 2020 he replied, *'I'm good gorgeous, how are you?'*

15. Patient A had not seen Dr Esho for aesthetic treatment for some months due to the COVID lockdown. On 29 June 2020 she informed Dr Esho that she had an appointment with him on 16 July. She messaged, *'I really need my lips dissolving and redoing'* for a XXX shoot in August. *'Can you work your magic and squeeze me in ASAP.'* Dr Esho responded, *'Lets see'*.

16. He then engaged in sexual messaging with Patient A in which he asked her if she would provide sexual services for an early treatment slot, saying, *'Will you stay pay and give me a thank you pump? [Sweating face emoji]'*. In the same message thread Dr Esho shared a news article about a doctor who was being investigated by the GMC for sending explicit messages to patients and he wrote, *'Ha that's what I get scared of x'*.

17. On 17 July 2020, Patient A saw Ms B, the manager of the ESHO Clinic in the UK for skin care. Her next appointment with Dr Esho was on 25 August 2020, which is the subject of paragraph 5 of the Allegation. During this appointment, Dr Esho is alleged to have removed his penis from his trousers and allowed Patient A to masturbate him.

18. Between 25 August 2020 and 4 October 2020 further sexual messaging occurred between Patient A and Dr Esho. On 4 October 2020, Dr Esho messaged Patient A, *'Come to Newcastle'*. Then, in November 2020, after receiving more sexually explicit videos and photographs from Patient A, Dr Esho messaged Patient A saying he wanted sexual contact with her.

19. No further messages were exchanged between the two until 27 January 2021 when Dr Esho commented with smiling face heart eyes emoji on Patient A's Instagram story. Patient A then sent Dr Esho a sexual video of herself. She advised Dr Esho that her cheeks were hurting as a result of treatment received from another practitioner and requested an earlier appointment. She then expanded on this in a series of voice messages.

20. Dr Esho expressed concern that Patient A seemed to be in a 'cycle' of getting treatments elsewhere then being unhappy with the results. Dr Esho said he was worried that he was not the right doctor for her. Patient A reassured Dr Esho that he was. She sent a voice note saying that her previous experiences with other practitioners had, '*really affected me mentally*' and texted '*It's been a mental journey*'. Dr Esho responded, '*Ok il help if I get the booty lol*'.
21. Patient A sent Dr Esho a picture of her naked buttocks, to which Dr Esho responded, '*Lord the promised land*'. Patient A then sent Dr Esho over 30 sexually explicit photographs of herself to which he responded with four praying hands and a sweating face emoji.
22. The sexual messaging on Instagram continued. On 14 February 2021, after receiving numerous pictures of Patient A in provocative poses, Dr Esho wrote, '*Just need to dip into it lol*'. Patient A invited Dr Esho to visit her home. Dr Esho responded, '*what's postcode, may have to drop by next week lol*'. On 15 February Patient A again asked for an early appointment. Dr Esho replied that her appointment on 20 April 2021 was the soonest available.
23. Further messages related to treatments and pricing were exchanged throughout February 2021. In March and April 2021 the Instagram messaging was once again sexually explicit in its content. After receiving several pictures of Patient A's naked lower half, Dr Esho responded, '*I just want to be inside [and four emojis showing three water droplets each]*', and '*You have to let me put it in when you come lol*'.
24. On 21 April 2021 Patient A attended a consultation with Dr Esho at his London Clinic after which she sent him a message on Instagram, '*Thanks again I'm over the moon*'. Dr Esho responded, '*Awww, I'm so happy*' and '*Now let's keep it this way!*'
25. Patient A's next appointment with Dr Esho was on 19 May 2021 at the Clinic in Wimbledon. It is at this appointment that Dr Esho is alleged to have stroked Patient A's hair, indicated he wished to kiss her, rubbed himself against her and commented on the shape of her bottom as set out at paragraph 6 of the Allegation.
26. On 20 May 2021 Patient A messaged Dr Esho that she was happy with the treatment and because of that she had felt confident when filming that day. Dr Esho responded with, '*Awww so happy*' and '*So mad I didn't get to cum lol*'. Patient A replied, '*Lol it's ok il come Newcastle instead*' followed by a series of pictures of herself in various explicit poses and states of undress. Patient A messaged, '*Thank you I'm give you so much love when u allow me to*'. Dr Esho asked Patient A if she had booked in for Newcastle. She replied, '*not yet*'.
27. On 24 July 2021 Patient A messaged Dr Esho, advising that she had been told the next available appointment at the Clinic was in September but '*...hoping you can squeeze me in before then*'. Dr Esho replied, '*Say I said can squeeze you into Newcastle in August clinic*'. Patient A responded on 30 July 2021, '*Wooooo I'm seeing you on Sat 7 Aug in Newcastle [XXX]!!*'.

28. Further messaging continued as follows:

Dr Esho: *'Ha I'm ready [emoji] last time I wanted to [emoji] in that ass so bad lol'*

Patient A: *'[emoji] hehehe'*

'And my ass was thirsty'.

29. On 7 August 2021, Patient A attended her appointment at the Clinic in Newcastle. At this appointment Dr Esho is alleged to have behaved as described in paragraph 7 of the Allegation, that he had sexual intercourse with Patient A in return for the provision of free botox.

30. Paragraph 9 of the Allegation relates to events on or around 5 December 2021. Dr Esho is alleged to have told Patient A that sex could not occur between them during this appointment. It is alleged that Dr Esho explained that this was due to the rest of his team being present. It is further alleged that Dr Esho called Patient A *'skinny'* during the appointment.

31. Patient A saw Dr Esho at the Wimbledon clinic again on 19 January 2022. On 20 January 2022, she messaged Dr Esho saying that she was happy with her lips. Dr Esho replied, *'Need to test them lol'*.

32. Patient A had three more appointments with Dr Esho in January, February and April of 2022. Around 3 May 2022, Patient A contacted the Clinic via telephone about concerns regarding migration of her lip filler. The response from Dr Esho came via Instagram messages, in which he told Patient A he could not see any migration. Some confusion ensued regarding the treatment plan. Patient A and Dr Esho had no further contact after 14 May 2022.

33. After speaking to a friend about what had happened Patient A felt that Dr Esho had taken advantage of her. Patient A also felt that because of how important her personal image was to her (which she referred to as *'her brand'*), and the success of her online sex work, she had been in a vulnerable position during her treatment by Dr Esho. Patient A's friend advised her to consider reporting Dr Esho to the GMC.

34. Patient A raised her initial concerns with the GMC through an online complaint form submitted on 29 July 2022. On 4 August 2022 Patient A contacted the GMC again after receiving approximately 30 missed calls and messages from Dr Esho and Ms B on her mobile phone. Patient A did not respond to these communications and had no further contact with, or from, Dr Esho after that.

The Outcome of Applications Made during the Facts Stage

35. On day one of the hearing, 19 February 2024, before the hearing was formally opened, Mr Marios Lambis KC, on behalf of Dr Esho, made an application pursuant to Rule 34 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). Mr

Lambis submitted that three redacted paragraphs in Patient A's witness statement should remain redacted. Ms Chloe Hudson, counsel on behalf of the GMC, opposed the application. The Tribunal refused the application in relation to two of the paragraphs, but granted it in relation to the third. The Tribunal's full decision on the application is included at Annex A.

36. On day six of the hearing, 26 February 2024, the Tribunal granted Mr Lambis' application made pursuant to Rule 41 of the Rules that the hearing be held in private during evidence relating to XXX. Ms Hudson did not oppose the application. The Tribunal's full decision on the application is included at Annex B.

37. On day 11 of the hearing, 4 March 2024, the Tribunal granted Mr Lambis' application that the remainder of the hearing be conducted remotely as of Wednesday 6 March 2024. Ms Hudson did not oppose the application.

38. On day 12 of the hearing, 5 March 2024, the Tribunal refused Mr Lambis' application made pursuant to Rule 34(1) of the Rules that two witness statements made by Ms C be admitted as hearsay evidence. At the relevant time, Ms C was employed as Front of House Manager at the Esho Clinic Wimbledon. Ms Hudson opposed the application. The Tribunal's full decision on the application is included at Annex C.

The Allegation and the Doctor's Response

39. The Allegation made against Dr Esho is as follows:

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

1. Between June 2019 and May 2022 you provided medical care/treatment to Patient A at the Esho Clinic ('the Clinic'). **Admitted and found proved**
2. At all material times Patient A was vulnerable because of her profession. **To be determined**
3. In or around July 2019 to May 2022, on one or more occasions, you engaged in an improper emotional relationship with Patient A in that you responded to posts she put on Instagram. **Admitted and found proved**
4. Between 17 July 2019 and 23 February 2022 you behaved inappropriately, in that you exchanged messages with Patient A via Instagram, which included (and not limited to) sexual content as set out in Schedule 1. **Admitted and found proved**
5. On or around 25 August 2020, you:
 - a. made inappropriate comments to Patient A in that you commented on the shape of her bottom during her appointment at the clinic; **To be determined**

- b. rubbed up against Patient A; **To be determined**
 - c. took your penis out of your trousers; **To be determined**
 - d. allowed Patient A to masturbate you. **To be determined**
6. On or around 19 May 2021, you:
- a. made inappropriate comments to Patient A in that you commented on the shape of her bottom during her appointment at the clinic; **To be determined**
 - b. indicated to Patient A that you wanted to kiss her; **To be determined**
 - c. stroked her hair; **To be determined**
 - d. rubbed yourself against her. **To be determined**
7. On or around 7 August 2021 you:
- a. kissed Patient A; **To be determined**
 - b. undid your trousers; **To be determined**
 - c. had sexual intercourse with Patient A; **To be determined**
 - d. ejaculated on Patient A's stomach; **To be determined**
 - e. stated to Patient A that you could 'get away with giving her botox in exchange for sexual services', or words to that effect; **To be determined**
 - f. administered botox to Patient A for free in exchange for having engaged in sexual activity with you. **To be determined**
8. On a date unknown but between June 2019 and prior to the appointment as set out at paragraph 7 you stated to Patient A words to the effect of 'it would be better to see you at the clinic in Newcastle in terms of having sex.' **To be determined**
9. On or around 5 December 2021 stated to Patient A words to the effect of:
- a. that you were 'disappointed that the whole team were at the Clinic (in Newcastle) that day so you could not engage in sexual activity with Patient A'; **To be determined**
 - b. 'you have got so skinny'. **To be determined**

10. Your conduct as set out at paragraphs 3-9 above was sexually motivated.
Admitted and found proved in relation to paragraphs 3 and 4

To be determined in relation to paragraphs 5, 6, 7, 8 and 9

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

The Admitted Facts

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

The Facts to be Determined

41. In light of Dr Esho's response to the Allegation made against him, the Tribunal is required to determine: Whether Patient A was vulnerable because of her profession; whether Dr Esho made inappropriate comments and had physical sexual contact with Patient A on 25 August 2020 and 19 May 2021; whether Dr Esho had sexual intercourse with Patient A on 7 August 2021 and then administered free botox in exchange stating he could get away with this; whether Dr Esho advised Patient A, prior to the appointment on 7 August 2021 that it would be better to see him in the Newcastle clinic in terms of having sex; whether Dr Esho told Patient A, on or around 5 December 2021, that he was disappointed the whole team was in the Newcastle clinic that day so he could not engage in sexual activity with her; whether during the appointment on 5 December 2021 Dr Esho said to Patient A that she had become skinny; and whether Dr Esho's conduct was sexually motivated in relation to the above.

Witness Evidence

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

- Patient A, in person. Patient A also provided a witness statement dated 20 October 2020, and two supplemental witness statements dated 23 February 2023 and 13 October 2023.

43. Dr Esho provided his own witness statement, undated, and also gave oral evidence at the hearing. In addition, the Tribunal received evidence from the following witnesses on Dr Esho's behalf:

- Ms D, Lead Skin Specialist for the ESHO Clinic, by video link. Ms D also provided a witness statement, dated 2 May 2023;

- Ms B, UK Manager for the ESHO Clinic, by video link. Ms B also provided a witness statement, dated 3 May 2023.

44. The Tribunal also received evidence on behalf of Dr Esho in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Ms E, solicitor at Kingsley Napley, who provided a witness statement dated 4 January 2023. The statement included photographs and a floor plan of the ESHO Clinic in Wimbledon.

Expert Witness Evidence

45. The Tribunal also received evidence from an expert witness, Dr F, on behalf of Dr Esho. Dr F is a GP with 40 years' experience in General Medical Practice. He has a particular interest in the preparation of medical reports for legal purposes and is listed in the 'UK Register of Expert Witnesses'. Dr F has provided medico-legal reports for solicitors, courts, coroners, insurance companies, employers and others, involving criminal, civil, family matters and criminal negligence. He currently writes about 180 reports per year. Dr F has specialist experience in performing newborn circumcision for social, cultural, religious and family reasons.

46. Dr F provided a report dated 25 February 2024. Ms Hudson did not challenge the content of Dr F's report which was therefore read to the Tribunal.

Documentary Evidence

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

- The complete Instagram messaging between Dr Esho and Patient A including recordings and transcripts of voice messages and videos;
- Patient A's complaint to the GMC, dated 29 July 2022;
- Patient A's medical records held by Dr Esho, selected invoices and diary entries from the Esho Clinic;
- Chronology prepared by Mr Lambis, dated 10 January 2024;
- Dr Esho's CV and 18 testimonials;
- Videos/plans of several of the Esho clinics;
- WhatsApp messages exchanged between Dr Esho and Ms C, dated 7 August 2021;
- Stock list for Newcastle clinic and patient lists for weekend of 7-8 August 2021;
- XXX;

The Tribunal's Approach

48. The Tribunal received the following advice from the Legally Qualified Chair.

49. The burden of proof rests on the GMC throughout. Dr Esho does not need to prove anything. The standard of proof is the civil standard, namely whether it is more likely than not that the events occurred.

50. As the Tribunal is considering sexual allegations, while the burden and standard of proof does not change the Tribunal should bear in mind the comments made in *In Re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563 and *Re B (Children)* [2008] UKHL 35, “*the more serious the allegation the less likely it is that the event occurred, and thus the stronger and more cogent should be the evidence before a court determines that on the balance of probabilities, the event did occur.*”

51. The Tribunal must assess all the evidence and determine its relevance and weight to the core issues. It must assess the truthfulness, reliability and accuracy of each witness and each piece of evidence and draw common sense conclusions based upon the evidence which it considers reliable and credible. The Tribunal must not speculate.

52. The Tribunal may take account of any inconsistencies and contradictions in the evidence in assessing its weight. If inconsistencies and contradictions are capable of resolution the Tribunal will seek to do so, but inability to achieve this does not necessarily mean a witness is not telling the truth- it may merely show that a witness’ evidence is unreliable and should therefore be accorded less weight. If the essential core of a witness’ account is consistent, the Tribunal can place less weight on any inconsistencies concerning peripheral or less important issue when assessing overall credibility. The Tribunal can reject part of a witness’ account as implausible yet find another part credible.

53. If the Tribunal finds a witness to be truthful in one part of his/her evidence, it would be entitled to take account of that finding in assessing that witness’ truthfulness in relation to the other parts of his evidence. However, this alone is not, and cannot be, determinative of its assessment. Similarly, the reverse applies.

54. This is an emotionally charged case. When appraising any witness, but particularly Patient A and Dr Esho, the Tribunal must guard against making an assessment solely by virtue of their behaviour or demeanour while giving evidence. It is usually unreliable and often dangerous to draw a conclusion from a witness’ demeanour as to the likelihood that the witness is telling the truth, or indeed that they are telling a lie. See: *MacDonald J. Cumbria County Council v R (Special Guardianship Order or Interim Care Order)* [2019] EWHC 2782 (Fam):

“Rather than attempting to assess whether testimony is truthful from the way it is given, the only objective and reliable approach is to focus on the content of their testimony and to consider whether it is consistent with other evidence {including evidence of what the witness has said on other occasions} and with known or probable facts”.

55. The Tribunal heard significant evidence about Dr Esho’s positive good character. He has been practising as a doctor for 18 years without a blemish against him. Dr Esho’s good character is relevant to the Tribunal’s considerations in two ways:

- (a) Because of his good character, the Tribunal is entitled to conclude that he is less likely than otherwise might have been the case to have committed the acts with which he is charged. However, every doctor who comes before a Tribunal for the first time is of good character and doctors without a blemish on their career would never be found guilty of misconduct if they were simply able to rely upon their previous good character.
- (b) It supports his credibility generally and can be taken into account when deciding whether he can be believed.

56. In this case, the second limb is subject to Dr Esho’s admissions to some paragraphs of the Allegation; specifically that he inappropriately exchanged sexual texts with Patient A. The Tribunal must not conclude that Dr Esho’s admissions to part of the Allegation means that he cannot be believed in relation to those parts of the Allegation which he has not admitted. Similarly, the Tribunal must not conclude that Dr Esho is not a credible witness simply because of his admitted misconduct.

57. Dr Esho’s defence is that he maintained a clear boundary between fantasy and reality. He admitted inappropriate virtual contact with Patient A at an early stage. When deciding the outstanding paragraphs of the Allegation in this case, the Tribunal may take account of those admissions when determining what weight to attach to the evidence about Dr Esho’s good character.

58. XXX

59. XXX

The Tribunal’s Analysis of the Evidence and Findings

Reliability and credibility

60. The Tribunal considered each outstanding paragraph of the Allegation separately and evaluated the evidence carefully. There is a clear dispute between the parties. Either Patient A is telling the truth about the alleged sexual contact, or Dr Esho is. Further, there are some key facts which the Tribunal must determine which impact significantly upon its determination of the Allegation. These include: whether Dr Esho met and socialised with Patient A before the consultation at his London clinic on 12 June 2019 and whether Patient A said to Dr Esho that she was a sex worker and asked for a skill swop at that consultation.

61. The Tribunal began by reviewing the overall reliability and credibility of Patient A.

62. The Tribunal determined that Patient A's evidence was not inherently less credible or reliable, as Mr Lambis submitted, because of the nature of her work and how she conducts it. The Tribunal considered Patient A to be an articulate, intelligent and thoughtful witness whose oral evidence was consistent with her written statements and the text messages. The Tribunal considered the nature of Patient A's work to be irrelevant to the wider issue of her reliability and credibility as a witness.

63. Mr Lambis further submitted that Patient A was less worthy of belief because she is a '*performer*'. The Tribunal noted that Dr Esho also undertakes media work and has participated in a number of television programmes. The Tribunal concluded that the ability of Patient A and Dr Esho to present a particular persona in front of a camera for professional purposes did not assist the assessment of the evidence of either. The Tribunal therefore focused on the content of each witness's evidence and how it fitted with the contemporaneous documents, messaging and the evidence of other witnesses. The Tribunal considered that witness demeanour did not assist it to any significant degree.

