

## PUBLIC RECORD

Dates: 11/03/2024 - 22/03/2024

Medical Practitioner's name: Dr Sunil Kumar SAHU

GMC reference number: 6054117

Primary medical qualification: MB BS 2003 Manipal Academy

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

**Summary of outcome**

Suspension, 9 months.  
Immediate order imposed.

**Tribunal:**

Legally Qualified Chair	Mr Duncan Toole
Lay Tribunal Member:	Mr Chris Weigh
Medical Tribunal Member:	Dr Deborah Brooke
Tribunal Clerk:	Miss Racheal Gill

**Attendance and Representation:**

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Stephen Brassington, Counsel, instructed by MDDUS
GMC Representative:	Mr Ian Brook, Counsel

**Attendance of Press / Public**

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

## Overarching Objective

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

## Determination on Facts - 19/03/2024

### Background

1. Dr Sahu qualified with an MBBS at Manipal Academy of Higher Education, India, in 2003. Dr Sahu moved to the UK in 2003 and obtained the Diploma of the Royal College of Obstetricians and Gynaecologists in 2007. He became a Member of the Royal College of General Practitioners in 2008. Prior to the events which are the subject of the hearing, Dr Sahu worked as a Locum GP from August 2008 to October 2009 and as a Salaried GP from October 2009 to April 2013. He then worked as a GP Principal from April 2013 to June 2016.
2. At the time of the events Dr Sahu was practising as a GP Principal at XXX Practice in XXX and XXX Practice 'the Practice' at the Health Centre in XXX, where he worked from October 2016 to August 2022 until his resignation. Dr Sahu currently works as a Locum GP in Edinburgh.
3. The events that led to Dr Sahu's hearing can be summarised as follows. On 6 January 2022, Dr Sahu asked Ms A if she would enter into an affair with him or words to that effect. Ms A was the XXX at the Practice. It is alleged that Dr Sahu's conduct on 6 January 2022 was sexually motivated and amounted to unlawful sexual harassment.
4. On 6 June 2022, Ms A had been XXX Dr Sahu had offered to demonstrate abdominal massage on Ms A to XXX. Ms A laid on the examination couch and Dr Sahu started to massage Ms A's stomach. Whilst performing a stomach massage, Dr Sahu is alleged to have touched Ms A inappropriately, without her consent, in that he moved his hands to just below her pants line when she had replied 'no' to him asking if he could move his hands lower. It is further alleged that Dr Sahu's conduct on 6 June 2022 was sexually motivated and amounted to unlawful sexual harassment.
5. On 11 August 2022, XXX. During XXX, it is alleged that Dr Sahu leaned towards Ms A's mouth and kissed Ms A on her cheek without her consent and told her that he really liked her

or words to that effect, to which she replied ‘so do I, but as a friend’. It is then alleged that he responded, with words to the effect of ‘friends with benefits?’. Once the procedure was concluded and she was leaving, Dr Sahu is alleged to have hugged Ms A without her consent; asked Ms A to lift her top up; told Ms A she had a nice bottom and proceeded to touch her bottom without her consent. Dr Sahu is then alleged to have asked whether he could see her breasts and that he proceeded to move his hand to the zip on Ms A’s top. It is further alleged that Dr Sahu’s conduct on 11 August 2022 was sexually motivated and amounted to unlawful sexual harassment.

6. Finally, it is alleged that Dr Sahu’s actions on 6 January 2022 and 6 June 2022 occurred when his registration was subject to a GMC warning for failing to maintain a professional boundary with a patient.

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

7. At the outset of the hearing, the Tribunal granted the GMC’s application, made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’), to amend paragraph 3 of the Allegation. The application was not opposed by Mr Brassington, Counsel on behalf of Dr Sahu.

8. Following the closure of the GMC’s case, Mr Brassington, Counsel on behalf of Dr Sahu, made an application under Rule 17(2)(g) of the Rules that there had not been sufficient evidence adduced in respect of paragraph 2 and paragraph 3(e) of the Allegation. The Tribunal refused the application in respect of paragraph 2 and accepted the application in respect of paragraph 3(e). The Tribunal’s full reasoning can be found in Annex A.

### The Allegation and the Doctor’s Response

9. The Allegation made against Dr Sahu is as follows:

1. On 6 January 2022 you asked Ms A if she would enter into an affair with you, or words to that effect. **Admitted and found proved**
2. On 6 June 2022, whilst performing a stomach massage, you touched Ms A inappropriately, without her consent, in that you moved your hands to just below her pants line when she had replied ‘no’ to you asking if you could move your hands lower. **To be determined**

3. On 11 August 2022 you ~~made further unwanted sexual advances towards Ms A in that you:~~

**Amended under Rule 17(6)**

- a. told Ms A that you really liked her, or words to that effect;  
**Admitted and found proved**
- b. responded with words to the effect of ‘friends with benefits’ when Ms A said ‘so do I, but as a friend/colleague’, or words to that effect, in relation to your comment in paragraph 3a; **Admitted and found proved**
- c. leaned towards Ms A’s mouth; **Admitted and found proved**
- d. kissed Ms A on her cheek without her consent; **To be determined**
- e. ~~hugged Ms A without her consent;~~  
**Successful application under Rule 17(2)(g)**
- f. asked Ms A to lift her top up ~~pointing to her bottom;~~  
**Amended under Rule 17(6)**  
**To be determined**
- g. told Ms A she had a nice bottom and proceeded to touch her bottom without her consent; **To be determined**
- h. requested to see Ms A’s breasts; **Admitted and found proved**
- i. proceeded to move your hand to the zip on Ms A’s top.  
**To be determined**

4. Your actions as set out in the following paragraphs above were sexually motivated:

- a. paragraph 1; **Admitted and found proved**
- b. paragraph 2; **To be determined**
- c. paragraph 3.  
**Admitted only in relation to paragraph 3a, 3g and 3h.**  
**To be determined in relation to paragraph 3b, 3c, 3d, ~~3e~~, 3f and 3i.**

5. Your actions as set out in the following paragraphs above constituted unlawful sexual harassment as defined in Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating

the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms A:

- a. paragraph 1; **Admitted and found proved**
  - b. paragraph 2; **To be determined**
  - c. paragraph 3.  
**Admitted only in relation to 3a, 3g and 3h.**  
**To be determined in relation to paragraph 3b, 3c, 3d, ~~3e~~, 3f and 3i.**
6. Your actions in paragraphs 1 and 2 above occurred when your registration was subject to a GMC warning for failing to maintain a professional boundary with a patient. **Admitted and found proved**

### The Admitted Facts

10. At the outset of these proceedings, through his Counsel, Mr Brassington, Dr Sahu made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

### The Facts to be Determined

11. In light of Dr Sahu's response to the Allegation made against him, the Tribunal is required to determine those paragraphs of the Allegation that have been denied by him.

