

## PUBLIC RECORD

Dates: 04/03/2024 - 14/03/2024

Medical Practitioner's name: Dr Senthil Kumar GOPALAKRISHNAN

GMC reference number: 6030138

Primary medical qualification: MB BS 1995 Tamil Nadu Dr MGR Med  
University

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

## Summary of outcome

Erasure  
Immediate order imposed

## Tribunal:

Legally Qualified Chair	Ms Angela Georgiou
Lay Tribunal Member:	Dr Billy McClune
Medical Tribunal Member:	Dr Edward Doyle

Tribunal Clerk:	Mr Andrew Ormsby
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## Attendance and Representation:

Medical Practitioner:	Not present, not represented
GMC Representative:	Mr Charles Garside, KC

## Attendance of Press / Public

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

## Overarching Objective

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

## Determination on Facts - 08/03/2024

### Background

1. Dr Gopalakrishnan qualified in 1995 at Tamil Nadu Dr MGR Med University in India. At the time of the events Dr Gopalakrishnan was practising as a Specialty Doctor in anaesthetics at Dorchester County Hospital (the Hospital).
2. The entirety of the Allegation that has led to Dr Gopalakrishnan's hearing relates to events that are alleged to have taken place on 2 April 2021.
3. It is alleged that, in the early hours of 2 April 2021, during a shift with his colleague Ms A at the Hospital, Dr Gopalakrishnan acted in a sexually motivated way towards Ms A.
4. It is further alleged that Dr Gopalakrishnan's alleged sexually motivated actions were an abuse of his senior position and were carried out without the consent of Ms A.
5. Dr Gopalakrishnan faced a criminal trial at Bournemouth Crown Court from 3 May 2022 to 10 May 2022, in respect of an allegation of sexual assault, arising out the events of 2 April 2021. The Tribunal have not been told the outcome of those criminal proceedings, but they have been provided with a transcript of evidence given at that trial.

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

6. At the outset of the hearing, the Tribunal accepted Mr Garside's submissions, on behalf of the GMC, made pursuant to Rule 40 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that notice of this hearing had properly been served on Dr Gopalakrishnan, and granted an application, made pursuant to Rule 31 of the

Rules, that this hearing should proceed in his absence. The Tribunal's full decision on these applications is included at Annex A.

7. The Tribunal granted the GMC's application to amend the Allegation in order to more accurately reflect the evidence of Ms A. The Tribunal amended the allegation under paragraph 1(h) from 'rubbed your erect penis against Ms A's leg' to 'pressed your erect penis against Ms A', under Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules').

### The Allegation and the Doctor's Response

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

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

1. On 2 April 2021, you walked to the XXX area with Ms A at Dorchester County Hospital, and you:
  - a. on at least one occasion hugged Ms A; **To be determined**
  - b. touched Ms A's bottom; **To be determined**
  - c. put your hand inside Ms A's top; **To be determined**
  - d. touched Ms A's breasts over her bra; **To be determined**
  - e. rubbed Ms A's nipples over her bra; **To be determined**
  - f. kissed Ms A on the lips; **To be determined**
  - g. kissed Ms A on the cheek; **To be determined**
  - h. ~~rubbed~~ pressed your erect penis against Ms A's leg; **Amended under Rule 17(6)**  
**To be determined**
  - i. said to Ms A 'well, at least show me your top half,' or words to that effect.  
**To be determined**
2. One or more of your actions as set out at Paragraph 1 were:
  - a. an abuse of your senior position in that, at the relevant time, you were a Specialty Doctor and Ms A was a XXX; **To be determined**
  - b. sexually motivated; **To be determined**

- c. carried out without the consent of Ms A. **To be determined**

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

### Witness Evidence

9. The Tribunal convened remotely and received evidence on behalf of the GMC from Ms A, XXX at the Hospital, via video link. She also provided a witness statement, dated 16 December 2022 and a supplemental statement dated 6 June 2023.

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

- Dr B, witness statement, dated 27 June 2023;
- Ms C, witness statement, 7 July 2023; and
- Mr D, witness statement, dated 27 July 2023.

11. Dr Gopalakrishnan did not provide a witness statement to the GMC and did not attend the hearing.

### Documentary Evidence

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

- Notes of interview, Ms A and the Police, dated 9 April 2021 and 4 May 2021;
- Court transcripts, dated 3 May 2021 and 4 May 2021;
- WhatsApp Text message chain between Ms A and Dr B, dated 2 April 2021;
- Notes of meeting between Ms A and the Trust, dated 10 August 2022;
- Dr B, statement to the Police, dated 29 April 2021;
- Bournemouth Crown Court Hearing Transcript, dated 3 May 2022 to 10 May 2022;  
and
- Record of interview – Police and Dr Gopalakrishnan, dated 12 April 2021.

### The Tribunal’s Approach

13. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Gopalakrishnan does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e., whether it is more likely than not that the events occurred. The Tribunal were advised that where there are serious allegations or where there are serious consequences which would flow from a factual finding, the Tribunal was required to undertake a heightened examination of the evidence, although this did not of itself alter the standard of proof to be applied.

14. The Tribunal were advised that if any of the facts alleged were found proved, it would then be necessary to consider sexual motivation. In *Basson v GMC [2018] EWHC 505 (Admin)*, the High Court defined acting with sexual motivation as conduct done either in pursuit of sexual gratification or in pursuit of a future sexual relationship.

15. The Tribunal also took into account that, when considering sexual motivation, it should make a deduction from all the facts and circumstances of the case, and it should look at the material in the round. It understood that the best evidence of a sexual motivation may be the behaviour itself and that where there was no plausible, alternative explanation as to why the doctor engaged in conduct or actions of an overtly sexual nature, then the Tribunal was entitled to conclude that the motivation was sexual.

16. In particular, the Tribunal had regard to the case of *Haris v General Medical Council [2021] EWCA Civ 763* in which it was said that a sexual motivation could be inferred from:

- The fact that the touching was of the sexual organs;
- The absence of a clinical justification; and
- The absence of any other plausible reason for the touching.

17. The Tribunal noted that Dr Gopalakrishnan is a man of good character. It considered this as important and relevant to its considerations in two respects. Although it is not a defence to the allegations, Dr Gopalakrishnan's good character counts in his favour when assessing the credibility of his evidence and whether it should be accepted. Secondly, his good character is relevant as it may mean it is less likely that he has acted in the way alleged. The Tribunal was advised that the weight to be given to good character is a matter for the Tribunal, and it should not detract from 'the primary focus' on the evidence before it: *Sawati v General Medical Council [2022] EWHC 283 (Admin)*, *Donkin v The Law Society [2007] EWHC 414 (Admin)* and *Wisson v Health Professions Council [2013] EWHC 1036 (Admin)*.

## The Tribunal's Analysis of the Evidence and Findings

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

19. The Tribunal took account of the GMC's submissions, that a determination on whether the facts alleged have been proved rested upon whose evidence (Ms A's or Dr Gopalakrishnan's) the Tribunal preferred.

20. It further noted and accepted the Legally Qualified Chair's (LQC's) advice, which was not challenged by the GMC.

21. The Tribunal considered that, in assessing the reliability of any evidence it was entitled to pay heed to: whether a witness's account had been consistent; whether there had been exaggeration; whether there was any ulterior motive for the witness saying what s/he said; whether there had been any adverse admissions by a witness about his/her actions which may indicate candour generally and whether any evidence had been corroborated, particularly by another witness or by any documentation, such as a statement, letter, e-mail, text message or note of any meeting, which was produced contemporaneously or in the weeks or months after the relevant incident. Where there was more than one statement or utterance given by a witness, the Tribunal would be entitled to take more account of an earlier statement as it was more contemporaneous to the event in question.

22. The Tribunal began by evaluating the evidence of Ms A, particularly since the burden of proof was upon the GMC.

### Background to alleged incident

23. The alleged incident occurred at approximately 2:15 am on the morning of 2 April 2021 at the Hospital.

### Ms A's account of events

24. The approximation of time of the alleged event was supported by a WhatsApp/text message sent by Ms A to XXX, and friend, Dr B, on 2 April 2021 sent at 02:41:

*'...Had another drama tonight too which I don't really know what to do about.'*

*Into bed now night night xxx 02:41'*

25. Ms A was working as a XXX on duty at the Hospital. She had to conduct XXX, and in order to XXX she needed an anaesthetist. Dr Gopalakrishnan was the anaesthetist on duty at the Hospital and he was called to assist XXX.

26. The XXX. Ms A's shift had started at 08:00 the previous morning. The XXX concluded at or about 2am, but her shift was not due to finish until 8am in the morning.

27. After the XXX Ms A, Dr Gopalakrishnan and others went to the mess canteen to have something to eat and drink. Ms A was still XXX, but she went to the staff mess and had a cup of tea and some biscuits.

28. On leaving the staff mess Ms A and Dr Gopalakrishnan left to walk up three flights of stairs to the Hospital XXX accommodation. The Hospital provided accommodation for staff XXX. XXX. The rooms are functional, but small and sparsely furnished.

29. Ms A claimed that, when both she and Dr Gopalakrishnan got to the XXX, outside the XXX rooms, Dr Gopalakrishnan hugged her. He was an older man and Ms A said that she was surprised by this hug. The hug was long and awkward. When that first hug ended, Ms A claimed that Dr Gopalakrishnan continued to hug her, on 4 or 5 occasions. Each hug became worse, on her account, and Dr Gopalakrishnan rubbed her back and then her bottom. She stated that she was wearing scrubs and that, whilst hugging her, he put his hand on her bottom outside of the scrubs.