64. When assessing Dr Esho's credibility, the Tribunal took account of his positive good character, his philanthropic work and that he is held in high regard by many patients and fellow practitioners. The Tribunal also took this into account when considering whether he would have behaved in the manner Patient A described.

65. The Tribunal considered Dr Esho's good character to be of less weight. This is because for 2½ years he maintained and hid from others an inappropriate emotional relationship with a patient with whom he had highly sexualised communications. The Tribunal reminded itself that Dr Esho recognised in some of his contemporaneous messaging that his behaviour was wrong. The Tribunal also considered that the messaging showed that Dr Esho allowed his staff to form an adverse view of Patient A. The Tribunal also noted that on one occasion he discussed personal matters relating to a staff member with Patient A. The Tribunal concluded that this showed a degree of duplicity on Dr Esho's part.

66. The Tribunal placed great weight on the contemporaneous messages exchanged via Instagram between Dr Esho and Patient A. It bore in mind that these were private exchanges made between two people who did not expect these to be seen by anyone else. Consequently, the Tribunal considered the messages to be good evidence of each person's state of mind and their expressed intentions at the time.

When Patient A and Dr Esho first met

67. The Tribunal noted that Patient A first contacted Dr Esho's clinic in 2017. Patient A and Dr Esho agreed that an appointment was booked but that Patient A cancelled it in advance and asked to re-arrange. This was supported by the patient notes and emails. There is no record of any appointment actually occurring in 2017, although Patient A believes she had a consultation with Dr Esho in some form that year.

68. The Tribunal did not find it necessary to decide whether that consultation actually happened. Both parties agreed that they did not have a formal doctor-patient relationship until June 2019. Neither suggested anything happened in 2017 which has any relevance to the matters in dispute. Patient A was remembering events from 7 years ago. Moreover, she has had significant aesthetic treatment from a number of practitioners over the years. Even if Patient A's recollection was incorrect, the Tribunal concluded that it did not impact on its assessment of Patient A's credibility on the core issues.

Did Dr Esho and Patient A have a social relationship before 12 June 2019?

69. The Tribunal next considered whether Dr Esho and Patient A were social acquaintances prior to her first clinic appointment on 12 June 2019.

70. In his oral evidence, but not in his statement, Dr Esho stated that he first met Patient A when she shouted to him across a nightclub, *'You're the Lip Doctor'*. Dr Esho said that he is known by this name. He stated that Patient A joined him at the bar, chatted and flirted with him. Dr Esho said that they met socially three more times. On one occasion, he stated that Patient A commented on the size of his penis based upon his race. Dr Esho said, *'It almost felt as though she [Patient A] was stalking me as every time I went out socially Patient A was there'*. Based upon these four random meetings, Dr Esho said he considered Patient A to be a friend.

71. Dr Esho told the Tribunal that he was sexually, but not strongly sexually, attracted to Patient A. He said he particularly liked her breasts. He did not, however, consider her to be a potential romantic partner then or at any other time.

72. The Tribunal noted Patient A's evidence that she never met Dr Esho outside of clinic appointments. Dr Esho's witness statement gave no details of when and where the alleged meetings happened and this was not put to Patient A in cross examination either. The Tribunal noted that when Dr Esho gave oral evidence however, he named the venues and described their first meeting in detail. When asked why these matters were not in his statement, Dr Esho said that he did not think the former was *'necessary'* and that he had *'generalised'* the latter by using the term *'flirtatious'*. Given the importance Dr Esho attached to these social meetings and how he stated they affected his later interactions with Patient A, the Tribunal did not accept this explanation.

73. The Tribunal reminded itself that on Dr Esho's account, he and Patient A never exchanged their contact details despite meeting socially a few times and notwithstanding his description that they were friends. The Tribunal concluded that had Patient A targeted Dr Esho because of his work, she would have spoken to him about it, her appearance or her cosmetic concerns. The Tribunal also concluded that had they met socially, Patient A would have had the opportunity to suggest a skill swop in a casual setting. There is no evidence she did so.

74. The Tribunal then considered the evidence of Ms B. Ms B stated that Dr Esho and Patient A seemed familiar with each other in the first clinic appointment in June 2019, *‘as though they had met before’*. The Tribunal noted that in oral evidence Ms B stated this was because Dr Esho said something to the effect of, *‘Oh you’* or *‘Its you again’*. The Tribunal noted that Ms B could not recall any reaction to this by Patient A but agreed that Patient A had not said anything to confirm any prior relationship.

75. The Tribunal noted that Ms B has been employed by Dr Esho for over 10 years. She told the Tribunal that she holds him in high regard. The Tribunal also noted that, in contrast, Ms B described Patient A as open, forthright, *‘always provocatively dressed’*; *‘an oversharer’* who *‘wanted everyone to know the nature of her work’* and *‘unladylike’*. The Tribunal concluded that Ms B did not approve of, or like, Patient A. The Tribunal therefore concluded that this coloured Ms B’s evidence.

76. The Tribunal noted that, after receiving the GMC complaint, Dr Esho told Ms B that he and Patient A had only *‘exchanged the odd text on Instagram’*. Given Dr Esho’s admissions to Paragraphs 1, 3 and 4 of the Allegation and the messaging content, the Tribunal considered this to be misleading on Dr Esho’s part. It led to Ms B trying to contact Patient A about the complaint. The Tribunal also noted Ms B’s oral evidence that Dr Esho gave her his account of his relationship with Patient A before she made her statement to his solicitors.

77. The Tribunal concluded from the content and manner of Ms B’s evidence that she does not accept that Dr Esho has acted inappropriately and seemed to blame Patient A for his current situation. The Tribunal therefore concluded that Ms B was not a reliable witness concerning the first consultation.

78. For all the reasons set out above, the Tribunal accepted Patient A’s evidence that she and Dr Esho had not met socially before the June 2019 appointment. The Tribunal further concluded that this was an attempt by Dr Esho to explain the overly familiar and casual style of his Instagram messaging with Patient A which commenced after her second appointment on 17 July 2019.

The reason for the 12 June 2019 consultation

79. The Tribunal next considered why Patient A consulted with Dr Esho in 2019. It concluded that although Patient A’s evidence was that she was seeking, *‘Designer lip’* treatment, this cannot be correct as Dr Esho and Ms B stated Dr Esho did not offer this, as it was a trademarked procedure offered by a different practitioner.

80. The Tribunal noted Dr Esho’s account, which was supported by the contemporaneous patient notes and invoice. This is that Patient A attended for a *‘corrective’* consultation because she was unhappy about her lips following treatment by another practitioner.

81. The Tribunal noted that Patient A was recalling events from 7 years ago, had no access to her medical records when making her statement and has had many cosmetic

treatments from a number of different practitioners since. The Tribunal concluded that Patient A's evidence about what brought her to the June 2019 consultation was inaccurate. The Tribunal determined that because this is a peripheral issue, however it did not significantly undermine Patient A's reliability or credibility in relation to key issues and events.

What occurred during the 12 June 2019 consultation?

82. The Tribunal then considered whether, during the June 2019 consultation, Patient A had told Dr Esho she was a sex worker and also whether she had asked him for a *'skill swap'*.

83. The Tribunal noted Patient A's oral evidence that during this appointment she had not told Dr Esho she was a sex worker or suggested a skill swap in any form.

84. The Tribunal noted that it is agreed that Ms B was present throughout this consultation and had not met Patient A previously. The Tribunal further noted that Dr Esho recommended a course of skin and lip treatments during the consultation but gave Patient A fourteen days *'cooling off period'* to decide whether to proceed.

85. The Tribunal reminded itself that Dr Esho and Ms B said that the atmosphere of the Esho Clinic was casual, open and friendly, *'not like a normal doctor's clinic'*.

86. The Tribunal also reminded itself that in his oral evidence, Dr Esho stated that Patient A told him she was a sex worker, that another doctor had previously done a *'skill swap'* with her and suggested *'mls for a pump'* and *'botox for bjs'*. The Tribunal noted that Dr Esho said he *'laugh[ed] it off'* saying *'Nigerians don't give anything away for free'*. The Tribunal noted that although the word *'pump'* appears in the messages, it is Dr Esho who uses it not Patient A. The Tribunal also considered that as a professional, Dr Esho would not have responded in the way he described. For all these reasons, the Tribunal did not consider Dr Esho's account to be plausible.

87. The Tribunal noted that Ms B's evidence was that *'Patient A brought up exchanging injectables for sexual favours'*, but did not know how this occurred or what was actually said despite it being a *'unique event.'* The Tribunal also reminded itself that in oral evidence, Ms B stated that Patient A also told her that she worked for XXX which Ms B understood was a *'camming channel where they interact with people online.'* Ms B stated that she presumed Patient A was a sex worker because of this although Patient A did not say what her occupation was.

88. The Tribunal noted Ms B's evidence that Dr Esho told Patient A he was a respectable doctor who did not engage in such practices. Ms B further stated that Dr Esho also mentioned his regulatory body. The Tribunal noted that this was inconsistent with the jocular response described by Dr Esho.

89. The Tribunal reminded itself that there is no entry in Patient A's notes stating that she made the comments attributed to her, said anything inappropriate, or said she was a sex

worker. The Tribunal noted that Ms B stated that she did record that Patient A worked for XXX in Patient A's electronic records. No such entry was produced to the Tribunal. The Tribunal noted that in oral evidence Dr Esho confirmed the Tribunal had the complete patient records held about Patient A. The Tribunal further noted these contain no reference to XXX.

90. The Tribunal noted that in oral evidence Ms B described this as '*a unique event*'. The Tribunal noted, however, that she did not discuss it with Dr Esho afterwards. Furthermore, neither of them considered taking any precautions like always ensuring a chaperone was present or not accepting Patient A as a patient.

91. The Tribunal reminded itself that Dr Esho and his character witnesses stressed his adherence to ethical conduct. However, Dr Esho agreed that he had not advised Patient A that such conduct was unethical. The Tribunal did not accept that Dr Esho would have taken no action against the other doctor who had allegedly swapped skills with Patient A.

92. The Tribunal noted that in oral evidence, Patient A denied that she told Dr Esho that she was a sex worker or that she suggested a skill swop during the 12 June 2019 appointment. Patient A's evidence about this was consistent with her statement.

93. The Tribunal accepted Patient A's account. The Tribunal considered there was no reason at the first appointment for Patient A to have mentioned she was a "sex worker". The Tribunal also considered that it was implausible had such a disturbing and unique event occurred, that it was not recorded or reported by Dr Esho or his staff, particularly given Ms B's assertion that XXX was sufficiently important to record.

94. The Tribunal reminded itself that Patient A did not tag Dr Esho on her professional Instagram site until her second consultation XXX. The Tribunal noted that when Dr Esho responded to Patient A's story he would have seen Patient A's Instagram and that she provided online sexual services. The Tribunal also noted that Dr Esho acknowledged this when he said in oral evidence, '*if a patient tags you [on Instagram] and it is self evident that she is a sex worker that does not prejudice my work or standing.*'

95. The Tribunal accepted Patient A's evidence that as an Instagram '*creator*', her business model requires that she updates her professional Instagram site on a daily basis and that her clients like to see what aesthetic treatments she is having.

96. The Tribunal noted that Dr Esho's response to being tagged was to post a private comment on Patient A's story of four love heart emojis. The Tribunal concluded that this was a flirtatious overture to Patient A, who Dr Esho agreed he was sexually attracted to, followed by inappropriate and sexualised messages commencing on 26 August 2019 with, '*no bjs in this time of healing lol.*'

97. The Tribunal reviewed the messaging. It noted that, despite the suggestion that Patient A proposed a skill swop during the 12 June 2019 consultation, the first reference to a skill swop in the messaging happened on 5 December 2019 and was prompted by Dr Esho:

Dr Esho *'Me you champagne and nipples lol'.*
Patient A *'That's fine we can skill swop. You give me free mls I give you da titty'.*

98. The Tribunal reminded itself of Patient A's oral evidence that she was not sexually attracted to Dr Esho. It also noted her evidence that she began to "sext" Dr Esho because his messages indicated he was sexually interested in her. The Tribunal accepted Patient A's evidence that as a result she saw him as a potential customer.

99. The Tribunal did not consider it to be plausible that Patient A raised skill swapping in her first appointment with a doctor she did not know in the presence of a staff member who she did not know either. The Tribunal also considered that had such a unique and disturbing conversation occurred it would have been recorded in the consultation notes, reported to the GMC or Patient A would not have been accepted as a patient. The Tribunal also did not consider it plausible that Ms B would have recorded that Patient A worked for XXX but not recorded that she asked for a skill swop.

100. The Tribunal further noted the inconsistencies in Ms B and Dr Esho's account and that Patient A's account was consistent with her statement. Finally, the Tribunal concluded that Patient A's account of how and when the skill swop was first proposed was consistent with the contemporaneous messaging.

101. The Tribunal therefore determined:

- i. Dr Esho did not have a pre-existing social relationship with Patient A when she came to his clinic on 12 June 2019;
- ii. Dr Esho was sexually attracted to Patient A;
- iii. Patient A did not say she was a sex worker or suggest a skill swop during the June 2019 appointment;
- iv. Dr Esho subsequently learned that Patient A was a sex worker because she tagged his clinic in a story on her professional Instagram account;
- v. Dr Esho tested whether a sexual relationship with Patient A was possible through sending her overly familiar and then sexualised messages via Instagram;
- vi. As a consequence, Patient A saw Dr Esho as a potential customer, responded in kind and then suggested a skill swop because she saw a business opportunity.

Paragraph 5a, 5b, 5c and 5d

102. Paragraph 5 of the Allegation states that during an appointment on 25 August 2020, Dr Esho made inappropriate comments to Patient A, rubbed against her, took his penis from his trousers and let Patient A masturbate him.

103. The Tribunal began by considering the messaging before, during and after the alleged incident bearing in mind Dr Esho's evidence that this was merely fantasising. The Tribunal focused on the content of the messaging, how it fitted in with the other evidence and whether it was more consistent with fantasy or real intent.

104. The Tribunal reminded itself that in June 2020 Patient A messaged Dr Esho asking whether he could arrange an early lip dissolve appointment. The Tribunal noted that after several sexualised responses, Dr Esho messaged, *'Will you stay pay and give me a thank you pump? [sweaty face emoji]'*. The Tribunal noted that Patient A appeared to take this seriously as she responded, *'If u squeeze me in YES'*.

105. Dr Esho messaged back *'Hmm deep inside I cant wait lol...'* *'But cant be going out. Like this'*. He attached a link to an article about a plastic surgeon being investigated by the GMC for sending sexual messages to three of his patients. Dr Esho then texted Patient A that he wanted unprotected sexual intercourse with her without any adverse consequences.

106. The Tribunal noted that there was a message exchange about practical arrangements including whether sex would happen before or after the treatment. Following that, Dr Esho sent a graphic message indicating he wanted anal sex. The Tribunal noted that Patient A's response was to seek in return a discount on the cost of future treatment. Dr Esho replied, *'The discount is the two month queue jump lol.'*

107. The Tribunal concluded that Patient A and Dr Esho were actually engaged in business negotiations: Dr Esho wanted sexual services, Patient A wanted free botox in return.

108. The Tribunal considered that the primary barrier to a deal being concluded was that Dr Esho did not value Patient A's sexual services as highly as his own professional services. This was demonstrated in the messages. The Tribunal also reminded itself of Dr Esho's evidence that he was sexually attracted to Patient A and Patient A's evidence that she was not attracted to him but saw a business opportunity.

109. The Tribunal noted that on 14 August 2020 Patient A messaged Dr Esho asking for an appointment with him after her next facial. Dr Esho accepted in oral evidence that when Patient A sent the message, she did not know that the diarised clinic appointment on 25 August 2020 was in fact with him.

110. The Tribunal also noted that Dr Esho's reply; *'Ha will you [water droplet emojis]'* did not include a laughing face emoji or *'lol'*, which Dr Esho emphasised in his evidence, meant he was joking. The Tribunal considered that Patient A's response, *'OMG yes its been established already make the apt please [various emojis]'* showed frustration on her part. The Tribunal concluded that Patient A took Dr Esho's text seriously. As a result, she agreed, and expected to provide, sexual services to him without payment at their next appointment believing that he had arranged an early appointment for her.

111. The Tribunal reminded itself that on 25 August 2020, stringent COVID restrictions were in place including social distancing and cleaning the treatment room between patients. The Tribunal noted that Patient A and Dr Esho agreed that in order to access the building, Patient A had to message Dr Esho. The Tribunal therefore rejected Dr Esho's evidence that another, unnamed patient, arrived outside the clinic at some point, rang the bell, and was admitted by Dr Esho to the reception area.

112. XXX

113. The Tribunal noted Patient A's oral evidence that Dr Esho '*was aroused and I relieved him.... Dr Esho commented on my bum, he rubbed against me*'. It also noted the message sent by Patient A after the appointment, '*...How are you feeling now*' and Dr Esho's response, '*Blessed lol*'. Furthermore, the Tribunal reminded itself of Patient A's evidence that the text was a reference to Dr Esho's gratitude that she had masturbated him.

114. The Tribunal considered Dr Esho's oral evidence that this message referred to Patient A having shown him a video showing her inserting a dildo into her anus. Dr Esho said he had watched the video for a second or two, it looked, '*painful*'. He stated that Patient A told him that he should feel '*honoured and blessed*'. The Tribunal noted that Dr Esho's written statement only referred to Patient A saying he should '*feel honoured*'.

115. The Tribunal accepted Patient A's evidence. It also concluded that Dr Esho attributed the word '*blessed*' to Patient A for the first time in his oral evidence in order to explain his use of it in the messaging.

116. The Tribunal noted that Dr Esho later sent Patient A another message, '*Today was [4 heart eyed emojis]*', Patient A's response, '*I'm glad you liked...*' followed by a suggestion that they '*hook up*', to which Dr Esho agreed.

117. The Tribunal considered Patient A's explanation of the messaging to be consistent with her account. It noted the inconsistencies in Dr Esho's account and considered his explanation of the texts to be implausible. While the Tribunal noted that Patient A had not referred to this incident in her GMC complaint dated 7 August 2022, it did not consider that this impacted adversely on her credibility in respect of Paragraph 5 of the Allegation. It accepted Patient A's explanation that the complaint only contained the '*highlights*' of 2½ years of interactions with Dr Esho. The Tribunal noted that Patient A's oral evidence was consistent with her statement.