### Witness Evidence

12. The Tribunal received evidence on behalf of the GMC from the following witnesses:
- Ms A, XXX, by video link. She also provided a witness statement dated 1 March 2023.
  - Mrs B, XXX at XXX Practice, by video link. She also provided a witness statement dated 7 September 2023.
  - Ms C, XXX at XXX Practice, by video link. She also provided a witness statement dated 21 August 2023.
13. 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:

- Mr D, XXX at XXX Practice, dated 15 September 2023;
- Dr E, Senior GP Partner, dated 27 February 2023 and supplemental witness statement dated 15 September 2023.

14. Dr Sahu provided his own witness statement, dated 19 February 2024 and also gave oral evidence at the hearing.

### Documentary Evidence

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

- Timeline of events notes, dated 15 August 2022, prepared by Ms A in respect of alleged incidents occurring on 6 January 2022, 6 June 2022 and 11 August 2022.
- Email dated 12 August 2022, from Mrs B to Mr D setting out her recollection of events on 6 January 2022, 6 June 2022 and 11 August 2022.
- Note prepared by Ms C on 15 August 2022 detailing her recollection of events occurring on 6 January 2022, 6 June 2022 and 11 August 2022.
- Record of discussion of investigatory meeting with Ms A, Ms C and Mr D, dated 12 August 2022.
- A number of testimonials from colleagues of Dr Sahu, dated throughout 2023.

### The Tribunal's Approach

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

17. 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 Sahu 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.

18. The Tribunal will decide the case only on the evidence heard or before it. It is entitled to draw inferences, that is to say, to come to common sense conclusions based on the evidence it accepts. An inference is a reasonable deduction drawn from the evidence, as opposed to mere conjecture or speculation.

19. In this case, Dr Sahu gave oral evidence. The Tribunal will judge that evidence by precisely the same fair standards that apply to any other evidence in the case. The Tribunal will judge the evidence of each relevant witness carefully, using common sense. We can accept the whole of the evidence of a witness, the Tribunal can reject the whole of the evidence of a witness.

20. The parties reached an agreed position with regards to the appropriate direction to be given in respect of Dr Sahu's character. Save for the warning, which is the subject of paragraph 6 of the Allegation, Dr Sahu is a man of good character with no Fitness to Practise history in respect of any sexual or dishonesty matters. Of course, good character cannot by itself provide a defence to the allegations, but it is relevant to our considerations in the following way. The doctor has given evidence and his character is a positive feature which supports his credibility. This means it is a factor which we will take into account when deciding whether we believe his evidence. What weight should be given to the doctor's good character on the facts of this particular case is a decision for the Tribunal to make.

21. When assessing the evidence given by each witness, the Tribunal should have in mind the comments of Mr Justice Warby in the case of *Dutta v GMC [2020] EWHC 1974 (Admin)*. In paragraph 38 of the judgment, Mr Justice Warby remarked that the Tribunal's reasoning process in that case, contained at least three fundamental errors of approach, as follows:

- i. in seeking to resolve the main factual dispute, the Tribunal "start[ed] with an assessment of the credibility of a witness's uncorroborated evidence about events ten years earlier, only then going on to consider the significance of unchallenged contemporary documents" [para 38]. At paragraph 42, Mr Justice Warby went on to say that the Tribunal should have "started with the objective facts as shown by the contemporaneous documents, independent of the witness, and using oral evidence as a means of subjecting these to "critical scrutiny".*
- ii. the Tribunal's assessment of the A's credibility was based largely if not exclusively on her demeanour when giving evidence.*
- iii. the way the Tribunal tested the witness evidence against the documents involved a mistaken approach to the burden of proof and the standard of proof.*

22. Mr Justice Warby went on to say in paragraph 47 that the Tribunal should have made a rounded assessment of the witness's reliability, rather than approaching each charge in isolation from the others.

23. Regarding sexual motivation, the Tribunal should consider Dr Sahu's actions in the context of the evidence before it. The cases of *Jagjivan v GMC [2017] 1 WLR* and *Haris v GMC [2021] EWCA Civ 763* considered the issue of sexual motivation. Namely, that the best

evidence of a sexual motivation could be the behaviour itself. It may be appropriate to draw an ‘irresistible’ inference of sexual motivation when the only way the behaviour could be perceived was as overtly sexual, and in the absence of any other plausible innocent explanation.

24. Finally, paragraphs 2, 3(d) and 3(g) of the Allegation state that Dr Sahu’s actions were carried out without the consent of Ms A. When considering consent, the Tribunal should consider the evidence before it and consider whether Ms A consented to the actions as described.

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

25. 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.

26. When the Tribunal considered the evidence from all witnesses including Dr Sahu, it bore in mind Dr Sahu’s character in the manner set out in the legal advice.

27. The Tribunal had read and heard evidence about the culture of ‘banter’ at the Practice. Mrs B had acknowledged in oral evidence that ‘banter’ was common within the workplace and that staff at the Practice would engage in ‘banter’, and Dr Sahu would join in. This included conversations between staff around personal matters, such as dating. In oral evidence, Ms A said that she and Dr Sahu had XXX as well as being work colleagues. She also said in her witness statement that Dr Sahu would make flirtatious comments such as calling her ‘hot’ and say that she should ‘get out and have fun’, but that she would usually laugh his comments off and wouldn’t think too much about it. Ms A found him to be flirtatious and associated that as being part of his personality and nothing more. Dr Sahu said that he had a good professional relationship XXX with Ms A.