30. Ms A claimed that thereafter, Dr Gopalakrishnan pushed her, backwards, into the bedroom XXX. He then turned her around so that she had her back to him. Ms A then alleges that Dr Gopalakrishnan proceeded to lift up her vest and her scrub top, placed both his hands under her top and rubbed her nipples over her bra. Ms A claims that this lasted for 10 – 15 seconds. She also claimed that Dr Gopalakrishnan had an erection, and that she could feel this through her scrubs. Ms A said that Dr Gopalakrishnan turned her around again and tried to kiss her. On the first attempt at a kiss, Ms A turned her face to avoid contact with Dr Gopalakrishnan, but he made contact with her cheek. On another attempt to kiss her, Dr Gopalakrishnan made contact with Ms A's lips. At one stage, Ms A alleges that Dr Gopalakrishnan asked her to lie down on the bed, and when she refused, he said 'well, at least show me your top half' or words to that effect. When Ms A refused, she says that Dr Gopalakrishnan left her room.

31. Ms A claimed that throughout this sequence of events, she was, both by word and gesture, repeatedly demonstrating that she did not want any sexual interactions with Dr Gopalakrishnan. She stated that she tried to push Dr Gopalakrishnan away and told the doctor to stop; at one stage Dr Gopalakrishnan told Ms A to be quiet or reduce her voice as he perceived her to be making too much noise outside the XXX rooms. Ms A said that she did not shout or scream, and felt frozen by what was happening to her. Ms A stated that by the end of the incident she was close to tears. Ms A claimed that eventually Dr Gopalakrishnan left without the incident going beyond indecent touching, numerous hugs, and a suggestion that she might like to lie down on the bed, that she refused.

32. Ms A claimed that after Dr Gopalakrishnan had left, and after she had locked the door to her accommodation bedroom, she sent the above WhatsApp message to her friend at 02:41.

33. The next morning Ms A resumed her WhatsApp conversation with Dr B at 08:38:

*'I don't really know how to say it ... but I was basically sexually assaulted last night.'* 08:38'

*'I know that sounds really exaggerated and it wasn't really that bad but I don't know what to do and just some advice would be good'* 08:39'

34. The Tribunal was told that when her shift at the hospital finished, Ms A travelled to her parents' house for a pre-planned visit over the Easter weekend. Whilst there, she gave an account of what allegedly happened to her parents. It also noted that by email sent on 3 April 2021 at 14:56, Ms A asked to speak to her clinical supervisor upon her return to work after the Easter weekend, in respect of *'an incident that arose XXX on Thursday night, 1<sup>st</sup> April.'*

35. The Tribunal have considered the transcript of the criminal proceedings at length. It noted the differences between the account of events given by Dr Gopalakrishnan, under oath at his criminal trial, and the account given by Ms A, again under oath, to the criminal trial and in her evidence, both written and oral, given to the Tribunal.

#### Dr Gopalakrishnan's account of events



36. Although Dr Gopalakrishnan did not take any part in these proceedings, the Tribunal considered the evidence before it from Dr Gopalakrishnan as regards his account of the events of 2 April 2021. The Tribunal did not draw an adverse inference from Dr Gopalakrishnan's absence from the current hearing but noted that the only evidence of Dr Gopalakrishnan's account of the events in question, came from his police interview and the evidence adduced at his criminal trial. It considered that there was no other evidence to support what Dr Gopalakrishnan asserted.

37. Dr Gopalakrishnan was arrested on 12 April 2021. At the beginning of his police interview on the same date, he made a brief exculpatory statement as follows: *"I completely deny that I have sexually touched or assaulted anyone. I have nothing further to say at this stage."* Thereafter, Dr Gopalakrishnan initially answered *"No comment"* to questions by the police. Towards the end of his police interview, and having been provided with some more information about the allegations against him and having spoken with his solicitor, Dr Gopalakrishnan gave slightly more information. He said that Ms A *"...invited me to her room, and we hugged, and there was nothing sexual."* When asked further questions by the police, Dr Gopalakrishnan continued to respond largely with 'no comment' but he denied the allegations and maintained that nothing sexual had happened.

38. Dr Gopalakrishnan's first full account of the events of 2 April 2021 came at his criminal trial. He accepted that he and Ms A had XXX, and that they had been to the staff mess and then walked to the XXX rooms XXX. Dr Gopalakrishnan, in his evidence at his trial, said that there was then an encounter with sexual overtones, but that it was at Ms A's instigation. As stated in the transcript from his trial, when they reached the XXX rooms:

*'Yes. So when I came out, we were, you know, continuing our conversation. At the time we were parting to, you know, go and sleep because we were tired. So, you know, she outstretched her hand, and we, you know, we, both of us, hugged, and when we were, you know, in the embrace, whilst my, you know, my hand was over her shoulder, and, right hand, and my left hand was on her hip'*

39. Dr Gopalakrishnan also asserted that he and Ms A had previously hugged:

*'Dr Gopalakrishnan: Sorry. I thought, you know, it was OK because I have exchange hug with her in the past, and it was a parting hug. I, I did not find anything ...*

*Mr F: Past hugs, were these whilst at Dorchester or were they back in, when you met in XXX?*

*Dr Gopalakrishnan: It was back in XXX.*

*His Honour Judge G: So you'd had hugs before?*

*Dr Gopalakrishnan: Yes, we did.*

*His Honour Judge G: When, when had you had hugs?'*

40. Later in his evidence Dr Gopalakrishnan said that he and Ms A had met 10 or 15 times before, in the stairs and corridors of XXX Hospital, and they had exchanged hugs on most of those times.

41. After one hug, Dr Gopalakrishnan's evidence was that Ms A had 'pulled him' into her room. The transcript from the criminal trial indicates Dr Gopalakrishnan's account of the alleged incident:

*Dr Gopalakrishnan: So we went like this. If it is me, like this, and she, like this. We went in. She turned.*

*Mr F: So she now had her back --*

*Dr Gopalakrishnan: Towards me.*

*Mr F: To you?*

*Dr Gopalakrishnan: Yeah.*

*Mr F Right. Did you turn her around or did she do that herself?*

*Dr Gopalakrishnan: She did her, on her own.*

*Mr F: Were you still in contact with each other at this point?*

*Dr Gopalakrishnan: At the time, yeah, yes.*

*Mr F: Right. And what, then, is the next thing that happens?*

*Dr Gopalakrishnan: So at the time she was excited, and she was speaking a little louder. I wanted her to reduce the --*

*His Honour Judge G: She was excited?*

*Dr Gopalakrishnan: Yeah, and her voice was louder. I reminded that our colleagues are sleeping next door, and I wanted her to reduce her voice.*

42. The Tribunal also noted the following exchange:

*Mr F: OK. What, what happens straight after that? Because I'm going to ask you this, this blunt question. Did your hands ever go on her breast area?*

*Dr Gopalakrishnan: Not, not on my own. It was her.*

*Mr F: Not on your own. So I want you to tell us how that came to happen. What's the next thing that happened?*

**Dr Gopalakrishnan:** So she was facing the bed, and I, I was behind her. At the time my hand was on her shoulder, right hand. So she pulled my left hand with, towards her, and my right hand she wrapped around her chest.

**Mr F:** So you're facing her back?

**Dr Gopalakrishnan:** Yes.

**Mr F:** Your right hand is on her shoulder. She pulls your left hand, and where does she put it?

**Dr Gopalakrishnan:** So left hand was like this. She pulled, and, like this and this.

**Mr F:** Right. Which hand was it of yours that came onto her chest area?

**Dr Gopalakrishnan:** My right hand.

**Mr F:** Your right hand. And was that you deliberately putting your hand there or not?

**Dr Gopalakrishnan:** No, not me deliberately putting on my ...

**Mr F:** The contact that you made with her then, was that to her breast area?

**Dr Gopalakrishnan:** Yes, it was.

**Mr F:** Was that over clothing or under clothing?

**Dr Gopalakrishnan:** It was over the clothes.

**Mr F:** What we have heard is that she was wearing scrubs, and she's told us what she had on under the scrubs. Do you agree she was wearing scrubs?

**Dr Gopalakrishnan:** Yes, I do agree. She was wearing scrubs.

[...]

**Dr Gopalakrishnan:** So we were facing each other now.

**Mr F:** What happens?

**Dr Gopalakrishnan:** So immediately, you know, she kissed, and, and it, it was on my lip, and I tried kissing, and I went to her cheek.

**Mr F:** So she kissed you on the lips.

**Dr Gopalakrishnan:** Yes, that's correct.

**Mr F:** How long did that kiss last for?

**Dr Gopalakrishnan:** It was transient, one or two seconds.

**Mr F:** How long?

**Dr Gopalakrishnan:** One or two seconds.

**Mr F:** One or two seconds. And then, you say, you tried to kiss her but you got her cheek.

**Dr Gopalakrishnan:** Yes, that's correct.

**Mr F:** Why? Did you aim for her cheek or did she move her head?

**Dr Gopalakrishnan:** I, I aim for her cheek.

Whether there had been a previous friendship

43. The Tribunal took account of Dr Gopalakrishnan's assertion that he and Ms A had been friends before the alleged incident on 2 April 2021, and had exchanged hugs previously.

44. The Tribunal considered that there was no evidence of closeness or familiarity between Ms A and Dr Gopalakrishnan before the events in question. It also noted Ms A's assertion that any previous relationship or closeness between her and Dr Gopalakrishnan before 2 April 2021 was non-existent, that she had not seen him outside of work; that he did not have her telephone number and there was no social media connection.

45. In the circumstances, the Tribunal did not accept Dr Gopalakrishnan's assertion that there was a previous friendship or closeness between himself and Ms A. The Tribunal considered that it was more likely than not that Ms A and Dr Gopalakrishnan had not been familiar, and so any physical contact would be unusual.

46. Furthermore, the Tribunal concluded that Dr Gopalakrishnan's assertion that it was Ms A, and not he, who instigated one of more of the events that occurred on 1 April 2021 was not supported by any evidence. In contrast, the GMC had provided evidence, including near contemporaneous WhatsApp messages to show that Ms A had been consistent from 2 April 2021 through to the current hearing, that it had been Dr Gopalakrishnan who had instigated the events in question.