118. The Tribunal determined, however, that while Patient A stated she felt taken advantage of because she did not receive free aesthetic treatment on 25 August 2020, she had agreed to provide sexual services to secure the early appointment.

119. For the reasons set out above, the Tribunal rejected Dr Esho's account of the events of 25 August 2020 and accepted Patient A's account. Therefore, the Tribunal found paragraphs 5a, 5b, 5c and 5d of the Allegation proved.

Paragraph 6a, 6b, 6c and 6d

120. Paragraph 6 of the Allegation states that during an appointment at the Wimbledon clinic on 19 May 2021, Dr Esho made inappropriate comments to Patient A concerning the shape of her bottom, indicated to Patient A that he wanted to kiss her; stroked her hair; and rubbed himself against her.

121. The Tribunal considered the evidence about 19 May 2021 separately from its previous decision regarding paragraph 5.

122. The Tribunal noted that Ms B and Ms D were at the clinic on 19 May 2021. Neither witness could remember the day itself. Each could only describe what routinely occurred and what they thought may have occurred based upon the diary and their general routine. Consequently, neither witness provided the Tribunal with much assistance concerning the events of 19 May 2021.

123. The Tribunal therefore focused on the evidence of Patient A and Dr Esho, the contemporaneous records and the messaging.

124. The Tribunal noted that in early 2021 Patient A and Dr Esho discussed her providing him with sex in exchange for an early appointment with him. Dr Esho told Patient A *'Its covid not us but the guys will book for soonest in covid x'; 'That's the only limiting factor x'*.

125. The Tribunal further noted that Patient A sent Dr Esho a large number of naked or semi naked images of herself. Following that there was an exchange of messages about the treatments Patient A wanted. The Tribunal noted Dr Esho's response that he would decide the treatment plan on the day. He also messaged that they work *'best with lots of bloodflow' 'so guess we need to go some vigorous activity lol' 'when are you in?'*

126. The Tribunal noted that on 19 May 2021 Patient A messaged Dr Esho before the appointment, *'Today is the day'*. Patient A stated that she attended a previous appointment on 20 April 2021 wearing a *'buttplug'* which *'went to waste'*.

127. The Tribunal further noted that the day after the 19 May 2021 appointment, Dr Esho messaged, *'So mad I didn't get to cum lol'*. Patient A response *'lol its ok il come Newcastle instead...'*

128. The Tribunal also considered a later message sent by Dr Esho to Patient A in late July 2021, *'Ha im ready (water) last time wanted to (water) in that ass so bad lol'* to which she responded, *'...my ass was thirsty'*.

129. The Tribunal concluded that all the messages above referred to the abortive sexual contact which Patient A alleges occurred on 19 May 2021

130. The Tribunal also reminded itself:

- i. of Dr Esho’s evidence that he was sexually attracted to Patient A;
- ii. that Patient A’s account of events in her oral evidence was consistent with her written statement and with the messaging;
- iii. of its conclusions concerning the relative credibility of Dr Esho and Patient A;

131. The Tribunal concluded that the messaging showed that Patient A expected to provide Dr Esho with sexual services on 19 May 2021. The Tribunal also concluded that this did not happen due to the presence of other staff but that the limited sexual touching Patient A described, did happen. The Tribunal further concluded that this left Dr Esho feeling sexually frustrated.

132. For all the reasons set out above, the Tribunal therefore found paragraph 6a, 6b, 6c and 6d of the Allegation proved.

Paragraph 7a, 7b, 7c, 7d and 7e

133. Paragraph 7 of the Allegation states that at an appointment on 7 August 2021, Dr Esho kissed Patient A; undid his trousers; had sexual intercourse with her and then ejaculated onto Patient A’s stomach.

134. In his oral evidence, Dr Esho said that Patient A had requested an early appointment XXX. He explained that he did not normally get involved with the clinic diary but because XXX he arranged for his staff to provide Patient A with an earlier appointment. The Tribunal then reviewed the messages exchanged on 24 and 26 July 2021;

24 July

Patient A *‘...got a vm from one of the girls at the clinic saying next apt not til September, hoping you can squeeze me in before then...[various emojis including four waterdrop emojis]*

Dr Esho *‘Say I said I can squeeze you into Newcastle in august clinic*

Patient A *‘Yes thank u xxx...’*

26 July

Patient A *‘Wooooo im seeing you on Sat 7th Aug in Newcastle [XXX]!!’*

Dr Esho *‘Ha Im ready... last time wanted to ... in that ass so bad lol’.*

135. The Tribunal concluded that Patient A believed that Dr Esho had facilitated an early appointment for her in Newcastle and that Dr Esho expected to receive sexual services in return. The Tribunal accepted Patient A’s evidence that she did not use XXX to secure an early appointment. It noted that Patient A’s message mentioned XXX to Dr Esho after the

appointment date was booked. The Tribunal concluded therefore that Dr Esho's explanation for the August appointment is untrue.

136. The Tribunal reminded itself of Dr Esho's earlier text in which he invited Patient A to Newcastle. It also reminded itself of Patient A's messaging concerning coming to Newcastle and her account, set out in Paragraph 8 of the Allegation. The Tribunal concluded that both parties regarded Newcastle as the place where sex would take place.

137. The Tribunal also noted that both parties agreed they were alone in the Newcastle clinic on 7 August 2021. Dr Esho also agreed that he knew this would be the case before the appointment.

138. Patient A's evidence was that the travel time to the Newcastle clinic from her home was about 3 hours. The Tribunal concluded that, given Patient A's previous reluctance to make such a long journey for a 30 minute lip appointment, she did so on 7 August 2021 because she believed she would receive free botox in addition to her booked treatment.

139. The Tribunal considered Patient A's account of events in her witness statement dated, 20 October 2022:

'I remember Dr Esho walked over to me and started kissing me. Dr Esho then undid his trousers. He then walked me over to the chair where treatments are usually administered. I went with him and got onto the chair. We started having sexual intercourse in missionary. Dr Esho did not use a condom despite me expressing my worries to him in our Instagram conversations that I could fall pregnant... We had penetrative vaginal sex, he wanted to do it from behind with me on all fours on the chair and so we turned around half-way through.'

'Towards the end, Dr Esho asked me to turn around onto my back, which I did, and he ejaculated on my stomach.'

'After this, we both got dressed and Dr Esho proceeded to do my filler on the same treatment chair. After he had done the filler, I asked him for the Botox treatment, which we had agreed would be in 'exchange' for us having had sex.'

140. Patient A said that Dr Esho was annoyed by her request for botox but did administer it.

141. The Tribunal then considered Dr Esho's account. He said when Patient A entered the treatment room she simulated sex on the treatment chair until he told her to stop. She called him a businessman, tried to make a deal with him for sex in return for botox and promised to tell no one. He said that he made clear to Patient A that he *'could not do that'* and that he had already done her a favour by securing an early appointment. The Tribunal was struck by the similarity of this alleged conversation and the Instagram messaging that had occurred months earlier.

142. The Tribunal also reminded itself of its conclusion that a deal had already been made in the messaging immediately before the appointment, albeit that Patient A and Dr Esho had a different understanding of what had been agreed. The Tribunal determined that as a result Patient A had no need to entice Dr Esho by *'twerking'* as the discussions and agreement about what would occur had been decided in the messaging before her arrival.

143. Dr Esho told the Tribunal that while he was prepared to engage in *'fantasy sexting'* with Patient A, he would not have sex with a patient or provide free botox in exchange for sex. The Tribunal reminded itself of Dr Esho's oral evidence, that he told Patient A on 12 June 2019 that, *'Nigerians don't do anything for free.'* It concluded that this provided insight into Dr Esho's perception of what he was not prepared to do.

144. The Tribunal noted that Patient A's account of events on 7 August 2021 was consistent with her witness statement and her original complaint. The Tribunal also considered that Patient A's account was consistent with the messaging. Finally, the Tribunal took account of the fact that it had found Patient A's evidence to be reliable and credible in relation to other paragraphs of the Allegations.

145. The Tribunal found Patient A to be straightforward in her account of events. She gave her evidence without exaggeration or embellishment and was open and forthright about the nature of her business. The Tribunal accepted Patient A's account, that after Dr Esho showed sexual interest in her, she saw a business opportunity and tried to engage in a skill swop of their respective skills, culminating in the events of 7 August 2021.

146. Dr Esho stated in oral evidence that there was not enough time for sexual intercourse, Patient A's treatment and the botox administration, to have occurred during the 7 August 2021 appointment. Dr Esho also stated that the treatment chair was not strong enough to bear the weight of both of them. Finally, Dr Esho stated that he did not have enough botox with him on 7 August 2021 to have treated Patient A. The Tribunal considered all those matters carefully.

147. In relation to timing, Dr Esho told the Tribunal that Patient A was 10 -15 minutes late for her 30-minute appointment. However, the clinic diary showed that Patient A's appointment was scheduled for 14:00 – 14:30 but Dr Esho's next patient was not due until 15:00.

148. Ms C, Dr Esho's receptionist, was working remotely on 7 August 2021. She updated him by WhatsApp message throughout the day. At 13:41 Ms C messaged Dr Esho that Patient A was running 15 minutes late, to which he did not respond. She then sent another message saying his 15:45 appointment was cancelled. Dr Esho responded, *'Ffs'* (For fuck's sake). There was no further communication between them until 14:49, when Ms C messaged Dr Esho saying his 15:00 appointment would be late. At 15:06 Ms C asked if Patient A's appointment was finished, Dr Esho responded at 15:08 confirming that was so.

149. In his witness statement, Dr Esho stated that he was stressed and stretched for time because Patient A's lateness adversely affected later appointments. The Tribunal rejected his account because Dr Esho knew before Patient A arrived that he had at least 45 minutes before his next appointment and that the cancellation of his 15:45 appointment would alleviate any potential issues with the 15:00 appointment. The Tribunal therefore rejected Dr Esho's account that there was no opportunity for the events described to occur due to lack of time.

150. The Tribunal also considered that the messages exchanged between Dr Esho and Ms C about Patient A indicated duplicity on his part. Specifically, the Tribunal noted the following exchange between Ms C and Dr Esho. At 14:51 in response to an enquiry by Ms C as to whether Patient A's appointment was finished, Dr Esho responded, '*Yes thank god lol paid in cash' ...'Literally I was like ooooh no'...'left door open lol'*. Ms C answered, '*I dread to think what she propositioned you with today'*.

151. The Tribunal concluded that Dr Esho had initiated and pursued sexual messaging with Patient A enthusiastically over 2½ years. These messages showed that Dr Esho gave staff members the impression that Patient A was sexually provocative and that he was seeking to protect himself against her advances. Dr Esho sought to give the Tribunal the same impression.

152. The Tribunal concluded that, had Dr Esho genuinely felt compromised by Patient A on 7 August, Ms C's message provided a clear opportunity for him to set his concerns and initiate actions to mitigate the risks he states she presented. He did not do so, choosing instead to hint and joke about her behaviour.

153. In relation to the treatment chair being too weak the Tribunal noted that patients come in all shapes and sizes. Patient A is slim woman. Dr Esho is a proportionate man. The Tribunal have seen photographs of a chair similar to the one in the treatment room on 7 August 2021. It is largely made of metal and appears robust. The Tribunal rejected Dr Esho's evidence and concluded that it was possible for sex to have taken place on that chair as Patient A described.

154. The Tribunal then considered Dr Esho's evidence about giving Patient A three reasons why he could not give her botox on 7 August 2021: Additional payment; insufficient time; and he did not have enough botox. Dr Esho produced records which showed the amount of botox he had taken with him to Newcastle since supplies were not held at the clinic itself. The Tribunal was surprised, if Dr Esho had not had enough botox to accommodate Patient A's request, that he gave two other reasons for not administering it.

155. The Tribunal noted that Dr Esho was due to be in Newcastle for two days, Saturday and Sunday. Patient A was treated on Saturday. Dr Esho told the Tribunal he could obtain botox locally overnight. He told the Tribunal he explained this to Patient A and offered her another appointment the next day so he could administer it. Dr Esho said Patient A declined saying she was not available. However, on 7 August Dr Esho had arrived with enough botox

to deal with all patients booked in for both days. He could therefore have used botox intended for one of Sunday's patients to treat Patient A and sourced the additional amount required on the following day.

156. The Tribunal further noted Dr Esho's evidence that he had only enough botox to treat all the patients booked for appointments that weekend. However, Ms B's analysis of the botox stock records showed that Dr Esho had two doses more than were required.

157. Dr Esho's evidence was that he was not expecting to administer botox to Patient A at her next appointment in Newcastle on 5 December 2021. Despite Dr Esho's evidence about the tight stock control of botox taken to the Newcastle clinic, he had enough botox to administer three additional injections to Patient A on that occasion. The Tribunal concluded that the supply of botox at the Newcastle Clinic is more flexible than Dr Esho suggested in his evidence.

158. The Tribunal also concluded that Patient A was aware that there was normally an additional charge for botox. She did not, however, expect to pay this on 7 August because of her understanding of the negotiations with Dr Esho before the appointment.

159. The Tribunal reminded itself of the medical notes made by Dr Esho following the appointment: '*Patient discussed wanting additional botox. Advised with time limited + also advised additional costs.*' The Tribunal considered that, if there was no botox available at the clinic, Dr Esho would have recorded that in the medical notes as the main reason for the treatment not being administered. The Tribunal also noted that the reference to '*time limited*' treatment was incorrect.

160. Patient A stated that Dr Esho was unhappy about administering free botox and the consultation came to an '*abrupt end*'. She also said with hindsight that she did not give Dr Esho the attention he felt he deserved having dispensed free botox.

161. The Tribunal considered the messages exchanged on 7 August 2021 after the appointment. Patient A, '*Thank you (Heart emoji)*'. Dr Esho, '*Thank you! x*'. The Tribunal considered that this gave the impression that a mutual exchange had taken place for which each was thanking the other.

162. Patient A said that after 7 August 2021 she was directed to the receptionists to arrange appointments, asked to sign forms confirming she was happy with treatments and felt Dr Esho was distancing himself. Dr Esho also said he did try to distance himself and have others around when treating Patient A.

163. The Tribunal noted the sporadic nature of the messaging after this appointment and that although Dr Esho made several sexualised comments, there was no more intense '*sexting*'. The Tribunal concluded that the change in messaging frequency and content confirmed the evidence of both Patient A and Dr Esho that their relationship changed after that date.

164. The Tribunal reminded itself that on 5 December 2021 Patient A had botox administered to her in an appointment at the Newcastle Clinic. Patient A paid for this and initially agreed to Dr N administering the botox but changed her mind. The Tribunal noted that there was no suggestion that Dr Esho had warned his colleague that Patient A might ask him for a skill swop.

165. The Tribunal concluded that by attempting to transfer Patient A's botox treatment to another doctor, Dr Esho was seeking to end Patient A's efforts to secure free botox for sexual services from him. However, the Tribunal also concluded that Dr Esho wished to continue "sexting" with Patient A. The Tribunal determined that while Dr Esho was prepared to have sex with Patient A, because she was a sex worker and he found her sexually attractive, he was not prepared to dispense treatment without payment again.

166. The Tribunal noted that Patient A has not criticised Dr Esho's clinical skills and that both she and Dr Esho agreed that they had not had any dispute concerning his clinical care of her.

167. The Tribunal reminded itself of Patient A's evidence that after confiding in a friend, she felt Dr Esho encouraged her to believe that he would do a skill swop. As a result she gave him sexual images, videos, 'sexting' and physical sexual contact for which she normally charged but he had not fulfilled his side of the bargain. The Tribunal accepted Patient A's evidence that she complained to the GMC to protect other patients from abuse and because she felt that Dr Esho was a 'freeloader'.

168. The Tribunal determined that Patient A's account was internally consistent in relation to key events. It also considered her evidence about sexual interactions was open, straightforward and not exaggerated. Moreover, the Tribunal found Patient A's account consistent with the messaging. By contrast, the Tribunal determined that Dr Esho's account did not accord with the contemporaneous messaging and his subsequent explanation for events contained new and additional material not set out in his statement. The Tribunal also considered, for the reasons set out earlier in this determination, that Dr Esho's account was not credible.

169. The Tribunal therefore accepted Patient A's account and rejected that of Dr Esho and found paragraphs 7a, 7b, 7c, 7d, 7e and 7f of the Allegation proved.

Paragraph 8

170. Paragraph 8 of the Allegation states that between June 2019 and 7 August 2021, Dr Esho told Patient A it would be better to see her in his Newcastle clinic in terms of sex.

171. In Patient A's complaint to the GMC, which Patient A confirmed in her oral evidence, she stated that, *'He[Dr Esho] asked me to book an appointment for this exchange to occur in*

his Newcastle branch.’ The Tribunal noted that Patient A could not recall when or how this was said.

172. The Tribunal reminded itself that on 30 December 2019, Dr Esho sent his personal phone number to Patient A so they could also communicate through WhatsApp. The Tribunal further reminded itself of Patient A’s unchallenged evidence that she no longer had any WhatsApp messaging because she had changed her phone. The Tribunal noted that Dr Esho and Patient A had another social media platform through which to communicate and would also have spoken at clinic appointments.

173. The Tribunal noted that during September and October 2020 Dr Esho commented on Patient A’s Instagram story several times, sent her sexual texts and invited Patient A to his clinic in Dubai where he was working. Patient A declined. The Tribunal also noted that on 4 October 2020, Patient A messaged, *‘Where tf my invite’* and Dr Esho replied, *‘Come to Newcastle’*. The Tribunal noted that although Dr Esho stated that this was because Patient A had asked him to arrange an earlier appointment, this is not consistent with the messaging. Patient A refused, saying Newcastle was too far.

174. The Tribunal concluded that Dr Esho’s message dated 4 October 2020 supported Patient A’s evidence and was sent because he and Patient A had been actively discussing where sex could occur and because he knew, and accepted in evidence, that no reception or support staff worked in the Newcastle clinic.

175. The Tribunal also noted that in an exchange on 20 May 2021, Dr Esho texted *‘So mad I didn’t get to cum lol’*. Patient A replied *‘Lol. It’s ok il come to Newcastle instead’*.

176. The Tribunal reminded itself of Patient A’s oral evidence that the return trip to Newcastle from patient A’s home was 6-7 hours and that she would not have travelled so far except to receive free botox.