28. It was evident to the Tribunal that Dr Sahu and Ms A were colleagues XXX, who, along with others in the Practice, participated on occasion in light-hearted conversation which sometimes extended to sexual innuendo.

29. In relation to the incident on 6 January 2022, Dr Sahu said in his witness statement that he felt very confused and conflicted in his mind about Ms A’s behaviour towards him and that his perception was that Ms A had romantic feelings for him. Therefore, in this context Dr Sahu said he wanted to clarify this ambiguity and asked Ms A if she would be interested to go out on a date with him.



30. The Tribunal noted that there was some discrepancy in oral evidence as to whether Dr Sahu used the word ‘affair’ or ‘date’, but in any event, Dr Sahu has admitted paragraph 1(a) of the Allegation in that he used words to the effect of asking Ms A whether she wanted to have an ‘affair’ with him. Dr Sahu accepted in his witness statement and cross examination that Ms A had in fact done nothing to give him the impression that she was interested in a relationship with him. He said that this was his perception at the time, and it was his fault that he misjudged this. Ms A said that she laughed nervously in response to Dr Sahu and politely said no and that he was married, XXX. In his witness statement, Dr Sahu stated that the following day, he apologised to Ms A both verbally and by writing ‘sorry’ on a piece of A4 paper. In her oral evidence, Ms A confirmed that Dr Sahu had apologised in this manner and that she had accepted his apology.

## 6 June 2022

### Paragraph 2

31. The Tribunal considered whether on 6 June 2022, whilst performing a stomach massage, Dr Sahu touched Ms A inappropriately, without her consent, in that he moved his hands to just below her pants line when she had replied ‘no’ to him asking if he could move his hands lower.

32. The Tribunal considered the accepted evidence relating to the 6 June 2022 incident. Ms A had been XXX. Dr Sahu offered to XXX. He suggested a self-massage of the abdomen and offered to demonstrate how to do this. Ms A again declined the offer XXX. Towards the end of the working day, Ms A went to a nurse’s clinical room with Dr Sahu to show him how to XXX. Whilst in the clinical room, Dr Sahu offered to show Ms A how to massage her abdomen. Ms A then laid on the examination couch and opened the top button of her trousers. It was accepted that Dr Sahu had applied gel to his hands, had tapped Ms A’s stomach and started to massage her abdomen.

33. The Tribunal noted that there was a conflict of accounts in relation to the abdominal massage. Ms A’s account was that Dr Sahu had asked Ms A if he could go further down and she told him ‘no’ since the pain wasn’t there. Ms A went on to describe that Dr Sahu then ‘proceeded to put his hand in my underwear’. This account had been written by Ms A on 15 August 2022 and had been subsequently included in her witness statement. The note of the investigation meeting on 12 August 2022 also included the same account. Ms A had also been consistent in her written and oral evidence, that she then told Dr Sahu to stop, and he did so immediately. The Tribunal did note that all three written accounts were made after the subsequent incident on 11 August 2022.

34. During Tribunal questions, it was put to Ms A that her timeline of events seemed to say that she had said ‘no’ to Dr Sahu and then he proceeded to put his hand into the brim of her underwear. Ms A responded, *“that might have been...it was so long ago...I just know what happened, how it happened, and he didn’t put his hand right in, it was the top and then when I said stop, he did stop immediately.”* The Tribunal further asked Ms A about the sequence of events and asked Ms A, *“did you say no and then he continued, or did you say no and he stopped immediately?”*. Ms A responded, *“No I said no and he stopped immediately”*.

35. Dr Sahu’s account was that he has asked Ms A if she was feeling any better from the massage, but she replied *“no”*. He went on to say that he asked Ms A if he could press firmer and deeper with the massage. Dr Sahu demonstrated in oral evidence that he went deeper with his hands and that his hands may have naturally gone lower down her abdomen, between the belly button and the upper margin of the pubic symphysis.

36. The Tribunal considered the evidence of Ms A’s colleagues who saw her demeanour following the massage with Dr Sahu. In her email to the Practice Manager on 12 August 2022, Mrs B described Ms A as ‘agitated/rattled’ when she came back XXX after the stomach massage. In Mrs B’s oral evidence, she stated that Ms A was *“noticeably flustered”*, *“agitated”* and *“rummaging around in things”*.

37. It was clear to the Tribunal that Ms A had reached a point in the stomach massage where she wanted it to stop. This was not disputed by Dr Sahu. The Tribunal also accepted that following the abdominal massage, there were independent observations of Ms A being agitated and flustered. The key issue was whether Dr Sahu had touched Ms A inappropriately without consent, by moving his hands lower after Ms A said ‘no’ to his request.

38. The Tribunal considered that Ms A was XXX had consented to the stomach massage. It considered that the evidence did not suggest that Dr Sahu’s offer of abdominal massage was anything other than a genuine attempt to help Ms A alleviate the pain that she had been experiencing during the day.

39. The Tribunal found that at some point during the abdominal massage, Ms A considered the position of Dr Sahu’s hand to be in an inappropriate position. This explained her physical state after leaving the nurses room, as observed by her colleagues.

40. In his oral evidence, Dr Sahu explained the position that his hand would have been, in order for him to carry out the stomach massage. The Tribunal considered that the whole incident would have taken place within a matter of seconds. Due to the nature of the examination being carried out, the Tribunal considered that it was likely that Dr Sahu would have touched the waistband of Ms A’s underwear when carrying out the massage. Dr Sahu

had always been consistent that he had not made a request to move his hand lower and that he had stopped immediately when told to do so.

41. In resolving the issue of whether Dr Sahu continued to move his hand lower after being told 'no', the Tribunal considered the most persuasive account of evidence to be from Ms A in her oral evidence. She was taken to her written notes and asked "*did you say no and then he continued, or did you say no and he stopped immediately?*". Ms A responded, "*No I said no and he stopped immediately*". Whilst it was evident that Ms A did not have a full recollection of the events, the Tribunal found her evidence on this point to be clear. The Tribunal considered that if Ms A had been disturbed by Dr Sahu continuing to move his hand lower, when she had told him 'no', it was not likely that she would have answered the question in this way.

42. The Tribunal concluded that Ms A had felt flustered and agitated as a result of the whole situation with Dr Sahu and was likely feeling anxious that she had found herself in a vulnerable position, during which she had to tell Dr Sahu to stop.