47. The Tribunal considered that Ms A's account was consistent and noted that she had reported a 'sexual assault' to her friend, Dr B, in the form of a WhatsApp text message, within hours of the events occurring. Ms A also made a complaint to her clinical supervisor very shortly after the events. It also noted the distress that she exhibited, as supported by other witnesses, after these events and her communication of the alleged incident to her parents when visiting them shortly after the alleged events. The Tribunal considered these factors were indicative that Ms A's account of events was, in general terms, more likely, on the balance of probabilities. It also considered that Dr Gopalakrishnan's unsupported assertion that Ms A had instigated the sexualised conduct should be treated with some scepticism.

48. Further, the Tribunal noted that Ms A's account was generally consistent, from the time of the alleged incident to the current hearing. The Tribunal had the benefit of seeing and hearing Ms A give evidence. It found that she gave her account clearly and without embellishment, and made concessions where appropriate. The Tribunal found Ms A to be an honest and credible witness. In contrast, the Tribunal considered that Dr Gopalakrishnan had

given inconsistent accounts about the events on 1 April 2021, initially denying that there had been any sexual contact between himself and Ms A, save for one hug. The Tribunal noted that it was only during his criminal trial that Dr Gopalakrishnan asserted that there had been more than a hug shared between himself and Ms A, that it was an encounter of a sexual nature, and that it had been instigated by Ms A. The Tribunal formed the view that Dr Gopalakrishnan's account of events had developed over time, even during the criminal trial itself, and often in a self-serving way. By way of example, the Tribunal noted that during his police interview, Dr Gopalakrishnan indicated that Ms A had given him a 'non-verbal invite' to her XXX room, by nodding her head. However, by the time of his criminal trial, Dr Gopalakrishnan asserted that Ms A had 'pulled him' into her XXX room. Likewise, during his police interview Dr Gopalakrishnan maintained that no part of him touched Ms A, other than during the one hug. During his criminal trial, even on his own account, Dr Gopalakrishnan had touched Ms A's chest and breast area, and kissed her on at least one occasion. In light of those inconsistencies, and noting that the Tribunal had not received oral or written evidence from Dr Gopalakrishnan in these proceedings, the Tribunal considered that the evidence of Ms A was more reliable, and therefore preferable, to the evidence that Dr Gopalakrishnan gave during his criminal trial.

#### Paragraph 1(a) of the Allegation

49. The Tribunal considered whether, on 2 April 2021, Dr Gopalakrishnan walked to the XXX area with Ms A at Dorchester County Hospital, and he, on at least one occasion hugged Ms A.

50. The Tribunal noted that both Ms A and Dr Gopalakrishnan stated that a hug took place, although it was Ms A's evidence that in fact 4 or 5 hugs took place. The Tribunal therefore considered that what was in question was not whether a hug had occurred, but whether the instigator of the hug was Dr Gopalakrishnan, or Ms A.

51. The Tribunal considered that Dr Gopalakrishnan's account of the incident had developed over time whereas Ms A had been consistent in her account that it was Dr Gopalakrishnan who instigated the hugs. The Tribunal noted Ms A's detailed account of this, which commenced with her initial police statement dated 9 April 2021, and continued through to her oral evidence at the current hearing.

52. In the circumstances, the Tribunal considered that it was more likely than not that Dr Gopalakrishnan had not only hugged Ms A, but had been the instigator of the hug.

53. Accordingly, the Tribunal found paragraph 1(a) of the Allegation to be proved.

Paragraph 1(b) of the Allegation

54. The Tribunal considered whether, on 2 April 2021, Dr Gopalakrishnan walked to the XXX area with Ms A at Dorchester County Hospital, and touched Ms A's bottom.

55. The Tribunal noted that Dr Gopalakrishnan had accepted during his trial that a hug had taken place and that there had been physical contact between himself and Ms A. The Tribunal noted that Dr Gopalakrishnan asserted that Ms A had been the instigator.

56. The Tribunal took account of Dr Gopalakrishnan's denial that he had touched Ms A's bottom during his Police Interview, dated 12 April 2021. It also noted Dr Gopalakrishnan's assertion during his trial that it had been Ms A who had touched *his* bottom.

57. The Tribunal was sceptical of Dr Gopalakrishnan's assertion that it had been Ms A who had touched his bottom. The Tribunal bore in mind Ms A's consistency in her evidence from her initial witness statement, dated 9 April 2021, her evidence at Dr Gopalakrishnan's trial, her GMC witness statement, dated 16 December 2022, and her oral evidence at the hearing. It noted and accepted Ms A's evidence that there had been more than one hug, and that with each hug Dr Gopalakrishnan's hands had moved over her back and onto her bottom.

58. In the circumstances, the Tribunal considered that Ms A's evidence had been entirely consistent and plausible. The Tribunal accepted that Ms A's account was more likely, on the balance of probabilities, than Dr Gopalakrishnan's account. It noted Dr Gopalakrishnan's limited involvement in the regulatory process and his assertion at his trial that it had been Ms A who instigated events and had touched his bottom, which the Tribunal considered to be unconvincing.

59. Further, the Tribunal considered that, given his unlikely assertion that it was Ms A who had touched his bottom, it was likely that Dr Gopalakrishnan had 'retold the story' in such a way that minimised and deflected his actions.

60. The Tribunal concluded that it was more likely than not that on 2 April 2021, Dr Gopalakrishnan walked to the XXX area with Ms A at Dorchester County Hospital and touched Ms A's bottom.

61. Accordingly, the Tribunal determined that paragraph 1(b) of the Allegation was found proved.

Paragraph 1(c) of the Allegation

62. The Tribunal considered whether, on 2 April 2021, Dr Gopalakrishnan walked to the XXX area with Ms A at Dorchester County Hospital and put his hand inside Ms A's top.

63. The Tribunal noted that Dr Gopalakrishnan had denied this allegation, both during his police interview and at his trial.

64. However, it also considered that Dr Gopalakrishnan had asserted that it was Ms A that had instigated the sexualised incident and progressed events, rather than him. The Tribunal considered that, for Dr Gopalakrishnan's account to be true, the series of preceding events such as Ms A instigating the hug with him and touching his bottom, would also have to be true.

65. Furthermore, the Tribunal would have to accept that, since according to Dr Gopalakrishnan's version of events, Ms A had instigated the encounter, that Ms A would have to be lying rather than just mistaken about the events that had occurred. The Tribunal considered such a scenario to be wholly unlikely.

66. In the circumstances, the Tribunal noted that Ms A had been consistent in her assertion that Dr Gopalakrishnan had put his hand inside her top in her evidence from her initial witness statement, dated 9 April 2021, her evidence at Dr Gopalakrishnan's trial, her GMC witness statement, dated 16 December 2022, and her oral evidence at the hearing.

67. The Tribunal noted that Ms A was wearing loose-fitting scrubs. In the circumstances, and having considered all of the evidence before it, the Tribunal considered that it was more likely than not, that Dr Gopalakrishnan had put his hand inside Ms A's top.

68. Therefore, given the plausibility and consistency of Ms A's account and the implausibility of Dr Gopalakrishnan's assertion at his trial that Ms A had instigated the encounter, rather than just a denial, the Tribunal considered that it was more likely than not than Dr Gopalakrishnan had put his hand inside Ms A's top.

69. Accordingly, the Tribunal determined that paragraph 1(c) of the Allegation was found proved.

Paragraph 1(d) of the Allegation

70. The Tribunal considered whether, on 2 April 2021, Dr Gopalakrishnan walked to the XXX area with Ms A at Dorchester County Hospital and touched Ms A's breasts over her bra.

71. The Tribunal noted that Dr Gopalakrishnan's account of this incident was given during his trial. The Tribunal noted that Dr Gopalakrishnan had asserted that it was Ms A that had instigated the sexualised incident and progressed events, rather than him. In particular, the Tribunal noted Dr Gopalakrishnan's suggestion that Ms A had taken his right hand and placed it on her chest and breast area. This was an account given for the first time during the criminal trial, in circumstances where Dr Gopalakrishnan had denied that any other part of his body had touched Ms A, other than the hug, during his police interview.

72. The Tribunal noted that Ms A had been consistent in her assertion that Dr Gopalakrishnan had touched her breasts under her scrub top and vest but over her bra in her evidence from her initial witness statement, dated 9 April 2021, her evidence at Dr Gopalakrishnan's trial, her GMC witness statement dated 16 December 2022, and her oral evidence at the hearing.

73. In the circumstances, given the consistency of Ms A's account and the inconsistency and inherent improbability of Dr Gopalakrishnan's account, the Tribunal determined that it was more probable than not, that Dr Gopalakrishnan had touched Ms A's breasts over her bra.

74. Accordingly, the Tribunal determined that paragraph 1(d) of the Allegation was found proved.

Paragraph 1(e) of the Allegation

75. The Tribunal considered whether, on 2 April 2021, Dr Gopalakrishnan walked to the XXX area with Ms A at Dorchester County Hospital and rubbed Ms A's nipples over her bra.

76. The Tribunal noted that Dr Gopalakrishnan had denied this allegation, both during his police interview and at his trial.



77. The Tribunal noted that on the night of the alleged incident Ms A was wearing loose-fitting scrubs and that it had found that Dr Gopalakrishnan had touched her breasts over her bra.

78. In the circumstances, the Tribunal noted that Ms A had been consistent in her assertion that Dr Gopalakrishnan had rubbed her nipples in her evidence at Dr Gopalakrishnan's trial, her GMC witness statement, dated 16 December 2022, and her oral evidence at the hearing.

79. The Tribunal took account of Ms A's assertion in her police witness statement, dated 9 April 2021, that Dr Gopalakrishnan '*massaged*' her nipples and noted that this statement had been made just over a week after the alleged incident.

80. The Tribunal had regard, in particular, to the strength of feeling on this issue expressed within Ms A's statement dated 4 May 2021 where she stated: "*...he rubbed his hands over my bra making contact with my nipples. This made me feel uncomfortable. It is the one stand out memory of that night, being in that position and him making circles with both my nipples using his hands although it was over my bra. It was horrible.*"

81. It also noted that in her oral evidence at Dr Gopalakrishnan's trial she stated that Dr Gopalakrishnan was '*making circles around where my nipples were*'.