177. The Tribunal noted that during October and November 2020 Dr Esho sent Patient A messages saying he wanted penetrative sexual intercourse with her. The Tribunal also noted that on 16 November 2020 they had an Instagram message exchange about the practicalities of having, and the risks associated with, vaginal intercourse. Dr Esho texted, *‘Lol you can’t get pregnant thou lol’*. The Tribunal concluded from Patient A’s response, that she had a period app, that she took this seriously. The Tribunal further noted Dr Esho’s response that such apps are not accurate, following which he messaged, *‘I want it now’... ‘So Baddddddd’*.

178. Finally, the Tribunal noted that Newcastle is where Patient A states she had sexual intercourse with Dr Esho on 7 August 2021.

179. The Tribunal therefore accepted Patient A’s evidence that Dr Esho at some point told Patient A that Newcastle was the easiest place for sex to happen. Accordingly the Tribunal found Paragraph 8 proved.

Paragraph 9

180. Paragraph 9 of the Allegation states that on or around 5 December 2021, Dr Esho told Patient A she was *'so skinny'* and that he was *'disappointed'* he could not have sex with her on 5 December 2021 *'as the whole team were at the [Newcastle] Clinic'*.

181. In her statement Patient A stated that whilst she was on route to the Newcastle clinic on 5 December 2021, Dr Esho told her he was disappointed that the number of people present at the clinic that day prevented them from having sexual activity. The Tribunal noted that Patient A drove to the Clinic. Patient A did not explain how Dr Esho told her this whilst she was travelling, however, it can only have been through a spoken phone conversation or messaging by Instagram or WhatsApp.

182. The Instagram records show no messaging or calls occurred between Dr Esho and Patient A on 5 December 2021. Patient A said the only other method of communication which she and Dr Esho used was WhatsApp messaging but she could not access these due to changing her phone. The Tribunal also reminded itself of Patient A's oral evidence that no sexually inappropriate comments were made to her by Dr Esho on 5 December 2021.

183. The Tribunal further reminded itself of its conclusion that the relationship between Dr Esho and Patient A had cooled after 7 August 2021. The Tribunal noted that when Patient A arrived at the clinic, she was accompanied into Dr Esho's treatment room by Dr N who remained present throughout. The Tribunal considered it unlikely that Dr Esho would have made the comment attributed to him by Patient A while also taking steps to ensure that he did not see her alone that day.

184. The Tribunal noted that Patient A's evidence that the comment about her being skinny was made by Dr Esho verbally during the clinic appointment. Moreover, the Tribunal noted that Patient A did not suggest that Dr N showed any unusual reaction to anything that was said during her treatment on 5 December 2021. The Tribunal concluded that it was not credible that such a comment was made in the presence of another doctor, who Patient A had never met before, particularly given Dr Esho's concern that the true nature of his relationship with Patient A remained concealed.

185. The Tribunal concluded, for the reasons stated above, that Patient A's evidence about 5 December 2021 was not reliable. Therefore Paragraphs 9a and 9b of the Allegation are not proved.

Paragraph 10

186. Paragraph 10 of the Allegation states that Dr Esho's conduct was sexually motivated in relation to those paragraphs which Dr Esho had not admitted but which the Tribunal had found proved.

187. The Tribunal noted that Dr Esho accepted that his messaging with Patient A and his inappropriate emotional relationship with Patient A was sexually motivated. He admitted this at the start of the hearing. It further noted Dr Esho's evidence about his sexual attraction to Patient A. The Tribunal also reminded itself that all outstanding paragraphs of the Allegation related to physical sexual touching or comments about having sexual contact with Patient A or finding her sexually attractive.

188. The Tribunal understood that Mr Lambis accepted that if the Tribunal found any of the outstanding paragraph proved, it followed that they were sexually motivated.

189. Given the previous admissions, the nature of the conduct described by the outstanding paragraphs, the way in which the case for Dr Esho had been conducted (namely that the events had either taken place or they had not) and Dr Esho's admitted sexual attraction to Patient A, the Tribunal found Paragraph 10 proved.

Paragraph 2

190. Finally, the Tribunal considered Paragraph 2 of the Allegation, namely whether Patient A was vulnerable because of her profession as a sex worker.

191. The Tribunal considered the definition of vulnerable as set out in the Oxford Dictionary of English: '*exposed to the possibility of being attacked or harmed either physically or emotionally.*'

192. The Tribunal reminded itself that in evidence Dr Esho accepted that the very nature of the doctor – patient relationship created an imbalance of power between himself and Patient A. The Tribunal noted this was demonstrated in some of the messaging interactions which occurred. The Tribunal also noted that Patient A displayed insecurity about her looks on occasions, while at other times she told Dr Esho how his clinical work had enhanced her confidence and performance at work.

193. The Tribunal reminded itself of Mr Lambis' submission that a sex worker is not inherently vulnerable simply because of the nature of their work and that Ms Hudson did not suggest that there is any legislation or guidance to the contrary.

194. The Tribunal determined that sex workers can be vulnerable, however, this depends on a range of factors including why they engage in sex work, who their clientele are, where they perform their services, whether they are in control of their own services or subject to the control of others, the state of their own health and their ability to choose whether to engage with any given customer or not.

195. Having heard Patient A's oral evidence, the Tribunal concluded that she is an intelligent, articulate and successful business woman. She created, developed and operates a thriving online business which she told the Tribunal she works hard to maintain and she provides a variety of sexual services through multiple online platforms. The Tribunal

concluded that Patient A demonstrates a high degree of agency in her choice of career and how she operates her business.

196. The Tribunal accepted Patient A's evidence that she considers it central to the success of her business that she maintains a particular look and that her brand includes a full lip look. The Tribunal determined that Patient A sought the services of Dr Esho because he specialises in lip augmentation. However, the Tribunal noted that Patient A saw other aesthetic practitioners while seeing Dr Esho without advising him and, when she experienced difficulties with their work, reverted to Dr Esho for corrective intervention. The Tribunal also noted that Patient A actively negotiated to secure a business deal with Dr Esho based on mutual exchange of skills. The Tribunal concluded, however, that Patient A did not secure the long term business outcome which she wanted and felt that the value of the services she had provided was not matched by what she received in return.

197. The Tribunal considered that Patient A did show moments of vulnerability because of her concern about her looks. In particular in January 2021, she was experiencing discomfort and mental distress due to filler which had been inserted into her cheeks by another practitioner. The Tribunal noted that when Patient A asked Dr Esho for help his response was, *'Ok I'll help if I get the booty lol.'* Although the Tribunal considered that Dr Esho was seeking to exploit Patient A's vulnerability, that vulnerability arose because of Patient A's distress and insecurity arising from poor treatment by another practitioner and not because she is a sex worker.

198. The Tribunal determined that Patient A is a sexual entrepreneur who is wholly in control of the services she provides, when and how she provides them and receives the whole of the benefit from doing so. The Tribunal therefore concluded that Patient A was not vulnerable because of her profession.

199. The Tribunal determined Paragraph 2 of the Allegation not proved.

The Tribunal's Overall Determination on the Facts

200. The Tribunal has determined the facts as follows:

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

1. Between June 2019 and May 2022 you provided medical care/treatment to Patient A at the Esho Clinic ('the Clinic'). **Admitted and found proved**
2. At all material times Patient A was vulnerable because of her profession. **Not proved**
3. In or around July 2019 to May 2022, on one or more occasions, you engaged in an improper emotional relationship with Patient A in that you responded to posts she put on Instagram. **Admitted and found proved**

4. Between 17 July 2019 and 23 February 2022 you behaved inappropriately, in that you exchanged messages with Patient A via Instagram, which included (and not limited to) sexual content as set out in Schedule 1.
Admitted and found proved
5. On or around 25 August 2020, you:
 - a. made inappropriate comments to Patient A in that you commented on the shape of her bottom during her appointment at the clinic;
Determined and found proved
 - b. rubbed up against Patient A;
Determined and found proved
 - c. took your penis out of your trousers; **Determined and found proved**
 - d. allowed Patient A to masturbate you.
Determined and found proved
6. On or around 19 May 2021, you:
 - a. made inappropriate comments to Patient A in that you commented on the shape of her bottom during her appointment at the clinic;
Determined and found proved
 - b. indicated to Patient A that you wanted to kiss her;
Determined and found proved
 - c. stroked her hair; **Determined and found proved**
 - d. rubbed yourself against her.
Determined and found proved
7. On or around 7 August 2021 you:
 - a. kissed Patient A; **Determined and found proved**
 - b. undid your trousers;
Determined and found proved
 - c. had sexual intercourse with Patient A; **Determined and found proved**
 - d. ejaculated on Patient A's stomach; **Determined and found proved**
 - e. stated to Patient A that you could 'get away with giving her botox in exchange for sexual services', or words to that effect; **Determined and found proved**

- f. administered botox to Patient A for free in exchange for having engaged in sexual activity with you. **Determined and found proved**
8. On a date unknown but between June 2019 and prior to the appointment as set out at paragraph 7 you stated to Patient A words to the effect of ‘it would be better to see you at the clinic in Newcastle in terms of having sex.’
Determined and found proved
9. On or around 5 December 2021 stated to Patient A words to the effect of:
- a. that you were ‘disappointed that the whole team were at the Clinic (in Newcastle) that day so you could not engage in sexual activity with Patient A’; **Not proved**
- b. ‘you have got so skinny’. **Not proved**
10. Your conduct as set out at paragraphs 3-9 above was sexually motivated.
Admitted and found proved in relation to paragraphs 3 and 4
- Determined and found proved in relation to paragraphs 5, 6, 7 and 8,**
- Not proved in relation to paragraph 9**

Determination on Impairment - 24/04/2024

1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved, Dr Esho’s fitness to practise is impaired by reason of misconduct.
2. Dr Esho was not present or represented at this stage of the proceedings. The Tribunal determined, after considering an application made by Mr Donoghue under Rule 31 of the Rules, to proceed in Dr Esho’s absence. The Tribunal’s reasoning is set out in Annex D.

The Evidence

3. In reaching its determination, the Tribunal took into account all the evidence received during the facts stage of the hearing. The Tribunal also received further documentary evidence as follows:
- Stage 2 written submissions on statutory grounds and impairment from Dr Esho’s legal representatives;
 - Dr Esho’s further witness statement dated 22 April 2024;
 - A stage two bundle from the GMC which included but was not limited to:

- A statement from Dr Esho’s Responsible Officer (RO), Dr G, dated 29 November 2023;
 - A letter from Dr H, Medical Ethicist, dated 6 September 2022 in which he spoke of a half-day training course on ‘Medical Ethics’ which he delivered to Dr Esho on the same date;
 - A certificate of attendance at the above course by Dr Esho, also dated 6 September 2022;
 - A certificate of attendance at a course entitled ‘Profession Boundaries In Practice’ on 4 October 2022, by Dr Esho;
 - Dr Esho’s log setting out the dates on which he conducted examinations/procedures on female patients showing the presence of a chaperone;
 - An article from the MailOnline, dated 10 April 2024, in relation to this case.
- A stage two bundle provided by Dr Esho’s legal representatives on his behalf. This included but was not limited to:
 - A testimonial, dated 26 February 2020, from Sir I and Lady J;
 - A testimonial, dated April 2020, from Ms K of the British Beauty Council;
 - Extracts of articles on Dr Esho’s campaign to bring aesthetic treatment solely under the remit of Aesthetic practitioners, and to ban injectables to anyone under the age of eighteen;
 - XXX;
 - A document entitled ‘A Framework of Quality Assurance for Responsible Officers and Revalidation’ for ESHO Medical Limited;
 - Dr Esho’s Appraisal undertaken by MEDSU dated 4 October 2023;
 - Dr Esho’s certificate of a satisfactory completion of appraisal dated 25 January 2024;
 - Online reviews about Dr Esho’s clinical work.

Submissions on Impairment

On behalf of the GMC

4. Mr Donoghue, Counsel, submitted that Dr Esho’s fitness to practise is currently impaired. He referred the Tribunal to relevant case law, and the test to be applied when considering impairment and reminded it of the two-stage process. He submitted that paragraphs 53 and 65 of Good Medical Practice (GMP) were relevant when assessing the extent to which Dr Esho’s actions departed from the standards expected of medical practitioners. He referred the Tribunal to paragraphs 3, 4 and 5 of the GMC guidance on ‘Maintaining a professional boundary between you and your patient’ and paragraph 3 of the GMC guidance on ‘Sexual behaviour and your duty to report colleagues’.

5. Mr Donoghue identified a number of factors which he submitted increased the seriousness of Dr Esho's actions in this case. These included the prolonged period of more than two and a half years over which Dr Esho exchanged sexualised messages with Patient A, that Dr Esho acted deliberately and that his actions were sexually motivated. He submitted that Dr Esho's actions breached multiple provisions of GMP and fellow professionals would consider his actions deplorable.

6. Mr Donoghue submitted that Dr Esho's actions are not easily remediable and, taken as a whole, are at the higher end of the spectrum of serious misconduct. Mr Donoghue further submitted that a finding of impairment was required on public interest grounds, adding that a reasonable and well-informed member of the public, aware of the full facts of the case, would be shocked to learn that a doctor who had acted in this way had been allowed to return to unrestricted practice.

7. In relation to insight, Mr Donoghue submitted that although Dr Esho had demonstrated some insight into his actions, including reflections upon those actions which he admitted, he had not demonstrated any meaningful insight into the entirety of his misconduct. Mr Donoghue referred the Tribunal to the newspaper reporting of the Tribunal's determination at stage one and Dr Esho's response, which was to accept the Tribunal's findings but maintain his denial that any sexual contact had occurred. Mr Donoghue referred the Tribunal to parts of the Sanctions Guidance (SG) which deal with insight. Mr Donoghue reminded the Tribunal, however, that it should not automatically equate a practitioner's challenge to the allegations as a lack of insight.

8. Given the circumstances of the misconduct, and the lack of insight demonstrated by Dr Esho, Mr Donoghue submitted that there was a real risk of repetition. He referred the Tribunal to the overarching objective and submitted that a finding of impairment was required on all three limbs of that, namely: patient safety, upholding and maintain high professional standards, and public confidence in the medical profession.

9. Mr Donoghue therefore invited the Tribunal to find Dr Esho's fitness to practise impaired by reason of misconduct.

On behalf of Dr Esho

10. The Tribunal took into account the written submissions received from Dr Esho's legal representative on his behalf, the contents of Dr Esho's stage two statement dated 22 April 2024 and the additional bundle of documents submitted on his behalf. The Tribunal also took into account the material submitted on behalf of Dr Esho during stage 1.

11. In the witness statement, Dr Esho stated that taking time to understand why he acted in the way he did, had been a painful but necessary exercise which forced him to confront his failing and explore the reasons for them. He stated that it had also allowed him to understand the damage his actions had caused Patient A, his family and the wider medical

profession. He stated, it *'has shown me how easy it is for the boundaries between doctor and patient to become unclear and distorted on social media, particularly for aesthetics doctors interacting with patients online which is, in today's society, the norm. It has shown me the harm that breaching professional boundaries in this way can have on patients, both physically and psychologically.'*

12. Dr Esho stated that the GMC investigation had forced him to look at how he conducted himself on social media. He continued that as soon as he was notified of the GMC investigation in August 2022, he immediately and voluntarily absented himself from all social media contact with patients and transferred control of The ESHO Clinic's social media account to the Clinic administrative team. Dr Esho stated that the administrative team at the Clinic were now responsible for monitoring and controlling the Clinic's Instagram account. Further, Dr Esho stated that he had not had any direct communication with any patients or prospective patients through social media since the complaint, adding that measures had been put in place to ensure inquiries received via social media by himself or any member of his team were directed to the administrative team.

13. Dr Esho went on to describe other steps he had taken since these matters came to light. XXX

14. Dr Esho further stated that he immediately booked onto two courses to help him to understand and address his behaviour. He undertook these courses in September and October 2022. He stated that these courses *'helped me to better understand why my interactions with Patient A overstepped professional boundaries. They also made me reflect on the wider impact of my actions. By communicating with Patient A in the way I did, I failed to show her dignity and respect. By my actions, I risked creating a perception that I was putting my own interests above her's as a patient, thus damaging trust that Patient A had in me as her doctor. While I acted in Patient A's best interests at all times insofar as her clinical care was concerned, by breaching professional boundaries in the way I did, I let her down and created a risk of public perception that my actions might have influenced my decisions about the care and treatment that I provided to her.'*

15. Dr Esho said that he was mortified by the messages he sent to Patient A, did not recognise himself as the person writing the messages, and they did not exemplify him as a person or a doctor. He added, *'I struggle to come to terms with the fact that I allowed myself to fall so seriously below the professional standards expected of me.'* Dr Esho stated that he had maintained and provided to the GMC a log of his consultations with patients where a chaperone was present.

16. Dr Esho emphasised that it was accepted by the GMC that there were no clinical concerns about his practice. He referred the Tribunal to the testimonials provided by his colleagues and acquaintances in support of his clinical work and character. In addition, Dr Esho said that Patient A's complaint had, *'forced me to take a step back and review not only my own actions but also the way in which I operate my clinics.'* Realising there was a lack of external oversight, he decided to register his company with NHS England (NHSE). Dr Esho

stated he had successfully applied to Dr G, Director Chief Operations at MEDSU to become his company RO. MEDSU would provide cost-effective, impartial and highly regarded external governance solutions.

17. Dr Esho ended by stating that he would never repeat his admitted behaviour adding that the *'realisation of my misconduct was a pivotal moment filled with a mix of shock, shame and remorse. Acknowledging that my actions had crossed professional boundaries was difficult but necessary. This moment of self-realisation was uncomfortable yet crucial; it propelled me to seek [XXX] help, marking the first step in my journey towards personal and professional redemption.'*

18. Dr Esho's legal representatives referred the Tribunal to relevant case law, and also reminded it of the two-stage process. They stated that Dr Esho did not seek to shy away from the position that whether taken together or individually, the behaviour outlined in the charges amounted to misconduct in that it constituted a serious falling short of what would be proper in the circumstances.

19. Dr Esho's legal representatives highlighted that from the outset, Dr Esho had admitted exchanging sexualised messages with Patient A and that these were sexually motivated. The submissions also expressed Dr Esho's unreserved remorse for his errors in judgement and acknowledgement of wrongdoing by Dr Esho, stating that these demonstrated his insight into the concerns identified in the case. Dr Esho's legal representatives further submitted that since these matters came to light, Dr Esho has continually reviewed his own behaviours and acknowledged that the position he found himself in was entirely as a result of his own conduct. They stated that Dr Esho was fully aware that sexual misconduct was difficult to remedy but submitted that he had endeavoured to do what he could to reassure patients, the wider public and his regulator that he would never repeat his misconduct.

20. Dr Esho's legal representatives accepted, however, that Dr Esho recognised that the only finding the Tribunal could make is that his fitness to practise is currently impaired, however, they requested that the Tribunal consider the wealth of evidence about his wider practice, behaviour and services to the public.