43. The Tribunal reminded itself that the burden of proof rests with the GMC. In all of the circumstances, the Tribunal concluded that there was insufficient evidence before it for it to find, on the balance of probabilities, that Dr Sahu inappropriately and without her consent, moved his hand just below Ms A's pant line when she had replied 'no' to his request to do so. The Tribunal was of the view that the GMC had not discharged its burden of proof.

44. Accordingly, the Tribunal found paragraph 2 of the Allegation not proved.

#### Paragraph 4(b) and Paragraph 5(b)

45. Having found paragraph 2 not proved, paragraph 4(b) and 5(b) of the Allegation fell away. The Tribunal therefore found these paragraphs not proved.

#### **11 August 2022**

46. Although the Allegation is ordered in its current form, the Tribunal noted that Dr Sahu's lean towards Ms A's mouth and the alleged kiss on the cheek was the first of the incidents in paragraph 3 of the Allegation, which occurred when Ms A underwent a minor surgical procedure conducted by Dr Sahu. After the alleged kiss on the cheek, Dr Sahu had then admitted going on to say he 'really liked' Ms A or words to that effect. She responded that she liked him too but as a friend/colleague. Dr Sahu admitted that he then said words to the effect of 'friends with benefits', though he states that he did not know the meaning of this phrase and it was not sexually motivated.

Paragraph 3(d)

47. The Tribunal considered whether on 11 August 2022 Dr Sahu kissed Ms A on her cheek without her consent.

48. In Ms A's witness statement, she stated that during XXX, she apologised to Dr Sahu if she smelt of garlic. Dr Sahu told her that he said he could not smell anything and he leaned towards her mouth as if he was about to kiss her. She said 'I managed to turn my face and then he pecked my cheek.'

49. In the written notes that Ms A made on 15 August 2022, she described the kiss as 'a peck on the cheek'. In the investigatory meeting dated 12 August 2022, Ms A had also referred to Dr Sahu kissing her on the cheek. She said in the meeting that she 'pulled back immediately'.

50. In oral evidence, Ms A said when Dr Sahu leant in towards her face, as if he was about to kiss her, she turned her face away from him.

51. It was put to Ms A in cross-examination that she had not mentioned any disquiet when her colleague Ms C entered the room towards the end of XXX, nor had she asked her colleague to stay in the room. Ms A said that the kiss did not make her feel uncomfortable, as a lot of the things he did were down to his personality, and he was like that quite often.

52. Dr Sahu denied that he kissed Ms A on the cheek. He admitted that he leaned towards her mouth, but stated that this was because Ms A was apologising for her garlic breath and blew air towards him. He admitted that he leaned towards her mouth, to reassure her that he could not smell any garlic. In oral evidence, Dr Sahu said that he would not have kissed Ms A during XXX, because he was dedicated to his work.

53. Dr Sahu did not provide an account when questioned during the investigation by the Practice in August 2022. He had simply apologised for his actions and handed in his resignation. The Tribunal however accepted that Dr Sahu had always been consistent that the kiss on the cheek did not happen.

54. The Tribunal considered that Ms A had been entirely consistent in her written notes; her account during the meeting on 12 August 2022; her witness statement and her oral evidence. Ms A's description of not feeling 'uncomfortable' when Dr Sahu kissed her on the cheek was also persuasive as it described her feelings at the time when this happened. It also

explained why Ms A did not seek any assistance from her colleague when she entered the room.

55. The Tribunal was not persuaded by Dr Sahu's assertion that he would not have acted in this way during XXX. This is because he admitted telling Ms A that he 'really liked her' or words to that effect, and then had touched her bottom and asked to see her breasts. Whilst the latter two actions happened after XXX had concluded, they were part of the same event.

56. Overall, the Tribunal preferred Ms A's clear evidence in respect of this part of the Allegation. The Tribunal therefore concluded it was more likely than not that Dr Sahu had kissed Ms A on her cheek without her consent.

57. Therefore, on the balance of probabilities, the Tribunal found paragraph 3(d) proved.

#### Paragraph 3(f)

58. The Tribunal considered whether on 11 August 2022 Dr Sahu asked Ms A to lift her top up.

59. Ms A had said in the investigatory interview on 12 August 2022 and her timeline of events notes, dated 15 August 2022, that Dr Sahu had asked her to lift her top up and she did so, thinking she had something stuck to her leggings.

60. In her witness statement, Ms A stated that as she was about to leave the consultation room, Dr Sahu had said to her 'what's that?' and she thought he was indicating there was something on her top. She said she believed that he was looking at her chest and he made a comment, but she does not remember what that comment was. Ms A makes no mention of being asked to 'lift her top up'.

61. In oral evidence, Ms A said that she had shared a hug with Dr Sahu after XXX. She thought Dr Sahu said she had something on her top.

62. Dr Sahu had denied that he had asked Ms A to lift her top up. He admitted that he said that Ms A had a nice bottom, but stated that she had voluntarily lifted her tunic from the back, 'shook her bottom' and walked across the room.

63. The Tribunal considered that Ms A was not clear and consistent on this point in her written evidence and in oral evidence. It was evident that she did not have a clear recollection, as she said in her witness statement 'I note [the written notes of 15 August] state that he also said I had a nice bottom and touched it, but due to the passage of time, I

am unable to clearly recall whether this happened’. In oral evidence, Ms A had accepted that Dr Sahu touched her bottom as part of the hug, which was inconsistent with her written notes of 15 August 2022. She was however emphatic in denying that she ‘shook her bottom’ as Dr Sahu had alleged.

64. Having already accepted that he touched Ms A’s bottom, after telling her that she had a nice bottom, the Tribunal also considered that Dr Sahu was clear in his account that he did not ask Ms A to lift her top up.

65. Looking at the evidence as a whole the Tribunal was not satisfied that it had sufficient evidence that Dr Sahu had asked Ms A to lift her top up as alleged.

66. Therefore, on the balance of probabilities, the Tribunal found paragraph 3(f) of the Allegation not proved.

#### Paragraph 3(g)

67. The Tribunal considered whether on 11 August 2022, Dr Sahu told Ms A she had a nice bottom and proceeded to touch her bottom without her consent.