82. The Tribunal also noted that in her oral evidence, Ms A answered questions regarding the alleged rubbing of her nipples in a clear and unembellished way.

83. Noting the inconsistency between the accounts given by Ms A and Dr Gopalakrishnan, the Tribunal preferred the account given by Ms A on this issue. The Tribunal considered it more plausible that Dr Gopalakrishnan had rubbed her nipples over her bra. The Tribunal rejected Dr Gopalakrishnan's account on this issue, such as it was, to be inherently unlikely in the circumstances.

84. Accordingly, the Tribunal determined that paragraph 1(e) of the Allegation was found proved.

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

85. The Tribunal considered whether, on 2 April 2021, Dr Gopalakrishnan walked to the XXX area with Ms A at Dorchester County Hospital and kissed Ms A on the lips and on the cheek.

86. The Tribunal noted that, on the facts, Dr Gopalakrishnan admitted that a kiss took place, but claimed that Ms A instigated it. He also admitted to having attempted to – and indeed succeeded in - kissing Ms A on the cheek, in response to her kissing *him*.

87. The Tribunal noted Ms A's police witness statement, dated 9 April 2021, in which she stated the following:

*'He tried to kiss me by taking hold of the back of my neck with his arm pushing my head towards him. I turned my face away from him but he still made contact with my lips and tried to kiss me'*

88. The Tribunal noted that Ms A repeated her assertion at the trial that she had turned her head to the side when Dr Gopalakrishnan had allegedly attempted to kiss her:

*'He had two attempts. He put his arm up at 90 degrees, if I may demonstrate like that, so that his forearm is behind my neck and my head, so that I couldn't move backwards. He tried to kiss me the first time, and I turned my head to the side. I didn't want, in any way to, his, his lips to touch mine at all. And then he tried it again, and he did make contact with my lips.'*

89. The Tribunal also noted the following oral evidence:

*'Mr F: As far as the kissing is concerned, again he says that, with your back to him, you then turned to kiss him on the lips once. What do you say to that?*

*[Ms A]: I didn't try and kiss him.*

*'Mr F: And he, there was, indeed, contact on, on the lips, and he then went and kissed you on the cheek. Again, what do you say to that?*

*[Ms A]: I say the first time he tried to kiss me, I turned my head, and he tried to lean in and kiss me. He may have caught my cheek at that point, and then he kissed me on the lips the second time'*

90. Noting that the Tribunal have rejected as unlikely the assertion that Ms A instigated the encounter on 1 April 2021 and the events that ensued that night, and given then

plausibility and consistency of Ms A's account, the Tribunal considered that Ms A's account of the kissing was more likely than not to be accurate. The Tribunal considered that it was more probable that Dr Gopalakrishnan had kissed Ms A on the lips and on the cheek.

91. Accordingly, the Tribunal determined that paragraphs 1(f) and 1(g) of the Allegation were found proved.

#### Paragraph 1(h) of the Allegation

92. The Tribunal considered whether on 2 April 2021, Dr Gopalakrishnan walked to the XXX area with Ms A at Dorchester County Hospital and he pressed his erect penis against Ms A.

93. The Tribunal considered that Ms A had been broadly consistent on this issue in her evidence from her initial police statement on the 9 April 2021 to her evidence at Dr Gopalakrishnan's trial to her oral evidence at the hearing.

94. However, the Tribunal did note that the wording of Ms A's assertion had changed slightly and bore in mind that her original account had been that Dr Gopalakrishnan had '*rubbed*' his body against hers, during which time she could feel that he had an erection. In her oral evidence to the Tribunal, Ms A said that she could feel his penis, which was hard, against her leg. She said that he 'did not move as such' but that she could feel the erection clearly. Ms A did not give an account of active rubbing of Dr Gopalakrishnan's erection on her.

95. Although the Tribunal noted the slight change of emphasis in Ms A's evidence, it considered Ms A's evidence on this issue to be broadly consistent, involving some contact with Dr Gopalakrishnan's erect penis.

96. The Tribunal noted the Dr Gopalakrishnan's oral evidence, and his denial that he was aroused, or had an erection. It also noted Dr Gopalakrishnan's assertion that Ms A could have mistaken something in his pocket for an erect penis. The Tribunal rejected this assertion and observed that, during his cross examination, Dr Gopalakrishnan conceded that he did not have any pockets in the front of his scrubs trousers. Dr Gopalakrishnan accepted that he only had pockets in his scrub top, in which he may have had a bleep or some tissues. Noting that Dr Gopalakrishnan and Ms A are broadly the same height, the Tribunal rejected as implausible and unconvincing the suggestion that Ms A could have mistaken something in Dr

Gopalakrishnan's pocket for an erect penis. In the circumstances, the Tribunal gave more weight to the evidence of Ms A on this issue.

97. Therefore, the Tribunal concluded that it was more likely than not, that on 2 April 2021, Dr Gopalakrishnan walked to the XXX area with Ms A at Dorchester County Hospital and he pressed his erect penis against Ms A.

98. Accordingly, the Tribunal determined that paragraph 1(h) of the Allegation was found proved.

#### Paragraph 1(i) of the Allegation

99. The Tribunal considered whether on 2 April 2021, Dr Gopalakrishnan walked to the XXX area with Ms A at Dorchester County Hospital and he said to Ms A 'well, at least show me your top half,' or words to that effect.

100. The Tribunal noted that Ms A had made this allegation very soon after the incident, and had remained consistent in her assertion that Dr Gopalakrishnan had said 'well, at least show me your top half,' or words to that effect, during the alleged events on 2 April 2021.

101. The Tribunal also considered that there was no benefit to Ms A to make up this allegation and that she had little motivation to do so given her limited involvement with Dr Gopalakrishnan before 2 April 2021.

102. Given the consistency and plausibility of Ms A's evidence, the finding the Tribunal had already made in terms of the events of 1 April 2021, as compared to the wholly unconvincing claim by Dr Gopalakrishnan that Ms A had instigated the sexualised encounter, the Tribunal considered that it was more likely than not, that Dr Gopalakrishnan had said to Ms A 'well, at least show me your top half,' or words to that effect.

103. Accordingly, the Tribunal determined that paragraph 1(i) of the Allegation was found proved.

#### Paragraph 2(a) of the Allegation

104. The Tribunal considered the allegation that one or more of Dr Gopalakrishnan's actions as set out at Paragraph 1 were an abuse of his senior position in that, at the relevant time, he was a Specialty Doctor and Ms A was a XXX.

105. Firstly, the Tribunal considered whether Dr Gopalakrishnan was indeed in a senior position to that of Ms A.

106. The Tribunal noted that Ms A was younger than Dr Gopalakrishnan and an observer may have perceived Dr Gopalakrishnan as being senior to Ms A.

107. However, the Tribunal considered that it had not received any evidence regarding any direct seniority.

108. Further, the Tribunal noted that Ms A had not been convinced when it was put to her, in oral evidence, that Dr Gopalakrishnan was her senior, or that he had in fact abused his position. Ms A did comment that as someone more junior to Dr Gopalakrishnan, he may have felt that she would not speak out about what had happened, but this did not appear to the Tribunal to be at the forefront of Ms A's mind.

109. The Tribunal also noted that it was unlikely that Dr Gopalakrishnan would be able to influence Ms A's education or training, nor did he have any supervisory role over Ms A in any way.

110. In the circumstances, the Tribunal concluded that the GMC had not provided sufficient evidence regarding Dr Gopalakrishnan's alleged seniority nor of any alleged abuse of that position of seniority and, therefore, had not discharged the burden of proof in respect of this allegation.

111. Accordingly, the Tribunal found that paragraph 2(a) of the Allegation was not proved.

Paragraph 2(b) of the Allegation in relation to Paragraph 1 of the Allegation

112. The Tribunal considered whether Dr Gopalakrishnan's conduct as set out on paragraph 1 of the Allegation was sexually motivated. It applied the principle that Dr Gopalakrishnan's state of mind at the relevant times could only be proved by inference or deduction from the surrounding evidence relating to the facts proved.

Paragraph 2(b) of the Allegation in relation to Paragraph 1(a)

113. The Tribunal considered whether Dr Gopalakrishnan’s conduct as set out in paragraph 1(a) of the Allegation, namely that he on at least one occasion hugged Ms A, and that this was sexually motivated.

114. The Tribunal concluded that Dr Gopalakrishnan’s actions in hugging Ms A, and according to Ms A’s evidence, coming back for more prolonged and ‘awkward’ hugs was all conduct that, on the balance of probabilities, was carried out either in pursuit of sexual gratification or in pursuit of a future sexual relationship. The Tribunal considered that persistently hugging a woman who indicated that she did not want to be hugged could only have a sexual motive behind it.

115. Accordingly, the Tribunal found paragraph 2(b) of the Allegation in relation paragraph 1(a).

Paragraph 2(b) of the Allegation in relation to Paragraph 1(b)

116. The Tribunal considered whether Dr Gopalakrishnan’s conduct as set out in paragraph 1(a) of the Allegation, namely that he touched Ms A’s bottom, was sexually motivated.

117. The Tribunal concluded that Dr Gopalakrishnan’s actions in touching Ms A’s bottom was conduct that, on the balance of probabilities, was carried out either in pursuit of sexual gratification or in pursuit of a future sexual relationship. The Tribunal considered that touching Ms A’s bottom had a sexual motive behind it, noting that the touching was of Ms A’s bottom, and an absence of a plausible alternative explanation for the touching.

118. Accordingly, the Tribunal found paragraph 2(b) of the Allegation in relation paragraph 1(b).

Paragraph 2(b) of the Allegation in relation to Paragraph 1(c)

119. The Tribunal considered whether Dr Gopalakrishnan’s conduct as set out in paragraph 1(b) of the Allegation, namely that he put his hand inside Ms A’s top, was sexually motivated.