The Relevant Legal Principles

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

22. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct and that the misconduct was serious, and then, whether as a result of that finding of serious misconduct, Dr Esho's fitness to practice is currently impaired. (See: *Cheatle v GMC* (2009) EWHC 645 (Admin), Cranston J (at paragraph 19)).

23. In order to determine whether Dr Esho's fitness to practise is impaired today, the Tribunal took into account his conduct at the time of the events and any relevant factors since then, such as whether the matters were remediable, had been remedied and whether there was any likelihood of repetition.

24. The Tribunal considered the overall risk to public safety and the impact of its findings on all three elements of the overarching objective. It also considered whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of current impairment was not made.

25. The Tribunal was assisted by the guidance provided by Dame Janet Smith in the Fifth Shipman Report, as adopted by the High Court in *CHRE v NMC* and *Paula Grant* [2011] EWHC 297 Admin. The Tribunal noted:

'..the tribunal should consider whether the findings of fact in respect of the doctor. ... show that his fitness to practise is impaired in the sense that 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...*
- d. has in the past acted dishonestly / or is liable in to act dishonestly in the future.'*

26. The Tribunal was also reminded of the comments of Collins J., in *Nandi v GMC* [2004] EWHC 2317 (Admin) at para 31:

*"What amounts to professional misconduct has been considered by the Privy Council in a number of cases. I suppose perhaps the most recent observation is that of Lord Clyde in *Rylands v General Medical Council* [1999] Lloyd's Rep Med 139 at 149, where he described it as "a falling short by omission or commission of the standards of conduct expected among medical practitioners, and such falling short must be serious". The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners."*

and reminded of *R (Remedy UK) v GMC* [2010] EWHC 1245

27. The Tribunal was reminded that the test of current impairment is a forward looking one and that it should consider Dr Esho's fitness to practise today and in the future. The

purpose of fitness to practise hearings is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise.

28. To form a view as to current impairment, the Tribunal must take account of the way in which the Registrant had acted in the past (*Meadow v GMC [2006] EWCA Civ 1390 para 32*). Current fitness to practise must be gauged partly by the practitioner's past conduct or performance and partly by reference to how he is likely to behave or perform in the future (*Zygmunt v GMC [2008] EWHC 2643 (Admin)) 11 para 30*). The Tribunal must therefore examine the context in which the doctor's behaviour occurred and also whether the conduct is easily remediable, whether it has been remedied and whether it is highly unlikely to be repeated (See: Silber J in *Cohen v GMC [2007] EWHC 581 (Admin)*).

29. The Tribunal was directed that the level of insight shown by the practitioner is a primary consideration in the proper determination of this issue (See: *CHRE v NMC and Grant [2011] EWHC 927 (Admin)*). It was further reminded that a finding of impairment may also be established on the basis that, "it is necessary to reaffirm clear standards of professional conduct so as to maintain public confidence in the practitioner and in the profession. In such a case, the efforts made by the medical practitioner in question to address his behaviour for the future may carry very much less weight than in a case where the misconduct consists of clinical errors or incompetence" *Yeong v GMC (2009) EWHC 1923 (Admin)*. This was approved and expanded by Silber J in (*CHRE v NMC and Grant [2011] EWHC 927 (Admin) para 74*) who stated that the Tribunal must also consider whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances of this case.

30. Finally the Tribunal was reminded that it must give reasons for its decision.

The Tribunal's Approach

31. Throughout its deliberations, the Tribunal has been mindful of its responsibility to uphold the overarching objective as set out in the Medical Act 1983 (as amended). That objective is the protection of the public and involves the pursuit of the following:

- a. to protect, promote and maintain the health, safety, and wellbeing of the public
- b. to maintain public confidence in the profession
- c. to promote and maintain proper professional standards and conduct for members of the profession

32. The Tribunal was mindful that it is a matter for itself to determine whether Dr Esho's actions amount to misconduct, exercising its own independent judgement.

33. The Tribunal therefore first considered whether the facts found proved amounted to misconduct.

34. For the purpose of fitness to practice proceedings, “misconduct” was defined as follows (*Roylance v GMC [2000] 1 AC 311*).

‘Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a practitioner in the particular circumstances.’

Misconduct

35. The Tribunal found the majority of the Allegation against Dr Esho proved. This included that Dr Esho engaged in an improper emotional relationship with Patient A by repeatedly responding to posts she put on Instagram; exchanged messages, including highly sexualised messages, with Patient A via private Instagram messenger; indicated to Patient A that he wanted to kiss her during one consultation; allowed her to masturbate him during a different consultation; and then in a third consultation had sexual intercourse with her. Further, Dr Esho said to Patient A words to the effect that he could *‘get away with giving her Botox in exchange for sexual services’*, and he administered Botox to Patient A for free in exchange for engaging in sexual activity with her. Further, the Tribunal reminded itself that it had determined that Dr Esho had manipulated a situation to encourage Patient A to attend his clinic in Newcastle as it was *‘better in terms of having sex’*.

36. The Tribunal considered the following paragraphs of GMC Guidance were engaged in this case:

Paragraphs 1, 46, 53 and 65 of GMP (2013 version), which state:

‘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.

46 You must be polite and considerate.

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

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

Paragraphs 3, 4, 5 and 14 of GMC guidance on ‘Maintaining a professional boundary between you and your patient’ (2013 version), which state:

'3 Trust is the foundation of the doctor-patient partnership. Patients should be able to trust that their doctor will behave professionally towards them during consultations and not see them as a potential sexual partner.

4 You must not pursue a sexual or improper emotional relationship with a current patient.

5 If a patient pursues a sexual or improper emotional relationship with you, you should treat them politely and considerately and try to re-establish a professional boundary. If trust has broken down and you find it necessary to end the professional relationship, you must follow the guidance in Ending your professional relationship with a patient.

14 You must consider the potential risks involved in using social media and the impact that inappropriate use could have on your patients' trust in you and society's trust in the medical profession. Social media can blur the boundaries between a doctor's personal and professional lives and may change the nature of the relationship between a doctor and a patient. You must follow our guidance on the use of social media.'

Paragraphs 5, 10 and 11 of GMC guidance on 'Doctors' use of social media' (2013 version), which states:

'5 The standards expected of doctors do not change because they are communicating through social media rather than face to face or through other traditional media. However, using social media creates new circumstances in which the established principles apply.

10 Using social media also creates risks, particularly where social and professional boundaries become unclear. You must follow the guidance in Maintaining a professional boundary between you and your patient.

11 If a patient contacts you about their care or other professional matters through your private profile, you should indicate that you cannot mix social and professional relationships and, where appropriate, direct them to your professional profile.'

Paragraph 3 of 'Sexual behaviour and your duty to report colleagues' (2013 version), which states:

'3 To maintain the trust of patients and the public, you must never make a sexual advance towards a patient or display sexual behaviour. Sexual behaviour – for example, making inappropriate sexual comments – does not necessarily involve touching the patient.'

37. In light of its findings at the Facts stage, the Tribunal considered that Dr Esho had breached the paragraphs identified above. His actions breached fundamental tenets of GMP in that he instigated, pursued, and undertook, a sexual relationship with Patient A. Like all patients, Patient A was inherently vulnerable simply by virtue of the doctor / patient relationship and Dr Esho's actions represented a breach of the trust which patients place in their doctors. Taking all the evidence into account, including its findings at the facts stage, the Tribunal considered that Dr Esho's actions amounted to misconduct.

38. The Tribunal then considered whether the misconduct was serious. It took into account that Dr Esho pursued and engaged in a sexual relationship with Patient A. The text messages Dr Esho exchanged with Patient A were often of a sexual nature and occurred repeatedly over a prolonged period of more than two and a half years. The sexual texts were interspersed with texts about clinical matters and, on one occasion, Dr Esho asked Patient A whether she would provide sexual services to him prior to confirming his agreement to provide her with clinical care.

39. The Tribunal also took into account that physical sexual contact occurred between Dr Esho and Patient A during three separate consultations in one of Dr Esho's clinics. Further that at least two of those instances of sexual activity involved an exchange where Dr Esho provided Patient A either medical services (and medication) free of charge, or facilitated an earlier appointment.

40. The Tribunal further considered that Dr Esho acted deliberately, that his actions were sexually-motivated and that at least two of the occasions of sexual activity were pre-planned by both Dr Esho and Patient A through messages exchanged in advance of the consultations. Finally, the Tribunal noted that Dr Esho was aware that he was crossing personal and professional boundaries because he sent messages to Patient A expressing concern about the prospect of the GMC becoming aware of his sexual interest in her and recognising that his behaviour was inappropriate for a medical practitioner. Despite this, the Tribunal reminded itself, it had concluded that Dr Esho still proceeded.

41. The Tribunal concluded that Dr Esho's conduct was a serious departure from the standards set out in GMP and the Guidelines identified above. His actions could undermine public confidence and put patients at risk. His actions were and would be considered by fellow professionals and the public as unacceptable, morally culpable and disgraceful conduct. In light of this, the Tribunal concluded that Dr Esho's actions amounted to serious professional misconduct.

Impairment by reason of misconduct

42. The Tribunal having found that the facts found proved amounted to serious misconduct, went on to consider whether, as a result of that misconduct, Dr Esho's fitness to practise is currently impaired. Throughout its deliberations, the Tribunal had regard to all three limbs of the statutory overarching objective, as set out above.

43. The Tribunal considered whether the misconduct was remediable, had been remedied by Dr Esho and whether there was any likelihood of repetition.

Insight

44. The Tribunal was mindful that at the outset of these proceedings, Dr Esho admitted some paragraphs of the Allegation against him. These included that he engaged in an improper emotional relationship with Patient A by responding to posts she put on Instagram, and that he behaved inappropriately, by exchanging messages with Patient A via Instagram, which included (but were not limited to) sexual content.

45. The Tribunal had regard to Dr Esho's statement of 22 April 2024. In this he stated that as soon as he was notified of the GMC investigation in August 2022, he immediately and voluntarily absented himself from all social media contact with patients; transferred control of The ESHO Clinic's social media account to his administrative team at the Clinic who now monitored and controlled the Clinic's Instagram account. Further, the Tribunal took into account that Dr Esho stated that he no longer had any direct contact with patients on social media and also that he had put external oversight of his clinics into place using a professional company.

46. The Tribunal accepted that Dr Esho showed some degree of insight through his comments in his statement that the misconduct he had admitted,

'has shown me how easy it is for the boundaries between doctor and patient to become unclear and distorted on social media, particularly for aesthetics doctors interacting with patients online which is, in today's society, the norm. It has shown me the harm that breaching professional boundaries in this way can have on patients, both physically and psychologically.'

and

that he had 'put in place strategies to deal with stressors and challenges that I face in my personal life to ensure that I don't repeat the same mistakes in future.'

47. The Tribunal further noted that while Dr Esho had sought out learning to address the issue of blurring professional and personal boundaries, this consisted of only two courses both undertaken in 2022.

48. The Tribunal had regard to a recent article in the MailOnline paper dated 10 April 2024 in which Dr Esho appeared to continue to deny any physical sexual interactions with Patient A. This appeared to be consistent with his statement of 22 April 2024.

49. Whilst the Tribunal acknowledged that Dr Esho's statement, the governance systems he had put in place, and the courses he had selected and done, and the other steps he had taken, demonstrated some insight, it was concerned that Dr Esho's insight is limited. In

particular, the Tribunal noted that he continues to accept only part of the misconduct which had been found proved.

50. The Tribunal was concerned that there was no detail presented to it by Dr Esho as to how his actions failed to show Patient A dignity and respect. The Tribunal noted that it had received no evidence to demonstrate that Dr Esho understands how his actions caused harm to Patient A and damaged the reputation of the profession. Whilst Dr Esho expressed regret and remorse for his actions, there was no clear apology to Patient A.

51. The Tribunal also noted that while Dr Esho XXX, which he considers to underpin his misconduct, this did not appear to address the misconduct he engaged in, why it took the form it did, or deeper attitudinal issues in relation to Dr Esho's view of women who engage in online sex work.

Remediation and Risk of Repetition

52. The Tribunal had regard to the guidance provided by Dame Janet Smith in the *Fifth Shipman report* as adopted by the High Court in *CHRE v NMC and Paula Grant [2011] EWHC 297 Admin*. It considered that factors (a), (b) and (c) in the test of *Grant* were engaged in this case:

'Do our findings of fact in respect of the doctor's misconduct, show that his fitness to practise is impaired in the sense that 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 or is liable in the future to bring the medical profession into disrepute; and/or*
- c. Has in the past breached or is liable to breach in the future one of the fundamental tenets of the medical profession; and/or*
- d. ...'*

53. The Tribunal noted that although Dr Esho had completed two half-day courses in September 2022, as set out above, there was no evidence of any ongoing reflection regarding his actions by way of further relevant courses or mentoring.

54. The Tribunal noted that Dr Esho transferred management of his and his team members' social media interactions to the Clinic, and that he registered his Clinic with NHSE and had a RO in place. The Tribunal considered that these steps were a response to Patient A's complaint and were undertaken to mitigate his actions. The Tribunal concluded that these were helpful procedural steps demonstrating proper leadership and setting a different tone in communications, however, they did not address the deeper issues of why Dr Esho had breached appropriate boundaries in respect of this particular patient, why he had continued to do so knowing that his behaviour would be unacceptable and what steps he needed to take personally to prevent repetition of his behaviour.

55. The Tribunal recognised that Dr Esho had found discussing personal issues difficult and that he had taken an important step in XXX. The Tribunal considered, however, that Dr Esho’s primary focus was on the damage which his actions had caused to himself, his reputation and business and his family rather than on Patient A, other patients, the wider public, the reputation of his profession generally and the importance of maintaining a high standard of conduct.

56. The Tribunal therefore concluded that there was insufficient evidence before it to show what steps Dr Esho has taken to remediate his misconduct or to develop insight into his actions. Dr Esho has not provided any evidence to demonstrate that he understood the impact his actions had or could have had on the patient at the time, on his colleagues, the medical profession, and the wider public interest and the public’s confidence in the medical profession. The evidence before the Tribunal suggested that Dr Esho was at the very early stages of his journey of remediation and insight. In the circumstances, the Tribunal considered that on the evidence before it, there was a risk of Dr Esho repeating his misconduct.

57. The Tribunal had determined that Dr Esho’s misconduct was serious. The Tribunal considered that Dr Esho’s conduct had put Patient A at risk of harm, brought the medical profession into disrepute and breached fundamental tenets of the medical profession. Dr Esho’s actions had breached aspects of GMP, and the Guidelines identified above. The Tribunal was also of the view that based on the evidence it had before it, Dr Esho had limited insight into his actions and the impact of these on patient safety and the reputation of the medical profession. The Tribunal was of the view that given the seriousness of the misconduct found, public confidence in the profession would be undermined if a finding of impairment were not made. A member of the public, aware of the full facts of the case, would be concerned that a doctor had acted in the way Dr Esho did. Further, the Tribunal was of the view that a fellow professional and the public would find this as wholly unacceptable conduct.

58. The Tribunal reminded itself of the purpose of the overarching objective, in particular:

- a. to protect, promote and maintain the health, safety, and wellbeing of the public
- b. to maintain public confidence in the profession
- c. to promote and maintain proper professional standards and conduct for members of the profession

59. The Tribunal determined that Dr Esho’s fitness to practise was impaired by reason of misconduct on all three grounds of the overarching objective. The Tribunal therefore considered that a finding of impairment was needed to protect, promote and maintain the health, safety, and wellbeing of the public, to maintain public confidence in the profession and to uphold proper professional standards.

Determination on Sanction - 27/04/2024

1. Having determined that Dr Esho'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.
2. Dr Esho was not present or represented at this stage of the proceedings.
3. The Tribunal had regard to its previous decision, under Rule 31 of the Rules, set out in Annex D, to proceed in Dr Esho's absence.

The Evidence

4. The Tribunal has taken into account evidence received during the earlier stages of the hearing, where relevant, in reaching a decision on sanction.
5. The Tribunal was provided with a further bundle of documents from Dr Esho's solicitors. This included submissions on Dr Esho's behalf in relation to sanction, Dr Esho's unredacted and undated stage 1 witness statement, and his Rule 7 Response dated 4 May 2023.

Submissions on Sanction

For the GMC

6. Mr Donoghue reminded the Tribunal that the question of the appropriate sanction is a matter for the Tribunal exercising its own independent judgement. He reminded it of the general principles when considering a sanction, as set out in the Sanctions Guidance (February 2024 version) (SG), adding that the main reason for a sanction was to protect the public. He referred the Tribunal to the overarching objective, and of the relevant matters it must consider when determining the appropriate sanction. This included mitigating and aggravating factors, insight and remediation.
7. In relation to insight and remediation, Mr Donoghue referred the Tribunal to relevant paragraphs of the SG and submitted that whilst there was some evidence to support that Dr Esho had a degree of insight, and that he had undertaken some remediation concerning his exchanging of social media messages with Patient A, he had not engaged with the Tribunal's findings in respect of those paragraphs of Allegation which he disputed. Mr Donoghue added that it was clear from the MailOnline article of 10 April 2024, and Dr Esho's stage 2 witness statement, that Dr Esho accepted, but did not agree with, the Tribunal's findings on the contested paragraphs of the Allegation. Mr Donoghue reminded the Tribunal that Dr Esho continued to assert that no physical sexual contact took place between him and Patient A. In the circumstances, Mr Donoghue submitted that Dr Esho therefore had demonstrated very limited insight.