68. The Tribunal noted that Dr Sahu had admitted that he told Ms A that she had a nice bottom and touched her bottom, however he denied that there was a lack of consent.

69. In her witness statement, Ms A stated that due to the passage of time, she was unable to clearly recall whether Dr Sahu told her that she had a nice bottom and proceeded to touch her bottom. In both the investigatory interview and her timeline of events notes, she said that Dr Sahu had touched her bottom when she lifted her top up. In oral evidence, Ms A accepted that Dr Sahu had moved his hands to her bottom during the hug that took place after the minor procedure.

70. In his witness statement, Dr Sahu had stated that before Ms A left the consultation room, she thanked him, and they hugged each other. This was accepted by Ms A. However, he stated that it ‘felt more like an embrace from Ms A than a hug. Whilst we embraced each other, briefly my left hand moved a bit lower and touched her bottom. I momentarily rested my hand on her bottom. It was an organic development of the embrace... At the time, I felt that Ms A did not seem to mind or be distressed with our proximity. She did not ask me to move my hand or move my hand herself. I was not clear in my mind what that all meant.... To confirm my doubts and check her stance again, I said that she had a nice bottom’.

71. During re-examination, Dr Sahu was asked by the Tribunal what he meant by an “organic development” of an embrace. He said that it was “like a stimulating feeling when you hug someone close, when you embrace someone, it triggered a sexual feeling. It wasn’t like a simple hug where you do it with a friend, it was more like an embrace with which you would do with a partner.” He accepted that in his mind, the hug was more overtly sexual, but he regrets it.

72. Ms A was asked in cross-examination whether she asked Dr Sahu to move his hand when he placed it on her bottom. She answered, “it wasn’t for long and I moved to get away”. Whilst she could not recall the full aspects of the hug, the Tribunal found this to be clear evidence that Ms A did not consent to her bottom being touched. It is also consistent with her written notes, where she describes the touching of her bottom and states ‘I moved towards the door’.

73. The Tribunal therefore concluded it was more likely than not that Dr Sahu acted in the way as alleged without Ms A’s consent.

74. Therefore, on the balance of probabilities, the Tribunal found paragraph 3(g) proved.

#### Paragraph 3(i)

75. The Tribunal considered whether on 11 August 2022 Dr Sahu proceeded to move his hand to the zip on Ms A’s top.

76. The Tribunal noted that in his witness statement, Dr Sahu had admitted that he asked Ms A if he could see her breasts but said ‘at no point did I proceed to move my hand to her zip top’.

77. In the investigatory interview and her timeline of events notes, Ms A had said that Dr Sahu had asked her if he could see her breasts and proceeded to move his hand to her zip top, but she moved away quickly. She said she left the office in a state of shock. She repeated this account in her witness statement ‘Dr Sahu was behind me when he asked whether he could see my breasts. He then came to the side of me and touched the zip on the top of my tunic. I can confirm he did not touch my breasts, and I moved away quickly in a manner where he took his hands off my zip. Although I do not remember my reaction, I do recall saying words to the effect of what he did as being ‘totally inappropriate’.

78. Ms A maintained in oral evidence that Dr Sahu had put his hand on the zip of her tunic. She told the Tribunal that this was “the final straw for me” and she clearly recollected saying to Dr Sahu “whoah that was completely inappropriate”. She went on to say that she

asked the nurse if she heard any of the exchange by the door, as she was standing in close proximity to the nurse's room.

79. In his oral evidence, Dr Sahu described the distance from Ms A at the time he made the request to see her breasts. He demonstrated being around three to four metres away from Ms A, who was standing by the door, with her hand on the door handle. His evidence was that he was not standing near to Ms A at the point he asked to see her breasts and therefore did not touch the zip on her top. Given the distance, Dr Sahu was asked what his expectation was when he made his request. He answered by demonstrating that she would open her top and expose her breasts.

80. The Tribunal noted that Dr Sahu had said in his oral evidence that he was not near enough to Ms A in the consultation room to touch her zip. The Tribunal noted Dr Sahu's account in oral evidence that he was inviting Ms A to open her top and show her breasts. In Ms A's written timeline of events, she described that she 'moved towards the door he then followed me and asked if he could see my breasts and touched the zip on my tunic.' The Tribunal preferred Ms A's evidence as it was unlikely that Dr Sahu would have made this intimate request to see her breasts when Ms A was such a distance away.

81. It was satisfied that Ms A was clear in both her written and oral evidence about Dr Sahu touching her zip. She had been clear that this was the final straw for her and in oral evidence, was able to repeat her words to Dr Sahu in the same way that she described that she did on 11 August 2022. Ms A had also been very clear that Dr Sahu at no point made contact with her breasts. The Tribunal found these elements to be particularly persuasive.

82. The Tribunal concluded it was more likely than not that Dr Sahu had moved his hand to the zip on Ms A's top.

83. Therefore, on the balance of probabilities, the Tribunal found paragraph 3(g) proved.

#### Paragraph 4(c)

84. The Tribunal considered whether Dr Sahu's actions as set out in paragraph 3 were sexually motivated.

85. The Tribunal was mindful that Dr Sahu admitted that his actions in paragraphs 3(a), 3(g) and 3(h) of the Allegation were sexually motivated. The Tribunal was then tasked to consider whether the remaining matters found proved in sub-paragraphs 3(b), 3(c), 3(d) and 3(i) of the Allegation were sexually motivated.



3(b)

86. While Dr Sahu admitted he had responded with ‘friends with benefits’ or words to the effect to Ms A when she said, ‘so I, but as a friend/colleague’, he asserted that he did not have a full understanding of the actual connotations of the comment at the time. Therefore, his actions could not be sexually motivated.

87. In his witness statement, he stated that although he has been living in the UK for over 20 years, his first language is Hindi and there was no sexual connotation in the direct Hindi translation. He stated that his understanding of ‘friends with benefits’ meant that she could confide in him regarding her health issues and personal relationships at home, and that he would accommodate her for XXX as an ‘add on’. He added that there was ‘no sexual connotation intended whatsoever’.