120. The Tribunal concluded that Dr Gopalakrishnan’s actions in putting his hand inside Ms A’s top was conduct that, on the balance of probabilities, was carried out either in pursuit of

sexual gratification or in pursuit of a future sexual relationship. The Tribunal considered that putting his hand inside Ms A's top had a sexual motive behind it, noting that the touching was of a private area of Ms A's body, and an absence of a plausible alternative explanation for the touching.

121. Accordingly, the Tribunal found paragraph 2(b) of the Allegation in relation paragraph 1(c).

Paragraph 2(b) of the Allegation in relation to Paragraph 1(d)

122. The Tribunal considered whether Dr Gopalakrishnan's conduct as set out in paragraph 1(d) of the Allegation, namely that he touched Ms A's breasts over her bra, was sexually motivated.

123. The Tribunal concluded that Dr Gopalakrishnan's actions in touching Ms A's breasts over her bra was conduct that, on the balance of probabilities, was carried out either in pursuit of sexual gratification or in pursuit of a future sexual relationship. The Tribunal considered that Dr Gopalakrishnan's actions clearly had a sexual motive behind it, noting that the touching was of a sexual organ and observing an absence of any other plausible explanation for the touching.

124. Accordingly, the Tribunal found paragraph 2(b) of the Allegation in relation paragraph 1(d).

Paragraph 2(b) of the Allegation in relation to Paragraph 1(e)

125. The Tribunal considered whether Dr Gopalakrishnan's conduct as set out in paragraph 1(e) of the Allegation, namely that he rubbed Ms A's nipples over her bra, was sexually motivated.

126. The Tribunal concluded that Dr Gopalakrishnan's actions in rubbing Ms A's nipples over her bra was conduct that, on the balance of probabilities, was carried out either in pursuit of sexual gratification or in pursuit of a future sexual relationship. The Tribunal considered that Dr Gopalakrishnan's actions in rubbing Ms A's nipples clearly had a sexual motive behind it. The Tribunal noted in particular the nature of the touching, which in this instance was very intimate, and was of sexual nature, given the rubbing or massaging of Ms A's nipples.

127. Accordingly, the Tribunal found paragraph 2(b) of the Allegation in relation paragraph 1(e).

Paragraph 2(b) of the Allegation in relation to Paragraph 1(f)

128. The Tribunal considered whether Dr Gopalakrishnan's conduct as set out in paragraph 1(f) of the Allegation, namely that he kissed Ms A on the lips, was sexually motivated.

129. The Tribunal concluded that Dr Gopalakrishnan's actions in kissing Ms A on the lips was conduct that, on the balance of probabilities, was carried out either in pursuit of sexual gratification or in pursuit of a future sexual relationship. The Tribunal considered that Dr Gopalakrishnan's actions in kissing Ms A on the lips had a sexual motive behind it.

130. Accordingly, the Tribunal found paragraph 2(b) of the Allegation in relation paragraph 1(f).

Paragraph 2(b) of the Allegation in relation to Paragraph 1(g)

131. The Tribunal considered whether Dr Gopalakrishnan's conduct as set out in paragraph 1(g) of the Allegation, namely that he kissed Ms A on the cheek, was sexually motivated.

132. The Tribunal concluded that Dr Gopalakrishnan's actions in kissing Ms A on the cheek was conduct that, on the balance of probabilities, was carried out either in pursuit of sexual gratification or in pursuit of a future sexual relationship. The Tribunal considered that Dr Gopalakrishnan's actions in kissing Ms A on the cheek had a sexual motive behind it.

133. Accordingly, the Tribunal found paragraph 2(b) of the Allegation in relation paragraph 1(g).

Paragraph 2(b) of the Allegation in relation to Paragraph 1(h)

134. The Tribunal considered whether Dr Gopalakrishnan's conduct as set out in paragraph 1(h) of the Allegation, namely that he pressed his erect penis against Ms A, was sexually motivated.



135. The Tribunal concluded that Dr Gopalakrishnan's actions in pressing his erect penis against Ms A was conduct that, on the balance of probabilities, was carried out either in pursuit of sexual gratification or in pursuit of a future sexual relationship. The Tribunal considered that Dr Gopalakrishnan's actions in pressing his erect penis against Ms A clearly had a sexual motive behind it, and noted the absence of any plausible explanation for the pressing.

136. Accordingly, the Tribunal found paragraph 2(b) of the Allegation in relation paragraph 1(h).

Paragraph 2(b) of the Allegation in relation to Paragraph 1(i)

137. The Tribunal considered whether Dr Gopalakrishnan's conduct as set out in paragraph 1(h) of the Allegation, namely that he said to Ms A 'well, at least show me your top half,' or words to that effect, was sexually motivated.

138. The Tribunal concluded that Dr Gopalakrishnan's actions in saying to Ms A 'well, at least show me your top half,' or words to that effect, was conduct that, on the balance of probabilities, was carried out either in pursuit of sexual gratification or in pursuit of a future sexual relationship. The Tribunal considered that Dr Gopalakrishnan's actions saying those words to Ms A clearly had a sexual motive behind it.

139. Accordingly, the Tribunal found paragraph 2(b) of the Allegation in relation paragraph 1(i).

Paragraph 2(b) of the Allegation in relation to Paragraph 1 of the Allegation

140. Accordingly, paragraph 2(b) was found proved in relation to paragraph 1 of the Allegation.

Paragraph 2(c) of the Allegation in relation to Paragraph 1 of the Allegation

141. The Tribunal considered whether one or more of Dr Gopalakrishnan's actions, as set out in paragraph 1 were carried out without the consent of Ms A.

142. The Tribunal examined Ms A evidence, in particular the almost contemporaneous WhatsApp message that she sent to a friend only a matter of minutes after the incident in

the early hours of 2 April 2021, in which she indicated that she had had a ‘*drama*’ and ‘*didn’t know what to do*’ about it gave significant weight to the assertion that she had not consented to any of Dr Gopalakrishnan’s sexually motivated actions. The Tribunal also noted the WhatsApp message sent to Dr B at 08.38 on the 1 April 2021 where Ms A said “*I don’t really know how to say it...but I was basically sexually assaulted last night*” as being indicative of Ms A being a victim of unwanted sexual conduct.

143. Furthermore, the Tribunal had specifically rejected Dr Gopalakrishnan’s claim that Ms A had instigated the sexualised encounter.

144. Given Ms A’s consistent evidence that Dr Gopalakrishnan’s actions had been unwelcome and unconsented to and in light of the fact that the Tribunal had rejected Dr Gopalakrishnan’s claims that Ms A had instigated kissing him, had touched his bottom, had placed his left hand on her breast and had tried to kiss him, the Tribunal concluded that Dr Gopalakrishnan’s actions, as set out in paragraph 1, had been carried out without Ms A’s consent.

145. In the circumstances, the Tribunal considered that all of the actions set out in paragraph 1(a) – (i), which were all found to be sexually motivated, were carried out without the consent of Ms A.

146. Accordingly, the Tribunal determined that paragraph 2(c) of the Allegation in relation to one or more of the actions set out paragraph 1 had been proved.

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

147. The Tribunal has determined the facts as follows:

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

1. On 2 April 2021, you walked to the XXX area with Ms A at Dorchester County Hospital, and you:
  - a. on at least one occasion hugged Ms A; **Determined and found proved**
  - b. touched Ms A’s bottom; **Determined and found proved**
  - c. put your hand inside Ms A’s top; **Determined and found proved**

- d. touched Ms A's breasts over her bra; **Determined and found proved**
  - e. rubbed Ms A's nipples over her bra; **Determined and found proved**
  - f. kissed Ms A on the lips; **Determined and found proved**
  - g. kissed Ms A on the cheek; **Determined and found proved**
  - h. ~~rubbed~~ pressed your erect penis against Ms A's leg;  
**Amended under Rule 17(6)**  
**Determined and found proved**
  - i. said to Ms A 'well, at least show me your top half,' or words to that effect.  
**Determined and found proved**
2. One or more of your actions as set out at Paragraph 1 were:
- a. an abuse of your senior position in that, at the relevant time, you were a Specialty Doctor and Ms A was a XXX; **Not proved**
  - b. sexually motivated; **Determined and found proved**
  - c. carried out without the consent of Ms A. **Determined and found proved**

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

#### **Determination on Impairment - 12/03/2024**

1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Gopalakrishnan's fitness to practise is impaired by reason of misconduct.

#### **The Evidence**

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary.

#### **Submissions**

##### Submission on behalf of the GMC

3. Mr Garside submitted that the facts found proved in this case were particularly serious as they involved sexually motivated conduct on the part of Dr Gopalakrishnan, which was not consented to by Ms A. The conduct found proved was of a nature that amounted to serious misconduct.

4. Mr Garside referred to *Good Medical Practice* (2013) and noted that a new edition *Good Medical Practice* guidance document had been published in February 2024. He stated that the 2013 guidance was relevant at the time of the events in question, but that the new edition of GMP should also be considered. He submitted that, whichever edition was decided to be the most relevant, the effect of the guidance was exactly the same, and that effect was to make it clear that *'what happened was misconduct'*.

5. Mr Garside referred the Tribunal to paragraphs 1, 35, 36 and 37 of GMP (2013). He submitted that Dr Gopalakrishnan had failed to treat his colleagues with kindness, courtesy and respect and suggested that Dr Gopalakrishnan's conduct on 2 April 2021 was wholly contrary to his duty to work collaboratively with colleagues.

6. Mr Garside referred the Tribunal to paragraphs 48, 52, 56 and 57 of GMP 2024. In particular, Mr Garside highlighted paragraph 57 which states that: *'You must not act in a sexual way towards colleagues with the effect or purpose of causing offence, embarrassment, humiliation or distress.'* Mr Garside submitted that Dr Gopalakrishnan had behaved in a sexual way towards Ms A, and that his conduct had caused Ms A offence, embarrassment, humiliation and distress.