8. Mr Donoghue referred the Tribunal to paragraphs 31, 32 and 33 of the SG and stated that Dr Esho's misconduct is so serious and represents such a significant breach of GMP and the associated guidance documents, that it is very difficult to remediate. Mr Donoghue submitted that accordingly, and despite the steps Dr Esho has taken subsequently, there remains an ongoing risk to the public. Mr Donoghue also submitted that action was required to maintain public confidence in the medical profession and uphold professional standards.
9. Mr Donoghue referred to the testimonials received on behalf of Dr Esho. He submitted that whilst the GMC accepted that the testimonials included at stage 1 provided some mitigation for Dr Esho, in terms of his general clinical competence, professionalism and position as a valued colleague, the weight to be attached to them was a matter for the Tribunal. He submitted that the more serious the misconduct, the less weight should be afforded to this material. Referring to the testimonials received on Dr Esho's behalf at stage 2 of the proceedings, Mr Donoghue repeated the submissions made at stage 2 in respect of their age. He noted that the testimonials pre-dated the findings of fact. No further references post-dating the Tribunal's findings of fact have been provided to the Tribunal. Mr Donoghue accepted that Dr Esho has no previous adverse history with the GMC.
10. Mr Donoghue said given the continuing nature of the misconduct found, the last incident complained of occurred about two years ago. As such, he submitted that the passage of time in this case was of limited relevance.
11. Mr Donoghue referred to the circumstances surrounding the events in this case and to paragraphs 50, 52 and 55 of the SG which deal with aggravating factors. He submitted that Dr Esho lacked insight into the totality of his misconduct. Mr Donoghue submitted that as Dr Esho's actions included using a social networking site to communicate with Patient A outside of the doctor-patient relationship and his agreement to exchange sexual activity for medical services or reduced waiting times, these should be categorised as predatory behaviour. Mr Donoghue also referred the Tribunal to paragraphs 149 – 156 of the SG which deal with cases involving sexual misconduct.
12. Mr Donoghue submitted that as this case involved an abuse of the special position which doctors occupy and represented a significant departure from the principles of GMP, Dr Esho's actions were at the top of the scale of seriousness.
13. Mr Donoghue took the Tribunal through the options available to it when considering the appropriate sanction. He submitted that taking no action or imposing a period of conditional registration were not appropriate sanctions and referred the Tribunal to his written submissions. He further submitted that a period of suspension was not an appropriate sanction either as Dr Esho's misconduct was at the upper end of the spectrum in terms of seriousness. He acknowledged that Dr Esho had undertaken some remedial steps, however, Mr Donoghue submitted that there was a lack of acknowledgment on Dr Esho's part concerning the full extent of his wrongdoing. Mr Donoghue therefore submitted that in this

case, suspension would be an insufficient sanction to protect patients or reaffirm public confidence in the medical profession.

14. Mr Donoghue submitted that paragraphs 107 – 108 and 109 (a), (b), (d) and (f) of the SG are engaged in this case. He said that Dr Esho had demonstrated a blatant disregard for the principles set out in GMP for patient protection, and had demonstrated a persistent lack of insight into the seriousness of his actions. Further, he stated that there was a risk of Dr Esho repeating his misconduct. In all the circumstances, Mr Donoghue submitted that erasure from the medical register was the necessary, appropriate and proportionate sanction.

For Dr Esho

15. Dr Esho's solicitors provided written submissions to the Tribunal in which they referred to case law concerning the interplay between continued denial of misconduct and insight. They submitted that Dr Esho was fully aware his actions had brought him before the Tribunal. They further submitted that Dr Esho accepted that there was no one but himself to blame, that he was deeply ashamed and acknowledged that he let himself, the profession, his patient, the public and his colleagues down. Dr Esho's solicitors added, *'Dr Esho fully accepts that he, as the professional, in the position of trust, bore the responsibility to act in the manner commensurate with his position, and that in failing to do so, his actions had a profound effect on Patient A. He cannot go back and change those actions now, but he remains deeply committed to demonstrating that he will never act in a similar manner in future.'*

16. Dr Esho's solicitors referred the Tribunal to paragraph 50 of its determination on impairment and submitted that Dr Esho had apologised to Patient A and the impact of his actions upon her, in his Rule 7 Response. They further referred the Tribunal to Dr Esho's re-examination concerning this. Dr Esho's solicitors also referred to their stage 2 written submissions which state, *'Dr Esho recognised the damage that he caused Patient A by his actions (paragraph 60) and explained that he failed to show Patient A dignity and respect by creating a perception that he was putting his own interests above hers as a patient by his actions, thus damaging the trust that Patient A had in him as her doctor.'* Further, they stated that when asked at cross examination whether he was sorry for what he had done, Dr Esho replied *'Yes, this is the biggest regret that I will hold in my life.'*

17. Dr Esho's solicitors submitted that Dr Esho was a doctor of previous good character who had been practising for eighteen years. They submitted that his actions were out of character. They added that Dr Esho's misconduct related to a single patient. Finally, they submitted that Dr Esho's testimonials expressing his previous good character and views about his integrity demonstrated that Dr Esho did not have a deep-seated attitudinal problem giving rise to a propensity to repeat his misconduct.

18. Dr Esho's solicitors then referred to the Tribunal's finding that Dr Esho had limited insight, and to the GMC's comments on Dr Esho's continued denial of some of the charges found proved. Dr Esho's solicitors submitted that continued denial did not mean that Dr Esho did not have insight and reminded the Tribunal that Dr Esho had made admissions to some of

the charges as early as his Rule 7 Response. They reminded the Tribunal that Dr Esho had admitted at the outset of these proceedings to having an improper emotional relationship with Patient A, to messaging Patient A on social media and that these actions were sexually motivated. Dr Esho's solicitors also said that Dr Esho acknowledged these failings during his oral evidence to the Tribunal, and continued to do so.

19. Dr Esho's solicitors added that Dr Esho recognised the need to demonstrate he understood the seriousness of the concerns at an early stage. In September and October 2022 he undertook two courses about professional boundaries. Finally, they submitted that Dr Esho's insight was demonstrated by his acceptance that the facts found proved are so serious that a finding of statutory misconduct requiring the imposition of a sanction was inevitable. They further submitted that Dr Esho accepted that the only options open to the Tribunal were suspension or erasure.

20. Dr Esho's solicitors referred the Tribunal to the SG and reminded it of the principles of proportionality to be applied when determining what sanction should be imposed. They urged the Tribunal to consider a period of suspension at the higher end for a number of reasons including:

- The Tribunal had accepted that whilst limited, Dr Esho had developed and demonstrated some insight into his own conduct and the seriousness of his actions;
- There was no evidence to suggest that remediation was unlikely to be successful, e.g., because of previous unsuccessful attempts or Dr Esho's unwillingness to engage. Dr Esho had already taken significant steps to change his practice and had engaged from the very outset of the GMC's investigation;
- XXX;
- Although the Tribunal had concluded that there was a risk of repetition, it did not state that this was a significant risk. They noted that there had been no repetition of misconduct of any kind since these matters;
- The wealth of references and testimonials attesting to Dr Esho's clinical practice, his philanthropic works and his conduct and character. He had enjoyed a hitherto unblemished and highly successful career since 2005;
- Dr Esho is a conscientious clinician, who had advocated for improved safety standards across the aesthetics sector;
- His business was the only source of income for himself and his employees;
- He is a family man who has dependants including an extended family inside and outside the U.K. who are dependent upon him XXX.

21. Dr Esho's solicitors described some of the issues in Dr Esho's personal life and reminded the Tribunal of his evidence as to how these had impacted upon him and the role he stated they played in his misconduct. They submitted that a period of 12 months suspension would send a clear message to Dr Esho and to the wider public that this type of misconduct is not befitting of a registered practitioner. They added that suspension from the medical register had a punitive effect and would prevent Dr Esho from practising.

The Tribunal's Approach

22. The Tribunal accepted the Legally Qualified Chair's advice that the decision as to the appropriate sanction, if any, is a matter for this Tribunal exercising its own judgment. In reaching its decision, the Tribunal should take account of the Sanctions Guidance dated February 2024 (SG) and the statutory overarching objective.

23. The Tribunal must consider any aggravating and mitigating factors as set out in the SG.

24. The Tribunal should only impose the minimum sanction necessary to protect the public and the public interest.

25. Throughout its deliberations the Tribunal should apply the principle of proportionality, balancing Dr Esho's interests with the public interest but reminding itself that its overarching duty is to protect the public as identified by the three limbs of the overarching objective.

26. The Tribunal must consider the least restrictive sanction first and then, if necessary, consider the other sanctions, taking into account the evidence and submissions that have been heard, including its earlier findings on fact and impairment.

27. The Tribunal was reminded of the case law concerning the interplay between continued denial of misconduct and insight and that these are different and distinct concepts although they are closely related.

The Tribunal's Determination on Sanction

Preliminary matters

28. The Tribunal noted that although Dr Esho had provided an additional witness statement at stage 2, and various mitigation was advanced on his behalf in written submissions made by his solicitors, neither Dr Esho nor his solicitors had attended stages 2 and 3 of the proceedings. Dr Esho had not therefore confirmed the contents of his further statement on oath. Dr Esho's non-attendance did not make his position more serious, but it had deprived the Tribunal of the opportunity to assess the depth and genuineness of his stated insight and remorse as described in his additional statement and his solicitor's submissions.

29. The Tribunal reminded itself that a doctor is entitled to deny the charges against him. The Tribunal noted that although Dr Esho's stage 2 statement was made after he had been afforded time to reflect upon its findings of fact, it contains no evidence of any reflection upon those matters in respect of which findings adverse to his position were made. The stage 2 statement continues to reflect only about those matters which Dr Esho admitted, namely the social media communications. It does not reflect upon how public confidence in the medical profession could be affected by the matters the Tribunal found proved, or the risks

presented by such behaviour. This is particularly so as Dr Esho's area of expertise mostly involves him treating female patients.

Aggravating and Mitigating Factors

30. In reaching its decision, the Tribunal identified the following aggravating factors:

- The concerns in this case relate to a fundamental principle of medical practice which is that a practitioner should not engage in any form of sexual relationship with a patient. This is essential to the maintenance of trust between a doctor and their patient and trust held by the public generally in doctors as a profession. They are therefore very serious;
- Dr Esho had pursued a course of conduct over a period of two and a half years which involved three individual instances of sexual contact and repeated instances of sexualised and inappropriate messaging with Patient A;
- Dr Esho successfully hid this from everyone else including professional colleagues, and created an impression that Patient A was sexually propositioning him;
- Dr Esho's actions were sexually motivated;
- Dr Esho acted deliberately. The messaging shows that sexual contact was discussed and arranged in advance of it occurring;
- Dr Esho was an experienced doctor who knew it was wrong to pursue a sexual relationship with his patient;
- During their messaging, Dr Esho told Patient A that he was afraid of the consequences of having sexual contact with her as this could get him into trouble with his regulator, however, he carried on exchanging sexualised messages and then had sexual contact with Patient A, regardless;
- Dr Esho bartered with Patient A in respect of offering his medical skills or providing early appointments in exchange for her sexual services;
- Dr Esho's behaviour was predatory;
- Inappropriate and sexualised contact with Patient A was initiated by Dr Esho and continued by him;
- Dr Esho put his own interests before Patient A's interests.

31. The Tribunal identified the following mitigating factors:

- Dr Esho had demonstrated some insight into the seriousness of that part of his misconduct which he admitted;
- In his Rule 7 Response, Dr Esho apologised to Patient A for his sexualised messaging and its impact on her;
- Dr Esho also admitted that part of the Allegation at the outset;
- In his witness statements at stages 1 and 2, Dr Esho expressed regret and remorse for his admitted actions and the impact they had on the medical profession;
- The personal XXX issues which Dr Esho had described in his

- witness statements and evidence;
- Dr Esho had made some efforts to remediate the misconduct found by changing practices, procedures, systems and processes at his clinics and by engaging the services of a well thought of company who provided external oversight and governance;
- Prior to these events, Dr Esho had no previous adverse history with the GMC;
- Dr Esho attended two courses on maintaining professional boundaries in September and October 2022;
- XXX;
- Dr Esho engaged in, and co-operated with the GMC investigation and the fact finding stage of the proceedings;
- Dr Esho had engaged with the remaining stages of the proceedings in the sense of instructing his solicitors to provide additional material;
- The testimonials received from Dr Esho’s clinical colleagues and his acquaintances attesting to his clinical work and good character.

32. The Tribunal bore in mind all the aggravating and mitigating factors throughout its deliberations as regards the appropriate and proportionate sanction. Having balanced these factors, the Tribunal concluded that the mitigating factors had less weight than the aggravating factors.

33. The Tribunal then considered each sanction in ascending order of severity, starting with the least restrictive.

No action

34. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Esho’s case, the Tribunal first considered whether to conclude the case by taking no action. The Tribunal considered the oral submissions made by Mr Donoghue, and the written submissions made on Dr Esho’s behalf by his solicitors in respect of the appropriate sanction. It also considered paragraphs 68-70 of the SG which highlight that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

35. The Tribunal determined that, given the gravity of the facts found proved, and in the absence of any exceptional circumstances in this case, taking no action would be neither appropriate, proportionate nor in the public interest.

Undertakings

36. No undertakings were submitted to the Tribunal.

Conditions

37. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Esho's registration.

38. The Tribunal took account of paragraph 80 of the SG which highlights that, in many cases, the purpose of conditions is to help the doctor remedy any deficiencies in their practice, while protecting the public. Further, the Tribunal noted paragraph 81 of SG which confirms that conditions might be most appropriate in cases involving issues around the doctor's performance or where there is evidence of shortcomings in areas of the doctor's practice.

39. The Tribunal also considered paragraph 82 of SG which advises that:

'82 Conditions are likely to be workable where:

- a. the doctor has insight;*
- b. a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings;*
- c. the Tribunal is satisfied that the doctor will comply with them;*
- d. the doctor has the potential to respond positively to remediation or retraining or to their work being supervised.'*

40. It also had regard to paragraph 85, which states:

'85 Conditions should be appropriate, proportionate, workable and measurable.'

41. The Tribunal reminded itself that it is not concerned with Dr Esho's clinical performance but with sexual misconduct, in a number of forms, with a patient, which was particularly serious.

42. The Tribunal concluded that conditions would not be a sufficient response given the gravity of Dr Esho's misconduct and this was reinforced by its conclusions concerning Dr Esho's limited insight into his wrongdoing. The Tribunal therefore determined that conditions would not be appropriate in this case.

Suspension

43. The Tribunal then went on to consider whether imposing a period of suspension on Dr Esho's registration would be sufficient to satisfy the statutory overarching objective.

44. The Tribunal took account of the SG in relation to suspension, including particularly paragraphs, 91 and 92. These 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 (see paragraphs 24–49).'

45. The Tribunal also reminded itself of the following paragraphs of the SG

'31 Remediation is where a doctor addresses concerns about their ... conduct or behaviour. Remediation can take a number of forms, including coaching, mentoring, training, and rehabilitation (this list is not exhaustive), and, where fully successful, will make impairment unlikely.

32 However, there are some cases where a doctor's failings are irremediable. This is because they are so serious or persistent that, despite steps subsequently taken, action is needed to maintain public confidence...'

46. In addition, the Tribunal had regard to paragraphs 45, 46(c) and 55 (a), (d)(ii) and (e) of the SG which state:

'45 Expressing insight involves demonstrating reflection and remediation.

46 A doctor is likely to have insight if they:

c demonstrate the timely development of insight during the investigation and hearing.'

47. The Tribunal also considered sub-paragraphs of paragraph 97 of the SG:

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

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

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

f No evidence of repetition of similar behaviour since incident.

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

48. The Tribunal accepted that Dr Esho has taken a number of actions to remediate his misconduct and gain insight into his behaviour. This includes introducing a chaperone policy in his clinics, ceasing to engage with any social media messaging in relation to his practice, establishing external oversight and governance of his practice, undertaking two courses concerning professional boundaries, XXX. It further accepted that there is no evidence of repetition.

49. Whilst acknowledging that these steps are positive, the Tribunal noted that they primarily occurred in 2022 shortly after Dr Esho was advised of Patient A's formal complaint to the GMC. Moreover, the Tribunal noted that most of the steps related to systems and processes rather than addressing more fundamental attitudinal concerns. XXX

50. The Tribunal reminded itself of Dr Esho's evidence during stage 1 that it was Patient A who initiated their online contact, acted provocatively, tried to entice him to have sexual contact with her and that his sexualised messages were 'just a joke'. The Tribunal concluded that this showed that Dr Esho continued to justify and minimise the seriousness of his behaviour and had not taken proper responsibility for his actions.

52. The Tribunal concluded, however, that the primary concern is that Dr Esho's misconduct is at the upper end of the scale of seriousness and is fundamentally incompatible with his continued registration as a doctor on the medical register. This is because of the Tribunal's findings that Dr Esho's misconduct involved significant breaches of GMP. In this regard, the Tribunal took into account in particular paragraph 55 of the SG:

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

a a failure to raise concerns

d abuse of professional position (see paragraphs 142–150), particularly where this involves:

....

ii predatory behaviour

e sexual misconduct.'

53. The Tribunal was of the view that a fellow professional would consider Dr Esho's behaviour to be wholly unacceptable. The Tribunal also concluded that given the seriousness of the misconduct found, a member of the public, aware of the full facts of the case, would be concerned if Dr Esho was allowed to remain on the medical register.

54. The Tribunal therefore concluded that suspension would be inappropriate and insufficient to mark the seriousness of Dr Esho's misconduct, protect the public, uphold proper standards of conduct and behaviour and maintain public confidence in the medical profession. The Tribunal concluded that in such circumstances, to impose a period of suspension, would not uphold the three limbs of the overarching objective.

Erasure

55. The Tribunal therefore went on to consider whether the sanction of erasure was appropriate and proportionate in this case.

56. The Tribunal reminded itself of its findings of fact and the aggravating and mitigating factors had identified. It considered the following paragraphs of the SG particularly relevant to its deliberations:

'107 The tribunal may erase a doctor from the medical register in any case – except one that relates solely to the doctor's health and/or knowledge of English – where this is the only means of protecting the public.

'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’

57. The Tribunal also had regard to paragraphs 133, 142, 143, 147, 148 and 150, which deal with cases which indicate more serious action is likely to be required. These state:

‘Failure to raise concerns

133 All doctors have a responsibility to promote and encourage a culture that allows all staff to raise concerns openly and safely. Doctors’ duties to raise concerns are set out in paragraphs 58 and 75 of Good medical practice and in the more detailed guidance Raising and acting on concerns about patient safety. 28 These duties apply to all doctors and not just those with specific management or leadership responsibilities.

Abuse of professional position

142 Trust is the foundation of the doctor-patient partnership. Doctors’ duties are set out in paragraph 86 of Good medical practice and in the more detailed guidance Maintaining personal and professional boundaries 31 and Ending your professional relationship with a patient.

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

Predatory behaviour

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

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

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

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

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

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

58. Dr Esho conducted an inappropriate sexual and emotional relationship with Patient A over a period of two and a half years. Dr Esho initiated the sexualisation of those conversations and then pursued sexualised communications with Patient A. These occurred regularly and repeatedly over a protracted period. Dr Esho engaged in bartering concerning the provision of his medical services or early appointments in return for sexual services from Patient A. He successfully concealed these communications from others. He also invited Patient A to communicate with him by WhatsApp and gave her his private number. Dr Esho on three occasions engaged in sexual contact with Patient A on the premises of one or other of his clinics. Dr Esho on one occasion asked Patient A to confirm that she would provide sexual services to him during a messaging exchange when she was seeking clinical advice and an early appointment due to discomfort arising out of cosmetic treatment provided by another doctor. Dr Esho placed his own needs before those of his patient.