88. During his oral evidence, Dr Sahu said that he had never previously used the phrase ‘friends with benefits’ and he had only seen it “*written*” as it was the title of a film on Netflix. He initially explained that when he saw a picture of the film on Netflix, that gave him the impression of a sort of “*sexual/romantic meaning*” because the picture contained a woman and a man. He later said that he did not know from the Netflix page that the phrase had a sexual meaning, because he did not read the description of what the film was about. He also told the Tribunal in oral evidence that the first time he realised that the phrase had a sexual context was when he first received the GMC allegations. He said that he showed the allegations to his wife and said to her that he did not understand how ‘friends with benefits’ could be an allegation. He said his wife was shocked as knew what the phrase ‘friends with benefits’ meant and told him that it meant ‘asking to have sex with you’.

89. In her written notes made on 15 August 2022, Ms A said that Dr Sahu used the phrase ‘friends with benefits’. She stated that her reply was to tell him that he has a wife and that it was not nice to say that. She explained that Dr Sahu went on to say he loved his wife, but ‘it is like a diet, you need a change’.

90. The Tribunal also noted that Dr Sahu then went on to say in his witness statement that Ms A had said that XXX gets annoyed with XXX as they frequently referred to Ms A as a ‘MILF’.

91. In determining whether the words used by Dr Sahu were sexually motivated, the Tribunal considered the written notes made by Ms A in the days following 11 August 2022 to be particularly persuasive. Dr Sahu does not accept saying ‘it is like a diet, you need a change’. The Tribunal considered that it was more likely than not that the phrase was used, given that it would be an unusual comment to misremember or to be mistaken about. The

phrase 'it is like a diet, you need a change', would only have been said in the context of the initial words having a sexual meaning. If it had the meaning attached to it as explained by Dr Sahu, then it would be difficult to understand what would have been meant by the words.

92. The Tribunal also considered that it was unlikely that Dr Sahu knew the meaning behind the term 'MILF' but did not know the meaning of 'friends with benefits'. Further given the context that Dr Sahu had told Ms A that he really liked her and his initial evidence about his impression of the film with the same name on Netflix, the Tribunal did not accept he did not know what 'friends with benefits' meant.

93. The Tribunal therefore was satisfied that Dr Sahu knew that 'friends with benefits' had sexual connotations and it found his actions to be sexually motivated.

3(c)

94. The Tribunal accepted the evidence that Ms A had apologised for her garlic breath during the procedure and Dr Sahu had leaned in towards her mouth. This part of the evidence was not contentious.

95. The Tribunal considered that it was common ground that there had been a conversation about Ms A having garlic breath.

96. Ms A said that he leaned in towards her mouth as if he was about to kiss her. Dr Sahu has always maintained that he leant in towards her mouth to smell her breath, as Ms A had continued to apologise for the possible smell.

97. The Tribunal concluded that Dr Sahu's explanation as to why he leaned in towards the mouth of Ms A, to be plausible and reasonable. The Tribunal concluded that the kiss on the cheek that followed, was an opportunistic act that took place thereafter. In those circumstances, the Tribunal found on the balance of probabilities that Dr Sahu leaning towards Ms A's mouth was not sexually motivated.

3(d)

98. The Tribunal considered that 'a peck on the cheek' as initially described by Ms A wouldn't necessarily always amount to sexual motivation. It also noted that Dr Sahu said in oral evidence that he would not try to kiss someone while conducting a surgical procedure.

99. However, given the context that Dr Sahu had admitted he told Ms A that he 'really liked her' and that he had previously asked Ms A if she would like to have an affair with him,

the Tribunal considered it a reasonable inference that Dr Sahu's kiss on Ms A's cheek was sexually motivated.

3(i)

100. The Tribunal considered that Dr Sahu had moved his hand towards the zip of Ms A's top immediately after saying 'can I see your breasts'. The Tribunal was satisfied on the balance of probabilities that moving his hand towards Ms A's zip top was sexually motivated. This was especially the case in light of the other conduct already found proved in the paragraphs above. The Tribunal considered that Dr Sahu's conduct was in pursuit of a relationship with Ms A.

101. Therefore, on the balance of probabilities, the Tribunal concluded that Dr Sahu's behaviour in relation to 3(b), 3(d) and 3(i) was sexually motivated and it found those subparagraphs of the Allegation proved.

102. The Tribunal determined that Dr Sahu's actions in relation to 3(c) were not sexually motivated and therefore found this not to be proved.

#### Paragraph 5(c)

103. The Tribunal considered whether Dr Sahu's actions as set out in paragraphs 3 constituted unlawful sexual harassment as defined in Section 26(2) of the Equality Act 2010, in that he engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms A.

104. The Tribunal was mindful that Dr Sahu admitted that his actions, in respect of paragraph 3(a), 3(g) and 3(h) of the Allegation, constituted unlawful sexual harassment. He said that he did not think his actions were unwanted at the time but had now acknowledged that they were unwanted in hindsight.

105. The Tribunal accepted that there was light hearted conversation shared between colleagues at the Practice and flirtatious comments were made by Dr Sahu to Ms A which she 'laughed off'.

106. However, the Tribunal considered that Dr Sahu's 'friends with benefits' comment on 11 August 2022 had clear sexual connotations and the Tribunal had found that the comment made was sexually motivated. It considered that Dr Sahu had made similar propositions to Ms A previously. It noted that Dr Sahu had admitted that in January 2022, he had asked Ms A

if she would have an affair with him and told her that he found her very attractive. On both occasions in January and August 2022, Ms A told him that he had a wife, XXX, and in August she also said that she would ‘go mad’ if XXX. The Tribunal was mindful that Dr Sahu’s repeated conduct to put Ms A in the position where she had to reject him, had the effect of creating an intimidating, humiliating and degrading environment for Ms A in the workplace.

107. The Tribunal found that Ms A had turned her head when Dr Sahu leaned to kiss her, demonstrating that his behaviour was unwanted. She had also clearly signalled to Dr Sahu that moving his hand to the zip on her top to be completely inappropriate. Ms A told the Tribunal that she considered this particular act to be “*the last straw*” for her following Dr Sahu’s overall behaviour towards her, and things had happened that “*got out of hand that needed to stop*”. Ms A’s colleagues also noticed that Ms A was looking distressed following the incident with Dr Sahu on 11 August 2022. In her witness statement, Ms A said she felt that Dr Sahu’s conduct had left her ‘feeling betrayed and angry’. The Tribunal considered that this was evidence of unwanted behaviour of a sexual nature.