7. Further, Mr Garside submitted that, taken as a whole, the events of 2 April 2021 demonstrated a clear breach of professional standards, integrity and conduct on the part of Dr Gopalakrishnan.

8. Mr Garside submitted that there had been breaches of the provisions of both editions of *Good Medical Practice* and noted that the Tribunal may need to consider the standards appropriate to the time the events occurred, namely the old edition. However, he invited the Tribunal to consider Dr Gopalakrishnan's conduct against the new edition of GMP, to determine whether his fitness to practice was impaired today. Mr Garside submitted that the conduct found proved was not only misconduct, but should be considered especially serious as it involved sexual misconduct. He invited the Tribunal to consider that sexual misconduct, because of its nature and effect, was conduct that should be regarded very seriously because of the repercussions that it may have. Mr Garside also submitted to the Tribunal that sexual misconduct seriously undermines public confidence in the profession.

9. Mr Garside submitted that there was no evidence of remediation or mitigation or a recognition of fault on the part of Dr Gopalakrishnan. He stated that the line taken by the doctor throughout *'from the very beginning'* had been that he had *'done nothing wrong'*, and that during his trial he had become more determined in his denials.

10. Mr Garside concluded by submitting that, because of the lack of any repentance, remorse or remediation and the seriousness of the original incident the Tribunal should find Dr Gopalakrishnan's fitness to practise to be *'undoubtedly'* impaired by reason of misconduct.

### The Relevant Legal Principles

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

12. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: firstly to consider whether the facts as found proved amounted to misconduct, and secondly, whether the misconduct was serious.

13. The Tribunal must determine whether Dr Gopalakrishnan's fitness to practise is impaired today, taking into account Dr Gopalakrishnan's conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

14. The Tribunal is also required to have regard to the wider public interest and to consider whether a finding of impairment is necessary in order 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.

15. With regard to impairment, the Tribunal had regard to the case of *CHRE v NMC and Grant* [2011] EWHC 927 where Dame Janet Smith's observations in the Fifth Report of the Shipman Inquiry were endorsed. Dame Janet Smith suggested that questions of impairment could be considered in the light of the following considerations:

*‘Do our findings of fact in respect of the doctor’s misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:*

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.’*

16. The Tribunal further had regard to *CHRE v NMC and Grant* [2011] EWHC 927, in particular, paragraph 76 of the judgment:

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

17. The Tribunal also had regard to the case of *Cohen v GMC* [2008] EWHC 581 (Admin), and took into account whether the *‘conduct which led to the charge is easily remediable; that, second, it has been remedied; and, third, that it is highly unlikely to be repeated’*.

18. The Tribunal accepted the above advice of the LQC.

## The Tribunal’s Determination on Impairment

### Misconduct

19. In reaching its determination as to whether Dr Gopalakrishnan's proven actions amounted to misconduct, the Tribunal had regard *to* 'Good medical practice' (GMP) (2013).

20. The Tribunal noted that GMP (2013) was withdrawn on 30 January 2024, but acknowledged that it was the relevant guidance contemporaneous to the events of 2 April 2021, and as such, it was pertinent to the proven facts of this case.

21. The Tribunal noted, in particular the following paragraph from GMP (2013):

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

22. The Tribunal considered that the seriousness of Dr Gopalakrishnan's unwanted and unconsented to actions against his colleague Ms A, during a shift on 2 April 2021, fell so far short of the standards of conduct reasonably expected of a doctor as to clearly amount to misconduct.

23. The Tribunal further noted that Dr Gopalakrishnan's misconduct was sexually motivated, and was of a kind that was both serious and which risked undermining the trust in the profession. The Tribunal therefore considered that Dr Gopalakrishnan's conduct in this case did amount to serious misconduct.

#### Impairment

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

25. Having regard to the factors set out in *CHRE v NMC and Grant*, the Tribunal considered that paragraphs (b) and (c) are engaged in this case. The Tribunal considered that Dr Gopalakrishnan's misconduct had brought the medical profession into disrepute. It was conduct that was liable to undermine the public's trust in the profession and it had negatively affected Ms A.

26. It further considered that Dr Gopalakrishnan's misconduct breached a fundamental tenet of the profession.

27. However the Tribunal noted that there was no evidence of any harm having come to any patients as a result of Dr Gopalakrishnan’s misconduct.

28. The Tribunal considered the approach taken in *Cohen*. The Tribunal looked for evidence of remediation and insight, and the likelihood of repetition, balanced against the three elements of the overarching statutory objective.

29. The Tribunal accepted that sexual misconduct is difficult to remediate. The Tribunal noted that Dr Gopalakrishnan had not engaged with the regulatory process and had absented himself from this hearing. Accordingly, the Tribunal had received no evidence of any insight or remediation on the part of Dr Gopalakrishnan. There had been no reflection or recognition of fault in this case, nor any evidence that Dr Gopalakrishnan understands the gravity of his misconduct. On that basis, the Tribunal considered that a risk of repetition of sexually motivated misconduct could not be excluded, notwithstanding Dr Gopalakrishnan’s previous good character and the references received in his favour during the criminal trial.

30. The Tribunal determined that the public expects doctors’ conduct to justify its trust in them and expects doctors to maintain respectful relationships with colleagues and treat them fairly. Where doctors fail to do so in a significant way, the public’s trust in the profession is undermined and a finding of impairment of fitness to practise is required. The Tribunal accepted that public confidence in the profession, and proper standards of professional conduct, would be damaged if a finding of impairment was not made in this case.

31. Therefore, the Tribunal determined that Dr Gopalakrishnan’s fitness to practise is currently impaired by reason of misconduct in respect of limbs 2 and 3 of the overarching objective, namely:

‘...

*b. to promote and maintain public confidence in the medical profession; and*

*c. to promote and maintain proper professional standards and conduct for members of that profession.’*

**Determination on Sanction - 13/03/2024**



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

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

2. The Tribunal granted the GMC’s application, made pursuant to Rule 17(2)(m) and Rule 34(1) of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’), that the Record of Determination of Dr Gopalakrishnan’s previous 2015 MPTS Fitness to Practise hearing be adduced. The Tribunal’s full decision on the application is included at Annex B.

### The Evidence

3. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

4. The Tribunal received further evidence on behalf of the GMC including:

- A redacted Private ‘Record of Determinations’ document of a previous MPTS Fitness to Practise hearing, dated 29 September 2015. The hearing dates were 15 – 29 January 2015; 18 – 27 May 2015; and 28 – 29 September 2015, at which Dr Gopalakrishnan had been found impaired by reason of misconduct which occurred during 2010/2011. As a result he was suspended for a period of four months; and
- Signed final page of Private Record of Determination, dated 29 September 2015.

### Submissions

#### Submissions on behalf of the GMC

5. Mr Garside referred the Tribunal to relevant paragraphs of the *Sanctions Guidance* (February 2024) (SG), in particular paragraphs 10(d), 14 and 17. He submitted that, given the

seriousness of the sexually motivated misconduct involved in this case, the appropriate sanction was erasure.

6. Mr Garside submitted that, in light of the record of determination of the previous MPTS panel and now that the true state of affairs is known, no mitigating factors could be discerned.

7. Further, Mr Garside stated that Dr Gopalakrishnan was a doctor who had displayed no recognition of guilt, no remediation, despite the earlier 2015 finding of similar misconduct, and had shown no insight into the effect that his actions might have on his female colleagues. He also emphasised that Dr Gopalakrishnan had never expressed regret for his actions.

8. Mr Garside referred to Dr Gopalakrishnan's 2015 hearing and stated that the allegations had been fully contested by senior Counsel instructed on Dr Gopalakrishnan's behalf. Throughout the hearing, Dr Gopalakrishnan had shown no recognition of guilt. He further stated that the findings in Dr Gopalakrishnan's previous 2015 hearing were an aggravating factor and referred to paragraph 54 of the SG:

*'54 Where the GMC, or another regulator, has previously made findings of impaired fitness to practise and imposed a sanction on the doctor's registration, the tribunal may wish to consider this as an aggravating factor in relation to the case before it.'*

9. Mr Garside submitted that Dr Gopalakrishnan's previous finding of impairment in 2015 *'destroyed the suggestion'* that the events of 2 April 2021 were a *'one-off incident'* in an otherwise unblemished career.

10. Further, Mr Garside emphasised that Dr Gopalakrishnan appeared to have no insight *'at all'* into what he had done wrong.

11. Mr Garside referred the Tribunal to paragraph 66 of SG and submitted that the Tribunal's choice on sanction was really one between suspension or erasure. In support of his submission that erasure was the appropriate sanction, Mr Garside took the Tribunal to paragraph 109 of SG, and invited the Tribunal to have particular regard to sub-paragraphs (f) and (j) as being indicative of a more serious sanction being necessary in this case. The Tribunal were also referred to paragraph 138(b) and 149 of SG, and invited to consider that the conduct found proved amounted to sexual harassment of Ms A, and that such conduct

seriously undermines public trust in the profession. Mr Garside concluded by submitting that Dr Gopalakrishnan's actions were also an abuse of the trust that exists between colleagues, and it was important that the abuse of that trust was treated with seriousness and not *'brushed off'*.

### The Tribunal's Determination on Sanction

12. The decision as to the appropriate sanction to impose, if any, is a matter for the Tribunal exercising its own judgement. The Tribunal reminded itself that there was no burden or standard of proof at this stage. It recognised that every case will necessarily turn on its own facts.

13. In reaching its decision, the Tribunal gave careful consideration to the SG. It bore in mind that the purpose of a sanction is not to be punitive although it may have a punitive effect.

14. The Tribunal also bore in mind that in deciding what sanction, if any, to impose, it should consider the sanctions available, starting with the least restrictive.

15. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Gopalakrishnan's interests with the public interest. It considered and had regard to the statutory overarching objective, which includes the protection of the public, the maintenance of public confidence in the profession, and the promoting and maintaining of proper professional standards and conduct for members of the profession. The Tribunal was mindful that it was required to ensure that any sanction it imposes is appropriate and proportionate.