59. The Tribunal concluded that GMP makes clear that it is always the responsibility of the doctor to set, maintain and police the personal/professional boundary between themselves and a patient. It is not a patient's responsibility whoever that patient is or whatever their occupation. A doctor is a professional who holds a privileged position in society. It is a position of considerable trust and as such the public are entitled to expect that a doctor will comply with the standards and guidance as to their conduct set by their regulator. Unlike a patient, the doctor is subject to oversight by his regulator. Having any sexual contact, through virtual or physical means and/or or engaging in an emotional relationship with a patient which is sexually motivated crosses the clear red line established by GMP. It is a fundamental tenet of medical practice which has been established to protect patients from abuse by doctors. Dr Esho blatantly disregarded this boundary over a protracted period and repeatedly breached it in a variety of ways. The Tribunal agreed with Mr Donoghue's submission that Dr Esho's misconduct is at the upper end of scale of seriousness.

60. The Tribunal considered that Dr Esho's misconduct had put Patient A at risk of harm, brought the medical profession into disrepute and breached fundamental tenets of the medical profession. Dr Esho disregarded a variety of guidance including GMP. Dr Esho's misconduct is so serious as to be incompatible with his continued registration as a doctor.

61. Separately and independently, the Tribunal was also of the view, based on the evidence it had before it, that Dr Esho continued to show limited insight into his actions and the impact of these on the protection of patients, the reputation of the medical profession and the importance of maintaining proper professional standards.

62. In all the circumstances, the Tribunal determined that erasure was required to send a message to the medical profession and to the public that this type of behaviour was unacceptable. The Tribunal considered that erasure was also required to protect the public, declare and uphold proper standards in the medical profession and to maintain public confidence in the medical profession.

63. The Tribunal therefore determined to erase Dr Esho's name from the Medical Register.

Determination on Immediate Order - 27/04/2024

1. Having determined to erase Dr Esho's name from the Medical Register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order of suspension.

Submissions

For the GMC

2. On behalf of the GMC, Mr Donoghue submitted that an immediate order of suspension is necessary in this case. He referred the Tribunal to the relevant paragraphs of the SG applicable to when an immediate order may be appropriate. He said this is a case where there are patient safety concerns, Dr Esho abused his position of trust, and an immediate order is required to maintain public confidence in the medical profession.

3. Mr Donoghue referred to the written submissions provided by Dr Esho's solicitors. He said that the case law relied upon was not relevant in this case given the factual circumstances in that case were completely different. Further, Mr Donoghue addressed the Tribunal on the points raised in the written submissions relating to the impact of an immediate order on Dr Esho and his staff. In particular, he pointed to the fact that the findings of fact had been determined on 9 April 2024 and Dr Esho had been aware since that date that suspension or erasure were the likely outcomes. He therefore had sufficient time to put his affairs in order.

4. Mr Donoghue also asked the Tribunal to revoke the current interim order of conditions on Dr Esho's registration.

For Dr Esho

5. The Tribunal had regard to the written submissions received from Dr Esho's solicitors on his behalf. They submitted that an immediate order was not necessary. They referred the Tribunal to the relevant paragraphs of the SG, and to relevant case law. Dr Esho's solicitors submitted that there are no concerns about Dr Esho's clinical practice and therefore he presented no risk to patient safety.

6. Dr Esho's solicitors submitted that an immediate order was not required on public interest grounds as Dr Esho has been working satisfactorily since he was referred to the GMC in August 2022 with no issues arising. They went on to highlight the financial difficulties an imposition of an immediate order would have on Dr Esho's staff, and on Dr Esho and his family. They submitted that an immediate order would have a disproportionately punitive effect as it would not give Dr Esho any time to update his employees on the outcome of this matter nor put his affairs in order to ensure that his clinics are not disrupted. Dr Esho's solicitors went on to say that the twenty eight day appeal period would allow Dr Esho to put in place a structured plan to ensure his clinics could continue to operate and ensure patient care was prioritised.

7. Dr Esho's solicitors submitted that if the Tribunal did not agree with their primary submission, then an immediate order of conditions would be proportionate and workable. They said that Dr Esho works in aesthetics, which technically did not require him to be a registered doctor with a licence to practise. Dr Esho chose to submit himself to regulatory obligations. They reminded the Tribunal that Dr Esho's registration has been subject to an interim order of conditions since August 2022 which included the requirement to have a chaperone present in every appointment, and there was CCTV throughout the building and all calls are recorded. They added that there was no direct contact with patients outside of the clinic or via social media and that all patients were directed to the administrative team with an audit trail.

8. Dr Esho's solicitors submitted that the current interim conditions continued to be workable and effective, and that Dr Esho had complied with them throughout. They submitted that public confidence in the profession would be maintained by an order which mirrors the current interim conditions, thus rendering an immediate order for suspension unnecessary and disproportionate.

The Tribunal's Determination

9. The Tribunal had regard to paragraphs 172 to 178 of the SG. It took account of the relevant guidance, the submissions made by Mr Donoghue and the written submissions provided by Dr Esho's solicitors on his behalf. It also had regard to the specific basis upon which the Tribunal reached its determination on sanction.

***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...*

***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.'*

10. The Tribunal determined that, given the seriousness of Dr Esho’s misconduct, its findings on impairment and the sanction it has imposed, it is in the public interest to suspend his registration with immediate effect. It concluded that not to suspend Dr Esho’s registration with immediate effect would undermine the overarching objective to protect the public, to uphold and maintain high standards in the medical profession, and to maintain public confidence in the medical profession.

11. The Tribunal considered whether conditions would be appropriate and workable in this case given its findings at the earlier stages of these proceedings. It determined that public confidence in the medical profession would not be maintained if an immediate order of conditions were imposed.

12. This means that Dr Esho’s registration will be suspended from today. The substantive direction, as already announced, will take effect 28 days from the date on which written notification of this decision is deemed to have been served, unless he appeals in the interim. If he does appeal, the immediate order will remain in force until the appeal has concluded.

13. The Tribunal revoked the interim order of conditions upon Dr Esho’s registration with immediate effect.

14. That concludes the case.

ANNEX A – 27/04/2024

Application to Rule 34 for redactions in the hearing bundle to remain redacted.

1. On day one of the hearing, 19 February 2024, before the hearing was formally opened, an application was made by Mr Lambis, KC, on behalf of Dr Esho, under Rule 34 of the Rules, that three redacted paragraphs in Patient A’s witness statement should remain redacted.
2. The first redacted paragraph related to Patient A’s perception that Dr Esho took advantage of her vulnerability concerning the importance of her looks to her and her livelihood, which she felt was dependent on her looks. The second redacted paragraph related to Patient A’s perception of being punished and manipulated by Dr Esho for having seen another doctor for aesthetic treatments. The third redacted paragraph related to XXX.
3. Mr Lambis submitted that Patient A’s statements in these paragraphs amounted to speculation or opinion evidence about what Dr Esho may, or may not, have been thinking about the matters being referred to. Therefore, he submitted, they should not be admitted as evidence.
4. Ms Hudson, Counsel, on behalf of the GMC, submitted that all three paragraphs were admissible. She submitted that Patient A was entitled to describe how she interpreted Dr Esho’s actions towards her in respect of vulnerability. In her statement Patient A described how she had told Dr Esho how important her looks were to her given the nature of her work and her livelihood. XXX.

The Relevant Legal Principles

5. The Tribunal was referred to Rule 34(1) of the Rules, which states:

‘34 (1) The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.’

The Tribunal’s Decision

6. In relation to the first redacted paragraph, the Tribunal concluded that rather than speculating on Dr Esho’s thought process, Patient A was explaining her own. This did not amount to opinion or speculation. The Tribunal therefore concluded that the redaction should be removed.
7. In relation to the second redacted paragraph, the Tribunal took into account Patient A’s assertion that Dr Esho’s behaviour towards her changed after she had seen another doctor. In her statement she explained that Dr Esho told her she must “*obviously be unhappy*”. The Tribunal concluded that Patient A’s feelings of being manipulated were

reflective of how she perceived the situation and were therefore an explanation of her own state of mind, and not opinion or speculation about what was in the mind of Dr Esho.

8. With regard to the third redacted paragraph, the Tribunal noted that Patient A stated, “[XXX]”. The Tribunal considered that the use of the words XXX were indicative of speculation concerning what Patient A thought Dr Esho might be thinking rather than indicating how she felt about his behaviour. Accordingly, the Tribunal determined that such speculation was not relevant or helpful and that the admission of this evidence would be unfair.

9. Accordingly, the Tribunal directed that the first two redacted paragraphs referred to would be restored, and that the third paragraph would remain redacted.

ANNEX B – 27/04/2024

Application to Application for proceedings to be held in private

Submissions

1. On 26 February 2024 (day six of the hearing), Mr Lambis, KC, made an application under Rule 41 of the Rules, for this part of the proceedings to be held in private. XXX Mr Lambis reminded the Tribunal that it could, of its own volition, sit in private session if it considered it appropriate under the Rules.

2. On behalf of the GMC, Ms Hudson, Counsel, did not oppose the application.

Tribunal Decision

3. The Tribunal recognised that it was generally in the public interest for an MPT Hearing to proceed in public session. Rules 41(1) and (2) of the Rules provide as follows:

“(1) Subject to paragraphs (2) ... below, hearings before the Committee and a Medical Practitioners Tribunal shall be held in public.

(2) The Committee or Medical Practitioners Tribunal may determine that the public shall be excluded from the proceedings or any part of the proceedings, where they consider that the particular circumstances of the case outweigh the public interest in holding the hearing in public...”

4. The Tribunal accepted the advice of the Legally Qualified Chair (‘LQC’) who explained that the general presumption was that hearings were held in public, subject to there being exceptional circumstances. XXX

5. The Tribunal accepted that any matters relating to XXX or other private personal matters should ordinarily be in private. XXX

6. XXX

7. XXX

8. For the above reasons, the Tribunal determined that it was fair and appropriate for these proceedings to be in private session when dealing with any evidence or submissions about this discreet issue. Accordingly, the Tribunal determined to grant the application.

ANNEX C – 27/04/2024

Application to Application to admit hearsay evidence

1. On day 11 of the hearing, 4 March 2024, on behalf of Dr Esho, Mr Lambis KC, made an application pursuant to Rule 34(1) of the Rules to admit the evidence of Ms C.

2. At the relevant time, Ms C was employed as Front of House Manager at the Esho Clinic. Ms C dealt with patients in person at the Wimbledon Esho Clinic (when permitted by COVID rules) and remotely at the Newcastle Clinic. Her statement does not mention whether she ever physically went to the Newcastle Clinic.

3. Patient A's records show that during the period of Ms C's employment, Patient A attended the Wimbledon Clinic six times and the Newcastle Clinic twice. The records do not reveal, and Ms C's statement does not record, on which occasion or occasions Ms C was present at the Wimbledon Clinic when Patient A attended there, but it is apparent that Ms C was there on one occasion.

4. Ms C also communicated with Patient A by Whatsapp messaging on 7 August 2021, which is a significant date in relation to the Allegation.

5. Ms C provided two statements for this hearing. Firstly, her initial substantive statement, dated 2 May 2023. Secondly, a statement dated 14 February 2024 explaining why she could not attend this hearing to give evidence. Both statements were taken by Dr Esho's solicitors and are endorsed with the declaration of truth.

6. Ms Hudson, on behalf of the GMC, opposed the application.

Submissions

7. Mr Lambis submitted that Ms C's evidence was relevant to the following:

- General character evidence in respect of Dr Esho;
- Procedures at the Wimbledon Clinic;
- Procedures at the Newcastle Clinic;

- Events that took place on 7 August 2021 (paragraph 7 of the Allegation);
- The character and demeanour of Patient A.

8. Mr Lambis referred the Tribunal to Rule 34(1) of the Rules:

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

9. Mr Lambis submitted that the *Civil Evidence Act 1995, ss.1(1) and (2)*, were also engaged. He submitted that as a result, all hearsay evidence is potentially admissible:

'1.— Admissibility of hearsay evidence.

(1) In civil proceedings evidence shall not be excluded on the ground that it is hearsay.

(2) In this Act—

(a) "hearsay" means a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated; and

(b) references to hearsay include hearsay of whatever degree.'

10. Mr Lambis drew the Tribunal's attention to relevant case law, including *Ogbonna v Nursing and Midwifery Council* [2010] EWCA Civ 1216; R. the Court of Appeal (Pill LJ; Rimer LJ; Black LJ), which held that a consideration of 'fairness' was a central component to the admission of hearsay evidence. Where the hearsay was vehemently challenged, and it constituted the sole or decisive evidence in relation to a charge, then there was an obligation on (in that case) the NMC to take reasonable steps to secure that witness' attendance. However, this was not a blanket rule and was 'fact-sensitive' depending on the circumstances of the case to be considered.

11. Mr Lambis submitted that in this case Ms C's evidence does not constitute the 'sole' or 'decisive' evidence in respect of the Allegation.

12. Mr Lambis then referred the Tribunal to the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin), which noted that what is fair is fact sensitive and depends on the individual case circumstances, particularly the nature and subject matter of the proceedings. In deciding whether or not to admit hearsay evidence, a Tribunal/Committee is entitled to take into account that it can give less weight to the evidence than if the maker of the statement was available to be cross-examined. Moreover, although the existence of a good and cogent reason for the non-attendance of the witness is

an important factor, the absence of a good reason will not automatically result in the exclusion of the evidence.

13. Mr Lambis submitted that Ms C's evidence was clearly fair and relevant to the contested issues and therefore should be admitted. Mr Lambis told the Tribunal Ms C had not "*gone quiet*" after providing her initial witness statement but provided a further statement setting out reasons why she could not attend.

14. Mr Lambis acknowledged that the weight the Tribunal could attach to Ms C's evidence would be reduced because the GMC would not have the opportunity to question her.

15. On behalf of the GMC, Ms Hudson, Counsel, submitted that the introduction of Ms C's substantive statement was opposed for the following reasons:

- The statement should not have been included in the final agreed bundle if the witness could not attend. Negotiations into the bundle were concluded at the end of January 2024. The statement of Ms C was included on the understanding that the evidence was challenged and the witness would be required for cross examination;
- It was incumbent on the Defence when taking the initial witness statement and throughout the course of the case to keep in touch with the witness and ensure that she was able to attend. By the time the final bundle was agreed, the witness should have been spoken to and her attendance confirmed. No mention was made of any issue with her attendance at that time;
- The statement explaining the non-attendance of Ms C was dated 14 February 2024, however, the reasons for her absence had existed for a significant period before that;
- Ms C's second statement did not explain why the witness would not be able to give evidence via video-link, an alternative that the GMC would have agreed to;
- Although the evidence was not sole or decisive in relation to any aspect of the Allegation, the GMC wanted to cross examine the witness about her knowledge of, and interactions with, Patient A; procedures in the two clinics; the WhatsApp messages that she exchanged with Patient A and Dr Esho on, and the events of, 7 August 2021. Ms Hudson submitted that Ms C's evidence was vital to Dr Esho's case. She further submitted that an evaluation of fairness involved consideration of the impact of admitting or excluding the statement on both Dr Esho and the GMC. Given that, she submitted, it would be unfair for Ms C's evidence to be admitted as the GMC were unable to cross examine her.

The Relevant Legal Principles

16. The Tribunal was advised by the LQC that it should have regard to Rule 34(1) of the Rules and the submissions from the parties. The Tribunal was also advised that in the usual course of events, unless the evidence of a witness is agreed, they must attend to give evidence so that the other party has the opportunity to cross examine them and thereby challenge their evidence.

17. The LQC reminded the Tribunal that evidence is relevant if it is logically probative of a fact in dispute or supports or contradicts an argument or proposition advanced by one of the parties. If the Tribunal decides that the statement does contain relevant material it must then decide whether it would be fair to admit the evidence, as highlighted in *Ogbonna*.

18. Fairness is a balancing exercise; the Tribunal must consider all the matters advanced by both parties when deciding what is fair but with the emphasis on the interests of the registrant.

19. A number of factors will be relevant to this consideration:

- the nature of the evidence which the defence seeks to admit;
- how important it is to the matters in issue;
- whether there is other evidence about those matters which can be given;
- the reason for the non-attendance of the witness;
- the steps taken to secure her attendance including whether appropriate and proportionate inquiry into alternative means of facilitating live evidence has occurred;
- the impact of her absence on the case of the GMC and its ability to challenge that evidence;
- the importance of the evidence to Dr Esho's case;
- the seriousness of the charges which Dr Esho faces;
- the consequences of an adverse finding for Dr Esho;
- when the GMC received notice that the witness could not attend;
- whether there is any suggestion that the witness has a reason to fabricate her evidence;
- the nature and extent of the challenge to the statement and the extent to which that difficulty would be likely to prejudice the party facing it.

20. The LQC advised the Tribunal that this is a non-exhaustive which was not arranged in order of priority. It is simply guidance to assist the Tribunal with the factors which it should have regard to when approaching the central question; whether it is fair to admit the evidence.

The Tribunal's Decision

21. The Tribunal first considered whether Ms C's statement contained material which was relevant to its determination of the issues in this case, supported a proposition advanced by the Registrant or undermined any proposition advanced by the GMC. The Tribunal accepted Mr Lambis' submission that the evidence Ms C provided was relevant to Dr Esho's character, the events of 7 August 2021, procedures at two of the Esho clinics and, to a lesser extent, potentially to the presentation (rather than the character) of Patient A when she attended a clinic as observed by Ms C. The Tribunal noted that Ms Hudson agreed that the evidence was relevant.