108. The Tribunal found Dr Sahu’s unwanted conduct constituted unlawful sexual harassment in relation to 3(b), 3(d) and 3(i), which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. It therefore determined those sub-paragraphs of the Allegation proved.

109. The Tribunal determined that Dr Sahu’s action in relation to 3(c) did not constitute unlawful sexual harassment and therefore found not to be proved.

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

110. The Tribunal has determined the facts as follows:

1. On 6 January 2022 you asked Ms A if she would enter into an affair with you, or words to that effect. **Admitted and found proved**
2. On 6 June 2022, whilst performing a stomach massage, you touched Ms A inappropriately, without her consent, in that you moved your hands to just below her pants line when she had replied ‘no’ to you asking if you could move your hands lower. **Not proved**
3. On 11 August 2022 you ~~made further unwanted sexual advances towards Ms A in that you:~~  
**Amended under Rule 17(6)**

- a. told Ms A that you really liked her, or words to that effect;  
**Admitted and found proved**
  - b. responded with words to the effect of ‘friends with benefits’ when Ms A said ‘so do I, but as a friend/colleague’, or words to that effect, in relation to your comment in paragraph 3a; **Admitted and found proved**
  - c. leaned towards Ms A’s mouth; **Admitted and found proved**
  - d. kissed Ms A on her cheek without her consent;  
**Determined and found proved**
  - e. ~~hugged Ms A without her consent;~~  
**Successful application under Rule 17(2)(g)**
  - f. asked Ms A to lift her top up ~~pointing to her bottom;~~  
**Amended under Rule 17(6)**  
**Not proved**
  - g. told Ms A she had a nice bottom and proceeded to touch her bottom without her consent; **Determined and found proved**
  - h. requested to see Ms A’s breasts; **Admitted and found proved**
  - i. proceeded to move your hand to the zip on Ms A’s top.  
**Determined and found proved**
4. Your actions as set out in the following paragraphs above were sexually motivated:
- a. paragraph 1; **Admitted and found proved**
  - b. paragraph 2; **Not proved**
  - c. paragraph 3.  
**Admitted only in relation to paragraph 3a, 3g and 3h**  
**Determined and found proved in relation to 3b, 3d and 3i**  
**Not proved in relation to 3c**
5. Your actions as set out in the following paragraphs above constituted unlawful sexual harassment as defined in Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms A:

- a. paragraph 1; **Admitted and found proved**
  - b. paragraph 2; **Not proved**
  - c. paragraph 3.  
**Admitted only in relation to 3a, 3g and 3h**  
**Determined and found proved in relation to 3b, 3d, and 3i**  
**Not proved in relation to 3c**
6. Your actions in paragraphs 1 and 2 above occurred when your registration was subject to a GMC warning for failing to maintain a professional boundary with a patient. **Admitted and found proved**

#### Determination on Impairment - 20/03/2024

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

#### The Evidence

112. The Tribunal has taken into account all the evidence received during the facts stage of the hearing. In addition, the Tribunal received a further bundle which was submitted on behalf of Dr Sahu. This included:

- A reflective statement prepared by Dr Sahu, undated.
- Medical Appraisal Report, dated 8 December 2023.
- Multisource Feedback from Lomond Practice, dated August 2022 and Crew Medical Centre, dated October/November 2023.
- Care Measure Report and Patient Feedback Forms, dated April 2023.
- Compliments from patients, dated 2023.
- Thank you card from medical student, dated 14 April 2023.
- Leaving card from Springwell Medical Centre, dated February 2023
- Leaving card and email from Crewe Medical Centre, dated March 2024.
- Letter from Dr F (Senior Counselling Psychologist), dated November 2023.
- CPD Certificates:
  - Professional Boundaries Course for Clinicians, dated 15 October 2022.
  - Professional Boundaries in Practice, dated 3 November 2022.
  - Probity and Ethics, dated 2 April 2023.

- How to Ensure a Mistake or Misconduct will not be repeated in the future, dated 18 April 2023.
- Professionalism- Fulfilling your Duty as a Doctor, dated 29 August 2023.
- Dr G's Course, dated 4 December 2023 and cover letter.

## Submissions

### On behalf of the GMC

113. Mr Brook submitted that Dr Sahu's actions amounted to serious misconduct and that his fitness to practise was currently impaired by reason of his misconduct. He submitted that finding impairment was a two-stage process. The Tribunal must find that Dr Sahu's actions amounted to serious misconduct before going on to consider whether he is currently impaired.

114. When outlining the approach that the Tribunal should take in respect of misconduct, Mr Brook referred the Tribunal to the following cases: *Roylance v The General Medical Council (No 2)*: PC 24 Mar 1999; *Mallon v General Medical Council [2007] ScotCS CSIH 17*; *Nandi v GMC [2004] EWHC 2317*; *R (Remedy UK Ltd) v GMC [2010] EWHC 1245 (Admin)* and *R (Aga) v GMC [2012] EWHC 782 (Admin)*.

115. Mr Brook submitted that Dr Sahu's actions amounted to serious misconduct because they were sexually motivated and constituted unlawful sexual harassment.

116. Mr Brook referred to the relevant considerations for the Tribunal when considering impairment, as set out by Dame Janet Smith in her 5th Shipman Report. He submitted that in this case, Dr Sahu had brought the reputation of the profession into disrepute and had breached fundamental tenets of the profession. Mr Brook accepted that there were no patient safety concerns and that this was not a case involving dishonesty.

117. In relation to impairment, Mr Brook cited the relevant principles in the following cases: *Cohen v General Medical Council [2008] EWHC 581 (Admin) (19 March 2008)*; *Yeong v General Medical Council [2009] EWHC 1923 (Admin)* and *CHRE v NMC and Grant [2011] EWHC 927 (Admin)*. Namely, he submitted that there will be occasions where impairment must be found in order to uphold standards and maintain public confidence in the profession.