16. When considering the principle of proportionality, the Tribunal had regard to the judgment in the case of *Bolton v. Law Society* [1994] 1 WLR 512, in which Sir Thomas Bingham stated that *'the reputation of the profession is more important than the fortunes of any one individual member. Membership of a profession brings many benefits, but that is part of the price'*.

17. The Tribunal also had regard to its earlier determinations on the facts and on impairment, the SG and GMP, and the submissions of Mr Garside on behalf of the GMC.

### Mitigating and Aggravating Factors

18. The Tribunal first identified what it considered to be the aggravating and mitigating factors in this case.

#### Mitigating Factors

19. The Tribunal reminded itself that Dr Gopalakrishnan had not taken an active part in these proceedings. Nonetheless, the Tribunal attempted to identify mitigating factors in this case.

20. The Tribunal noted that Dr Gopalakrishnan's misconduct had not involved patients. Further, there was no evidence of any harm having come to patients. However, the Tribunal considered this to be of limited mitigation.

21. The Tribunal noted that it had received no evidence of repetition of sexual misconduct during the period between 2011 and Dr Gopalakrishnan's targeting of Ms A in 2021. Whilst this was a period of some 10 years, in light of the similarities between the doctor's conduct in 2010/2011 and 2021, the Tribunal considered this factor to be of only limited mitigation.

22. The Tribunal could identify no other mitigating factors.

#### Aggravating Factors

23. The Tribunal considered Dr Gopalakrishnan's impairment by reason of misconduct finding in 2015 and noted that the sexual misconduct involving Ms A in 2021 was an escalation of seriousness when compared to his earlier conduct towards Ms B and Ms C in 2010/2011. The Tribunal considered this to be a serious aggravating factor.

24. The Tribunal noted that the 2010, 2011 and 2021 incidents relating to Dr Gopalakrishnan's misconduct involved similar behaviour in that he targeted female colleagues, in the workplace, during shifts when they were isolated and alone with him.

25. Dr Gopalakrishnan's misconduct relating to Ms A involved a prolonged incident of approximately 10 to 15 minutes and was sustained in the face of repeated requests from Ms A for the doctor to stop.

26. The Tribunal considered the serious nature of sexual misconduct and had regard to paragraphs 149 and 150 of the SG which provide:

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

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

27. The Tribunal also noted paragraphs 51 and 52 of SG, and reminded itself that Dr Gopalakrishnan had shown no evidence of insight. He had shown no acknowledgment of his misconduct, or the effect of that misconduct on his colleagues or the wider profession. The Tribunal noted sexual misconduct is difficult to remediate, but observed that there was no evidence any of remediation on the part of Dr Gopalakrishnan.

#### No action

28. The Tribunal first considered whether to conclude the case by taking no action. It noted that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

29. The Tribunal determined that there were no exceptional circumstances in this case which would justify taking no action.

30. The Tribunal determined that to take no action would be inappropriate. It considered that it would not be sufficient, proportionate or in the public interest to conclude the case by taking no action.

#### Undertakings

31. The Tribunal noted that no undertakings had been agreed in this case.

#### Conditions

32. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Gopalakrishnan's registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable.

33. The Tribunal determined that no workable or measurable conditions could be formulated which would address the seriousness of Dr Gopalakrishnan's misconduct.

34. Further, the Tribunal considered that the imposition of conditions would not mark the seriousness of Dr Gopalakrishnan's misconduct and would be insufficient to maintain public confidence in the profession or to promote and maintain standards for members of the profession.

### Suspension

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

36. The Tribunal acknowledged that suspension has a deterrent effect and can be used as a signal to the doctor, the profession, and to the public about what is regarded as behaviour unbecoming a registered doctor.

37. The Tribunal took account of the following paragraphs of the SG which indicate circumstances in which it may be appropriate to impose a sanction of suspension:

'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, e.g. because of previous unsuccessful attempts or doctor's unwillingness to engage.*

...

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

38. The Tribunal had regard to its impairment determination and its finding that Dr Gopalakrishnan's misconduct was a serious breach of paragraph 65 of GMP.
39. The Tribunal noted that sexual misconduct is difficult to remediate.
40. The Tribunal took the findings of the 2015 Panel into account and noted the remarkable similarities between the behaviour that Dr Gopalakrishnan had employed in his targeting of Ms B in October 2010 to February 2011, and Ms C in April 2011, and his targeting of Ms A in April 2021.
41. The Tribunal noted the 2015 finding that Dr Gopalakrishnan had engaged in sexually motivated conduct towards his colleague Ms B, at the workplace, during a shift, and whilst Ms B was alone with the doctor.
42. It also noted the 2015 finding that Dr Gopalakrishnan had engaged in sexually motivated conduct towards his colleague Ms C, at the workplace, during a shift, and whilst Ms C was alone with the doctor.
43. Further, it considered that Dr Gopalakrishnan's attitude and conduct had not been altered by the suspension he had received in 2015 following an MPTS Fitness the Practise hearing.
44. In the absence of evidence of remediation, the lack of expressions of regret or remorse and the absence of any evidence of insight to this Tribunal, it could not be satisfied that Dr Gopalakrishnan did not pose a significant risk of repeating his behaviour.
45. The Tribunal considered that Dr Gopalakrishnan's sexually motivated misconduct, at the workplace, during a shift on 2 April 2021 had been a repetition, and in some respects an escalation of, Dr Gopalakrishnan's sexually motivated misconduct in 2010 and 2011. In the circumstances, the Tribunal considered that the risk posed by Dr Gopalakrishnan had not been ameliorated by the earlier period of suspension imposed upon his registration in 2015.

46. Further, the Tribunal considered that there had been no remediation, no evidence of remorse and, given the previous findings of sexually motivated misconduct by the 2015 Panel and the similar behaviour employed by Dr Gopalakrishnan in the course of that misconduct, that there remained a risk of repetition of similar sexual misconduct.

47. The Tribunal determined that the seriousness of Dr Gopalakrishnan's misconduct, lack of any evidence insight, and the continued risk that he posed were incompatible with continued registration due to the need to protect the public, to maintain public confidence and uphold proper professional standards.

48. The Tribunal determined that suspension of Dr Gopalakrishnan's registration would not be appropriate, would not be effective given his previous suspension, and would not be sufficient to send a message to the profession and the wider public about the gravity of the misconduct.

49. The Tribunal was of the view that a sanction of suspension would not be effective given the fact that Dr Gopalakrishnan had previously been suspended but had repeated similar behaviour despite previous findings of misconduct and a suspension.

50. In the circumstances, having had regard to the findings at the facts and impairment stages of this hearing, the 2015 misconduct, and the continued risk that Dr Gopalakrishnan posed, the Tribunal was satisfied that a period of suspension imposed upon the doctor's registration would not be appropriate.

#### Erasure

51. Having determined that a sanction of suspension would be insufficient to protect the public interest or satisfy the statutory overarching objective, the Tribunal went on to consider paragraph 108 of the SG and determined that it was engaged by Dr Gopalakrishnan's sexually motivated misconduct:

*'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).

...

*f* Offences of a sexual nature [...]

...

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

52. The Tribunal considered Dr Gopalakrishnan's misconduct, and the continued risk that he posed, given the lack of evidence of any regret, insight and remediation. The Tribunal also noted that the conduct found proved was a repetition of sexual misconduct, in circumstances where Dr Gopalakrishnan had previously been suspended in 2015. The Tribunal considered those factors to be incompatible with Dr Gopalakrishnan's continued registration as a doctor.

53. The Tribunal reminded itself that the public needs good doctors, and that it had received no evidence to suggest that Dr Gopalakrishnan was anything other than a good clinician. However, the Tribunal found that this could in no way mitigate Dr Gopalakrishnan's repeated sexual misconduct.

54. Having regard to all the evidence before it, the relevant paragraphs in the SG, and the statutory overarching objective, the Tribunal determined that the only appropriate and proportionate sanction was one of erasure.

55. The Tribunal therefore directed that Dr Gopalakrishnan's name be erased from the Medical Register.

#### **Determination on Immediate Order - 14/03/2024**

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

## Submissions

### Submissions on behalf of the GMC

2. Mr Garside submitted that the imposition of an immediate order upon Dr Gopalakrishnan's registration was required.
3. Mr Garside referred the Tribunal to paragraphs 172 and 173 of the SG and submitted that, although Dr Gopalakrishnan was not a risk to patient safety directly, the doctor had put himself in a position where an immediate order was necessary to protect public confidence in the profession.
4. Further, Mr Garside submitted that further incidents could not be ruled out in the future, and that such future incidents might involve patients. However, he stated that even if such incidents did not involve patients, Dr Gopalakrishnan's misconduct was dangerous and destructive as far as other staff are concerned.
5. Mr Garside concluded by submitting that the public would be very surprised if Dr Gopalakrishnan was allowed to continue practising in light of the findings in this case and in light of the sanction that had been imposed.

### The Tribunal's Determination

6. In reaching its decision, the Tribunal has exercised its own judgement, and has taken account of the principle of proportionality. The Tribunal has borne in mind that it may impose an immediate order where it is satisfied that it is necessary for the protection of members of the public, is in the public interest, or is in the best interests of the practitioner.
7. The Tribunal had regard to the following paragraphs of the SG:

*'172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor [...] The interests of the doctor include avoiding putting them in a position where they [...] may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to*

*return to work pending the appeal, and against the wider public interest, which may require an immediate order.'*

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

*'174 Doctors and their representatives sometimes argue that no immediate order should be made as the doctor needs time to make arrangements for the care of their patients before the substantive order for suspension or erasure takes effect.'*

*'175 In considering this argument, the tribunal will need to bear in mind that any doctor whose case is considered by a medical practitioners tribunal will have been aware of the date of the hearing for some time and consequently of the risk of an order being imposed. The doctor will therefore have had time to make arrangements for the care of patients before the hearing, should the need arise.'*

*'176 In any event, the GMC also notifies the doctor's employers or, in the case of general practitioners, the relevant body, of the date of the hearing. They have a duty to make sure that appropriate arrangements are in place for the care of the doctor's patients should an immediate order be imposed.'*

8. The Tribunal determined that due to the serious nature of Dr Gopalakrishnan's misconduct an immediate order was both necessary and proportionate.
9. It considered that, given the risk of repetition of such misconduct, an immediate order was necessary to uphold proper professional standards and conduct for members of the profession and to maintain public confidence in the profession.
10. Further, the Tribunal concluded that public confidence in the profession would be undermined if there were not an immediate order given the nature of Dr Gopalakrishnan's misconduct, and the sanction that the Tribunal had determined was necessary and appropriate in this case.