22. The Tribunal noted, however, that relevance is not determinative of admissibility.
23. The Tribunal had regard to the fact that the starting point when considering any application to admit hearsay evidence is that witnesses are expected to be available to give live evidence if their evidence is not accepted by the other party. Thanks to digital working this can be facilitated in a number of ways so that it does not require a witness to attend a hearing physically, but can accommodate their virtual attendance.
24. The Tribunal took into account that pursuant to Rule 34(1) it may admit relevant evidence if it considers it fair to do so and that what is fair is a fact sensitive balancing exercise and depends on the circumstances of the individual case. The Tribunal proceeded on the basis that although fairness must be considered by reference to what is fair to each of the parties, the emphasis is upon fairness to the Registrant. That is because the Registrant is the person facing the Allegation and the person who will be primarily affected should there be an adverse outcome to the proceedings.
25. The Tribunal was mindful that Rule 34(1) does not exist to enable the basic rule, that a witness should attend court where their evidence is contested, to be circumvented. The reason for a witness's non-attendance is therefore an important consideration in determining admissibility.
26. In considering the application, the Tribunal recognised that Dr Esho faced serious charges including allegations that he had sexual contact, albeit consensual, with a patient on three occasions and that if found proved there would be serious consequences for him.
27. The Tribunal had regard to the fact that Ms C was XXX pregnant when she made her statement dated 14 February 2024. In that statement, Ms C expressed concern about the stress of giving evidence and also that her job XXX might be disrupted.
28. The Tribunal accepted that giving evidence can be challenging, particularly for those making a complaint or the recipient of an Allegation. The Tribunal further accepted that it was reasonable for a witness to wish to avoid stress during pregnancy. However, accommodations could be made to reduce any stress and the degree of stress would depend upon the individual witness rather than the mere fact of pregnancy.
29. The Tribunal noted that it had received no medical evidence to suggest that Ms C was experiencing any problems with her pregnancy. The Tribunal had also not been provided with any evidence, including any medical evidence, to suggest that Ms C had any pre-existing mental health issue and/or had previously experienced stress or was experiencing stress due to anxiety about attending the proceedings or giving evidence.
30. The Tribunal further noted that Ms C continued to work full time and that her role involved her sometimes travelling and working away from home and managing a large team of people. The Tribunal therefore noted that Ms C's pregnancy did not appear to prevent her

from undertaking her busy, and no doubt sometimes stressful, professional role or from travelling to undertake that.

31. The Tribunal noted that no material had been provided by Ms C's employer to suggest that there was a pressing reason why she could not be released for such a short time. The Tribunal always tries to make reasonable accommodations to assist witnesses.

32. The Tribunal also noted that Ms C's statement did not indicate that she had been asked about attending to give evidence remotely or that she had been advised that her attendance could be scheduled to accommodate her job role and any needs associated with her pregnancy, as had been arranged for other defence witnesses. Ms C's statement was also silent as to whether any reasonable adjustments had been offered to her to support her whilst giving evidence.

33. The Tribunal noted that it was expected that Ms C's evidence, if she did attend, would be dealt with in less than an hour.

34. The Tribunal therefore concluded that there was no good or cogent reason for Ms C not to give live evidence by some mechanism in these proceedings.

35. The Tribunal was mindful that unlike in criminal proceedings, where hearsay evidence is generally not admissible outside clearly defined reasons for non-attendance, the absence of a good and cogent reason for non-attendance is not determinative of admissibility in regulatory proceedings. The Tribunal therefore went on to consider other factors, including the importance of the evidence to its determination of the issues in this case, whether there was other evidence concerning those issues, whether the evidence could be properly challenged in the absence of the witness.

36. The Tribunal considered the importance of Ms C's evidence to Dr Esho's case as a whole. It concluded that for the most part Ms C's evidence is not particularly controversial and it would not be determinative of any significant issue in this case. Ms C did not witness any of the sexual incidents alleged, the Whatsapp exchanges she had with Patient A and Dr Esho on 7 August 2021 were, in the case of the former not disputed, and in the case of the latter, contained within the documents.

37. Ms C's statement set out her experience of Dr Esho's character. Not only is there a considerable body of other evidence dealing with this issue, but the GMC has not disputed that Dr Esho was, and remains, well regarded by many of his patients and peers. When the Tribunal retires to consider its determination, a good character direction will be given which explains the importance of Dr Esho's positive good character.

38. In relation to Patient A's character, the extent of Ms C's evidence is that she met Patient A *"at least once"*. Ms C's statement did not indicate when this meeting was and, as it is understood that Ms C never travelled to the Newcastle Clinic as this was staffed remotely by administrative support staff, at most Ms C met Patient A twice. Save for referencing a

discussion about XXX, it is not clear what occurred in those meetings. Similarly, although Ms C stated that she recalled Dr Esho telling her that he did not want to be in a room alone with Patient A in case she propositioned him, her statement is silent as to when this is supposed to have occurred and in particular whether this is a reference to the Whatsapp messaging between her and Dr Esho on 7 August 2021 or another occasion.

39. The Tribunal reminded itself that Dr Esho had not given evidence that he told Ms C he did not want to be alone in the room with Patient A. The Tribunal also reminded itself that the Whatsapp messages between himself and Ms C on 7 August 2021 had been admitted into evidence because Dr Esho was able to introduce them. Finally, the Tribunal noted that the only other occasion when Dr Esho suggested that Patient A “*propositioned*” him outside of their private Whatsapp messages, was during the appointment with Patient A on 27 July 2019 at which time Ms C was not employed by Dr Esho. The Tribunal therefore concluded that Ms C’s evidence concerning this matter was unclear and, in any event, would be unlikely to advance Dr Esho’s case.

40. The Tribunal noted that although Ms C’s statement referred to her “*knowing what Patient A was like*”, the statement indicated it was based upon an unsourced and undated rumour that Patient A had propositioned Dr Esho at some point. The Tribunal did not consider that an opinion based upon anonymous tittle tattle, as the statement suggested, would assist it in its deliberations.

41. The Tribunal also noted Ms C’s description of Patient A as “*very confident*” and discussing that she “[XXX]”. The Tribunal noted that Patient A accepted that she used XXX for her online sex work and was open about this.

42. The Tribunal has had the opportunity to see Patient A giving evidence over a period of several days. It has also heard Dr Esho’s evidence about her over the same period of time. The Tribunal has also heard evidence from other staff members who worked for Dr Esho for a longer period of time and had more contact with Patient A. They gave evidence about Patient A’s presentation. The Tribunal concluded that at its height, the relevant direct evidence which Ms C could provide dealt with her face to face interactions with Patient A on a maximum two occasions and a phone conversation on another explaining she would be late. Ms Hudson could only challenge Ms C’s evidence through cross examination. However, the Tribunal considered that, given the other evidence in this case, the evidence about character in Ms C’s statement adds little to the other evidence about Patient A’s ‘character’.

43. In relation to procedures at the Wimbledon and Newcastle Clinics, Ms B, a long term employee of Dr Esho, gave evidence about the procedures routinely followed in the Wimbledon clinic as did Dr Esho. Ms C’s evidence concerning ordinary practices was therefore, in the Tribunal’s assessment, of limited value. In relation to the ordinary procedures at the Newcastle Clinic, this in reality amounted to Ms C confirming Dr Esho’s evidence that he would ordinarily leave the treatment door open. Given that there was no evidence in Ms C’s statement that she was ever in attendance at the Newcastle clinic, how

she was aware of this is unclear. In any event, the Tribunal considered that as it did not advance matters, its absence would not disadvantage Dr Esho.

44. As to 7 August 2021, Ms C stated she had no recollection of the day itself or what occurred that day and, as noted above, the WhatsApp messages which she engaged in that day, have been produced. The Tribunal was provided with these communications and Patient A and Dr Esho have given evidence about them.

45. The Tribunal therefore concluded that Dr Esho will not be significantly disadvantaged if Ms C's evidence about these matters is not admitted.

46. The Tribunal considered that looking through the prism of fairness, with the emphasis upon fairness to Dr Esho, the statement of Ms C should not be admitted into evidence. The matters contained within it are of peripheral relevance to the issues to be decided, there is no good or cogent reason for her non-attendance, many if not all of the matters to which her statement refers to have been dealt with by other witnesses better placed to speak about those matters, there is documentary evidence confirming the content of message conversations which she describes, her evidence on many matters is vague and the GMC cannot challenge it properly without Ms C being available to be cross examined. Additionally, the Tribunal noted that even if admitted, for the reasons stated above, the statement would carry little, if any, weight. The Tribunal also considered that there are sufficient counterbalancing factors in this case to enable a fair hearing to occur.

47. The Tribunal therefore refused Mr Lambis' application.

ANNEX D – 27/04/2024

Application to Rule 31 Application – Proceed in Absence of the Practitioner

1. On 23 April 2024 (Day 20), Mr Ryan Donoghue, Counsel now representing the GMC, made an application under Rule 31 of the General Medical Council ('GMC') (Fitness to Practise) Rules 2004, as amended ('the Rules'), to proceed in the absence of Dr Esho.

Background

2. The hearing reconvened on the morning of 23 April 2024. Prior to parties being admitted into the hearing, the Tribunal was informed that neither Dr Esho nor his representatives were present in the hearing link 'lobby'. At the request of the Tribunal, the Tribunal Assistant contacted Mr Marios Lambis KC, counsel who represented Dr Esho at stage one of the proceedings. Mr Lambis advised that he was no longer instructed to act on behalf of Dr Esho; that he could not say why; and he could not say when he ceased to act for Dr Esho. This information was conveyed to the Tribunal.

3. When the parties were admitted into the hearing, Mr Ryan Donoghue, addressed the Tribunal on this matter. He submitted that before considering stage two of the proceedings, there were some preliminary matters to be dealt with. This included whether the hearing should proceed in the absence of Dr Esho and/or his legal representative.

4. Mr Donoghue referred the Tribunal to a bundle of correspondence between the GMC and Dr Esho's legal representatives, Kingsley Napley LLP. Amongst the bundle of correspondence was an email from Dr Esho's solicitors, dated 22 April 2024 and timed at 21:17, which stated:

'We write ahead of the resumed hearing in this matter.

Absolutely no discourtesy is intended to the Panel, but Dr Esho will neither be in attendance or represented.

For the avoidance of doubt, Dr Esho does not seek an adjournment, and is aware that the hearing may proceed in his absence.

Not least due to costs, and the significant upheaval to his family, Dr Esho has had to make the difficult decision to withdraw.

He wishes to convey to the Panel his respect for the process, and ensure that they are aware that he will engage with any decisions made in the ordinary fashion.

Please find attached the doctor's stage two witness statement and documents to be placed before the Panel along with the attached short submissions.

We will await the Panel's determination, before considering any further written submissions on sanction.'

Submissions

The GMC

5. Mr Donoghue referred the Tribunal to Rule 31. He reminded the Tribunal that it had the power to proceed in the doctor's absence. He submitted that the question to be considered was whether Dr Esho had voluntarily absented himself. Mr Donoghue referred to the paragraphs in case of *GMC v Adeogba [2016] EWCA Civ 162* which he submitted was relevant. He also referred the Tribunal to the email of 22 April 2024 from Dr Esho's solicitors adding that it was clear from the email that Dr Esho had decided to voluntarily absent himself. Further, Mr Donoghue submitted that it was clear Dr Esho was aware that the Tribunal could proceed in his absence.

6. Mr Donoghue referred the Tribunal to an email received from Dr Esho's legal representatives, dated 23 April 2024 and timed at 10:39, in response to the GMC's email sent

on 23 April 2024 at 10:36 seeking clarification as to the meaning of ‘significant upheaval to his family’. Dr Esho’s solicitors replied:

‘Nothing specific, but due to the public nature of the proceedings, which is heightened given his public profile, the doctor’s family has been affected fairly heavily.

He of course understands that this is part of the process, which cannot be avoided.’

7. Referring to the reasons for non-attendance, as set out in the email from Dr Esho’s solicitors, Mr Donoghue submitted that insufficient funds should not be considered a valid reason preventing the practitioner from engaging in these proceedings. Mr Donoghue further submitted that no specific matter had been identified in relation to family upheaval. In all the circumstances, Mr Donoghue submitted that it was in the public interest to conclude this case expeditiously. He invited the Tribunal to proceed in Dr Esho’s absence as he had voluntarily absented himself.

The Relevant Legal Principles

8. The Tribunal accepted the Legally Qualified Chair’s legal advice. It had regard to Rule 31 which states that:

‘Where the practitioner is neither present nor represented at a hearing, the Committee or Tribunal may nevertheless proceed to consider and determine the allegation if they are satisfied that all reasonable efforts have been made to serve the practitioner with notice of the hearing in accordance with these Rules.’

9. The primary consideration is one of fairness to the registrant. The principles in *R v Heywood 2001 2Cr. App.R11* confirmed in *R v Jones 2002 UKHL5* were set out to the Tribunal. The Tribunal should only proceed to hear a case in absence of a registrant and their legal representative with the upmost caution and only if it is fair and in the interests of justice to do so.

Tribunal’s Decision

10. The Tribunal was mindful that the hearing was listed for five days to conclude on Saturday, 27 April 2024.

11. The Tribunal took into account that Dr Esho was not present nor represented today, but was present and represented until the conclusion of stage 1 of the hearing. For this reason, it was not necessary for it to consider the question of the ‘service of notice of hearing’. Instead, the Tribunal needed to consider whether Dr Esho was aware that the hearing would reconvene today, whether he had voluntarily absented himself and whether it would be in the interests of justice to proceed in Dr Esho’s absence.

12. The Tribunal took into account the email received from Dr Esho’s solicitors, dated 22 April 2024, as set out above. The Tribunal was satisfied from the content of the email that Dr Esho was aware that the hearing would reconvene today. It also considered that Dr Esho was aware that the Tribunal could decide to proceed in his absence as Dr Esho’s solicitors stated this explicitly in their email.

13. Having considered all the information before it, the Tribunal was satisfied that Dr Esho had voluntarily absented himself. It considered that an adjournment would not likely result in his participation in the circumstances. The Tribunal concluded that it was fair and in the public interest, as well as in the interests of justice, to proceed with the hearing in Dr Esho’s absence. It concluded that the wider public interest in the case proceeding expeditiously outweighed Dr Esho’s own interests in adjourning, particularly when no application had been made to adjourn and no useful purpose would be served by adjourning to a later date.

14. In accordance with Rule 31, the Tribunal therefore determined to continue with the proceedings in Dr Esho’s absence. The Tribunal draws no adverse inference from Dr Esho’s non-attendance.

SCHEDULE 1

1.	17 July 2019	'Looking [three fire emojis]';
2.	26 August 2019	2. 'No bjs during this time of healing'; 3. Lmao nope put the cock down lol'
3.	7 September 2019	'I can't see properly, I think you need to move the camera down'
4.	10 September 2019	1. 'what you doing to me lol'; 2. Morning Glory [three emojis]; 3. 'Bloody have me wanting the real thing'; 4. 'oh bloody hell, I'm going to die lol'; 5. 'That's like every man's dream';
5.	24 October 2019	'I love your pussy'
6.	5 November 2019	a. 'Why you making me bulge lol'; b. 'Send more, don't be sorry lol'
7.	29 November 2019	a. 'Mate, I thought I could see some nipple'; b. Ha, not going to lie hand had a little wank about it lol'
11.	6 December 2019	'Me you champagne and nipples'
9.	11 December 2019	1. 'Lol loving the tongue'; 2. Ha free mls I'd need the whole booty and more;
10.	28 December 2019	'Need you and your nipples here lol'
11.	30 December 2019	1. 'I want'; 2. 'I thought you wanted me for me and not my mls'; 3. 'I want it all lol'; 4. 'you never know'; 5. 'got me feeling bare emotions'; 6. 'ha for real there is a mad energy'; 7. 'the other way we can do is old fashioned just for the love of wanting each other ha'; 8. 'ha but the Esho D is worth £500 for real lol'; 9. 'mutual gains'; 10. 'bare cums lol'; 11. 'we could discuss over a sample tasting meeting lol'; 12. 'my god having you for a night/every night is a dream';

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		<p>13. 'but if we do it for mls I break the doctors code and I'd be a dead man x lol';</p> <p>14. 'you sample some choco I sample some nipple ha'</p>
12.	18 January 2020	<p>a. 'send me that Bbc video ha';</p> <p>b. 'ha do it';</p> <p>c. 'I'd doesn't play it's screen grab lol';</p> <p>d. 'Lol whatsapp me the video';</p>
13.	7 March 2020	'Pleasure gorgeous'
14.	5 June 2020	'Thank me with some loving lol'
15.	27 June 2020	'I'm good gorgeous, how are you'
16.	29 June 2020	<p>a. 'LMAO for an early treatment slot';</p> <p>b. 'Will you stay and give me a thank you pump';</p> <p>c. 'Hmmm deep inside I can't wait lol';</p> <p>d. 'But can't be going out like this [shares article regarding doctor being investigated for sending explicit messages]';</p> <p>e. 'I just want you to bare back me and live free lol';</p> <p>f. 'sooo we have to be quiet';</p> <p>g. 'and you will have to be skirt no underwear';</p> <p>h. 'but if you pay for the treatments and [two emojis] I'll sneak it in lol';</p> <p>i. 'ha I'm talking about the other end';</p> <p>j. 'ha ok the other hole lol';</p> <p>k. 'next to it lol';</p> <p>l. 'I got a lot of juice';</p> <p>m. 'The discount is the two month queue jump lol';</p>
17.	14 August 2020	'Ha will you [emoji]'
18.	25 August 2020	'Today was [heart emojis]'
19.	22 September 2020	'We need this lol'
20.	11 November 2020	<p>a. 'Here's me thinking it was a juicy video lol';</p> <p>b. 'lol okay better video than last';</p> <p>c. 'But still also cutting off the juicy bits lol';</p> <p>d. 'Man I just want to be inside you';</p> <p>e. 'Man I really need to be in that bum lol';</p> <p>f. 'Need so bad lol';</p>

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		g. 'Lol you can't get pregnant though lol'; h. 'Ha just saying man is fertile lol'; i. 'Imao lots and lots of lube';
21.	18 November 2020	a. 'need it lol'; b. 'I want now'; c. 'So baddddd';
22.	30 January 2021	a. 'Okay I'll help if I get the booty lol'; b. 'Lord the promised land'; c. 'hahah yes'; d. 'Need to be in there';
23.	5 February 2021	'I need'
24.	14 February 2021	a. 'the perfect gift'; b. 'just need to dip into it lol'; c. 'ha ha on it'; d. 'what's postcode, may have to drop by next week lol'
25.	8 March 2021	'that tongue, miss it';
26.	14 March 2021	a. 'I just went to be inside'; b. 'That tongue'; c. 'You have to let me put it in when you cum lol'
27.	19 March 2021	a. 'I need a suga mummy lol'; b. 'and that also';
28.	26 March 2021	a. 'killing me'; b. 'You want to start wanking at work lol';
29.	14 April 2021	a. 'better with lots of blood flow'; b. 'so guess we need to go some vigorous activity';
30.	3 May 2021	'I neeed';
31.	20 May 2021	'So mad I didn't get to cum lol';
32.	30 June 2021	'So suckable'
33.	26 July 2021	'Ha I'm ready last time I wanted to [emoji]in that ass so bad lol'
34.	20 January 2022	'need to test them lol'
35.	23 February 2022	'to sexy'