11. This means that Dr Gopalakrishnan's registration will be suspended from the date on which notification of this decision is deemed to have been served upon him. The substantive direction, as already announced, will take effect 28 days from that date, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.
12. The interim order will be revoked when the immediate order takes effect.
13. That concludes this case.

ANNEX A – 04/03/2024

**Service of Notice of the Hearing and proceeding in absence**

1. Dr Gopalakrishnan was neither present nor represented at this hearing.

Service of Notice of the Hearing

2. Mr Garside, Counsel, on behalf of the GMC, invited the Tribunal to find, in accordance with Rule 40 and of the GMC (Fitness to Practise) Rules 2004 (the Rules), that all reasonable efforts had been made to serve Dr Gopalakrishnan with notice of this hearing (NoH).
3. The Tribunal was provided with a service bundle which included a screenshot of the GMC database showing Dr Gopalakrishnan's registered address and contact information. The Tribunal was provided with GMC emails to Dr Gopalakrishnan's email account and a further email address that the GMC advised that the doctor might be using.
4. The Tribunal was also provided with a copy of a letter dated 30 January 2024, which was sent by the GMC to Dr Gopalakrishnan in accordance with rule 34(9). This letter was sent by email on 30 January 2024 to Dr Gopalakrishnan's registered email address, as well as to his solicitor. It was also sent by post, and the Tribunal was provided with a Royal Mail Proof of Delivery for this letter, dated 1 February 2024.
5. The Tribunal was also provided with GMC email correspondence, dated 31 January 2024, sent to Dr Gopalakrishnan's email address and to the email address of his then legal representative, which enclosed the NoH. The Tribunal were also provided with a corresponding read receipt. The Tribunal noted that the NoH was sent by the GMC to Dr Gopalakrishnan at his registered email address on 31 January 2024 with relevant attachments. The NoH included details of the MPT hearing.
6. It was also provided with email correspondence sent on 8 February 2024 to Dr Gopalakrishnan and his then representative regarding the NoH and final hearing preparation. The Tribunal were also provided with a corresponding read receipt.

7. Email correspondence was received from Ms E, solicitor, on 19 February 2024 which acknowledged receipt of the relevant GMC correspondence regarding the hearing but in which she stated that she was no longer instructed to represent Dr Gopalakrishnan.

8. Having considered the contents of the proof of service bundle, the Tribunal was satisfied that notice of the hearing commencing 4 March 2024 had been served upon Dr Gopalakrishnan in accordance with Rule 40 of the Rules.

#### Proceeding in Absence

9. Having determined that the notice of the hearing had been properly served, the Tribunal went on to consider, under Rule 31, whether it should proceed with the hearing in Dr Gopalakrishnan's absence, as submitted by Mr Garside.

10. The Tribunal was mindful that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution, balancing the interests of the doctor with the wider public interest.

11. The GMC applied for the hearing to proceed in the Dr Gopalakrishnan's absence as, despite being served with the Notice of Hearing and the Allegation, he had not attended.

12. Ms Garside submitted that all reasonable efforts had been made to serve Dr Gopalakrishnan with the NoH and argued that the provisions within Rule 31 had been complied with by the GMC and the MPTS.

13. Mr Garside submitted that there was no evidence that an adjournment would secure the attendance of Dr Gopalakrishnan. Further, he submitted that, given the nature of the allegations against the doctor, it was in the public interest for the hearing to proceed.

14. The Tribunal was of the view that it was clear that efforts had been made to notify both Dr Gopalakrishnan, and his legal representative who was on record as acting for him until 19 February 2024, of the hearing. It was likely that Dr Gopalakrishnan had voluntarily absented himself from it.

15. The Tribunal was satisfied that an adjournment would not necessarily result in Dr Gopalakrishnan's participation.

16. The Tribunal considered all the information before it, including the seriousness of the Allegation and the passage of time since the alleged misconduct. It was also satisfied that Dr Gopalakrishnan had voluntarily absented himself. It concluded that the wider public interest in the case proceeding outweighs Dr Gopalakrishnan's own interests in adjourning particularly when no useful purpose would be served by adjourning to a later date.

17. In accordance with Rule 31, the Tribunal determined to proceed in Dr Gopalakrishnan's absence.

## ANNEX B – 13/03/2024

### Application to admit further evidence

1. On Day 7 of the hearing, after the Tribunal's finding that Dr Gopalakrishnan's fitness to practise was impaired by reason of misconduct, the GMC made an application, pursuant to Rule 17(2)(m) and Rule 34(1), to adduce a further piece of evidence, namely a redacted Record of Determination relating to a Fitness to Practice hearing involving Dr Gopalakrishnan in 2015.

### Submissions on behalf of the GMC

2. Mr Garside stated that during the time that the Tribunal were considering the question of Dr Gopalakrishnan's impairment, he discovered that the information that he gave the Tribunal, namely that Dr Gopalakrishnan was a man of good character and had had no previous regulatory involvement, was not correct.

3. Mr Garside stated that, however, bearing in mind that such previous regulatory involvement was likely to be more relevant at the sanction stage than at any other, he applied under Rule 17(2)(m) of the Rules to introduce evidence at the sanction stage.

4. Mr Garside stated that the evidence that the GMC wished to adduce, and which the Tribunal should consider, was the record of an earlier Fitness to Practise hearing, involving the doctor, that concluded in September 2015, and involved allegations remarkably similar to those in this case.

5. Mr Garside stated that, if the Tribunal accepted his submission that this new evidence may influence its decision at the sanction stage, he would ask that the Tribunal receive a redacted version of the official ‘Record of Determinations’ of the 2015 hearing.
6. Mr Garside stated that the relevant official ‘Record of Determinations’ of the 2015 hearing had been redacted, with particular regard to the fairness of the proceedings so far as the doctor was concerned. He stated that Dr Gopalakrishnan will no doubt know what the Record of Determination contains as he attended that hearing, represented by Counsel, and was subsequently suspended.
7. Mr Garside submitted that the redactions ensure that there would be nothing before the Tribunal that could in any way be described as ‘*wrongly prejudicial*’.
8. However, Mr Garside stated that it was ‘*extremely relevant*’ that Dr Gopalakrishnan was previously suspended for similar misconduct. He stated that this was relevant to the issues of remediation, insight, and the likelihood that the doctor might commit similar misconduct in the future.
9. Mr Garside concluded by submitting that the Tribunal should receive the redacted 2015 ‘Record of Determinations’ and consider the pertinence of the document for itself.

### The Relevant Legal Principles

10. The Tribunal had regard to the relevant rules including Rules 17(2)(m) and 34(1):

*‘17(2) The order of proceedings at the hearing before a Medical Practitioners Tribunal shall be as follows—*

*[...]*

*(m) the Medical Practitioners Tribunal may receive further evidence and hear any further submissions from the parties as to the appropriate sanction, if any, to be imposed or, where the practitioner’s fitness to practise is not found to be impaired, the question of whether a warning should be imposed;’*

*‘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



11. The Tribunal first considered whether the redacted 2015 ‘Record of Determinations’ document was relevant as evidence.

#### Relevance

12. The Tribunal considered that the redacted 2015 ‘Record of Determinations’ was relevant as the 2015 Fitness to Practise hearing considered similar allegations, and found similar misconduct, as the present Tribunal.

13. Further, the Tribunal considered that the evidence adduced was relevant to the question of Dr Gopalakrishnan’s ‘good character’, which the Tribunal had noted and considered at the facts and impairment stage of these proceedings.

14. The Tribunal noted that the 2015 Fitness to Practise hearing dealt with misconduct from 2010 and 2011 which was potentially ‘historic’. However the Tribunal considered that the evidence was nonetheless relevant as the allegations considered at the 2015 hearing bore similarities to the present case, namely, that Dr Gopalakrishnan on separate occasions engaged in sexually motivated misconduct towards two female colleagues, at work, during a shift.

#### Fairness

15. The Tribunal went on to consider whether the admission of new evidence would be fair, noting that this was an issue of fairness both to the GMC and to the doctor.

16. The Tribunal considered that, were the Tribunal not to admit relevant evidence, it could potentially be criticised for not having before it all relevant evidence when considering what, if any, sanction to impose in this case.

17. The Tribunal acknowledged that Dr Gopalakrishnan was neither present nor represented at the hearing but considered that the doctor had chosen not to be present.

18. Further, the Tribunal bore in mind that, though the evidence was presented by the GMC at a late stage, the evidence itself relates to facts found to be proved on the balance of probabilities, at a hearing in 2015. The Tribunal bore in mind that Dr Gopalakrishnan knew of, and was present, at the 2015 hearing and will have been aware of the determination of that Tribunal, both in terms of its findings and the sanction imposed. The Tribunal noted that

in any event, the GMC had redacted the document '*with regard to fairness*' and proposed that the Tribunal only consider the redacted document.

Decision

19. In the circumstances the Tribunal was of the view that the redacted 2015 Record of Determinations was relevant to the hearing and that it was fair for it to be admitted into evidence at this stage.

20. The Tribunal therefore granted the GMC's application to admit the redacted 2015 Record of Determinations document pursuant to Rule 17(2)(m) and Rule 34(1), subject to the Tribunal being provided with a copy of the final page of that document with the signature of the Panel Chair unredacted.