118. Mr Brook referred the Tribunal to Dr Sahu's remediation bundle, which provides evidence of his insight and reflections. He submitted that the Tribunal may determine that Dr Sahu has taken extensive steps to remediate his misconduct. However, he submitted that the

need to both uphold professional standards and maintain confidence in the profession must take precedence, even when the doctor has apparently remedied any failings (pursuant to the approach in *Cohen* and *Yeong*).

On behalf of Dr Sahu

119. Mr Brassington submitted that if it were a matter capable of being admitted, Dr Sahu would concede that his fitness to practice was currently impaired.

120. Mr Brassington submitted that the Tribunal will have little difficulty in determining serious misconduct in respect of Dr Sahu's behaviour at paragraph 3 of the Allegation. He submitted that Dr Sahu's actions on 11 August 2022 were a serious departure from what the public would expect of a registered medical practitioner.

121. Mr Brassington invited the Tribunal to consider whether paragraph 1 of the Allegation represented a stand-alone act of misconduct. He submitted that Dr Sahu's conduct was morally reprehensible, given his marital status. However, it was a matter for the Tribunal to consider whether the propositioning of a colleague for either an 'affair' or 'date', with a view to it becoming a sexual relationship, can be properly characterised as serious professional misconduct.

122. Mr Brassington submitted that once the initial proposition on 6 January 2022 was made and then rejected, what then followed in August 2022 was a plainly inappropriate course of conduct.

123. Turning to the question of impairment, Mr Brassington submitted that the misconduct was capable of being remedied and Dr Sahu had done so.

124. Mr Brassington submitted that Dr Sahu has apologised for his behaviour from the outset. He expressed his apologies to Ms A, to the Practice, and to the wider public and the profession for his behaviour. He submitted that Dr Sahu plainly has insight into why he conducted himself in the way he did. Mr Brassington acknowledged that the Tribunal would need to consider Dr Sahu's apology and insight in light of the conduct that had been found proved.

125. He also referred the Tribunal to Dr Sahu's reflective statement, which detailed the work undertaken with his psychologist and Dr G. Mr Brassington submitted that this process has been a salutary and shocking experience for him.



126. Mr Brassington then highlighted to the Tribunal a number of extracts contained within Dr Sahu's remediation bundle. In particular, Dr Sahu's 2023 Medical Appraisal Report and Multi Source Feedback Reports dated August 2022 and October/November 2023. He submitted that in August 2022, colleagues had described Dr Sahu as treating them with respect and being easy to work with and responsive. In October/November 2023, Dr Sahu was scored universally as 'Excellent' on 'Working effectively with colleagues'.

127. Mr Brassington referred to an email sent to Dr Sahu by the Crewe Medical Centre's Practice Manager in March 2024 and to the generous comments in the card given to Dr Sahu by his colleagues on leaving that surgery. He also referred to patient feedback, which included a message from an anonymised patient who said 'please please keep Dr Sahu...fantastic, caring, attentive, lovely man. We need more doctors like him'.

128. Mr Brassington submitted that this material was powerful evidence to demonstrate Dr Sahu's behaviour and the work that he has done arising from this case.

129. Mr Brassington invited the Tribunal to consider the report from Dr Sahu's psychologist, when considering the risk of repetition. He submitted that the prospect of the conduct being repeated was vanishingly low. He submitted that Dr Sahu had independently engaged a psychologist at an early stage of this process (September 2022) and began psychological therapy sessions. The report from Dr F describes that Dr Sahu appears to clearly understand the reasons behind his distorted professional boundaries at the time of the incident and that he has developed good insight into his actions and their consequences.

130. Mr Brassington acknowledged that the public interest was clearly engaged in this case. Dr Sahu has brought the profession into disrepute and has arguably breached fundamental tenets of the profession, which meant that a finding of impairment was right and proper. However, given the evidence, he submitted that Dr Sahu is a man who has remediated and shown insight and remorse.

### **The Tribunal's approach**

131. The Tribunal had regard to the advice given by the Legally Qualified Chair which is a matter of record. The Legally Qualified Chair set out the approach to be taken by the Tribunal, referring to relevant principles and legal judgments from higher courts.

132. 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.

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

134. The Tribunal must determine whether Dr Sahu's fitness to practise is impaired today, taking into account Dr Sahu'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.

135. The Tribunal had regard to the case of *Nandi v General Medical Council [2004] EWHC 2317 (Admin) (04 October 2004)* where misconduct was described as:

*'a falling short by omission or commission of the standards of conduct expected among medical practitioners, and such falling short must be serious". The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners.'*

136. The Tribunal also had regard to case of *CHRE v NMC & Paula Grant [2011] EWHC 927 (Admin)*, which cites Dame Janet Smith in her Fifth Shipman report, where she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise:

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

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

137. In respect of the above extract, it was accepted that (a) and (d) did not apply in this case.

138. In considering whether Dr Sahu's fitness to practise is currently impaired, the Tribunal had regard to the criteria as set out in *R (Cohen) v GMC [2008] EWHC 581 (Admin)* which can

be summarised as follows; the Tribunal should consider whether the conduct is remediable, whether it has been remedied and the likelihood of it being repeated in the future.

## The Tribunal's Determination on Impairment

### Misconduct

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

140. The Tribunal firstly considered paragraph 1 of the Allegation, namely asking Ms A whether she would enter into an affair, or words to that effect.

141. It was mindful that Dr Sahu has now recognised, with the benefit of hindsight, that his actions were unwanted and that his actions constituted unlawful sexual harassment. In Dr Sahu's witness statement, he said that he felt very confused and conflicted in his mind about Ms A's behaviour towards him and that his perception was that Ms A had romantic feelings for him. He said he wanted to clarify the ambiguity and asked Ms A if she would be interested to go out on a date with him. He has admitted that this request was sexually motivated. The Tribunal had no reason to doubt Dr Sahu's explanation as to why he asked Ms A to enter into an affair with him or words to that effect.

142. Whilst the Tribunal did not condone Dr Sahu's actions in asking Ms A to enter into an affair or words to that effect, it did not conclude that this amounted to serious professional misconduct. The background was that Dr Sahu felt confused about the feelings that he and Ms A had and he was seeking to clarify the situation. In those circumstances, the Tribunal did not consider that his actions on 6 January 2022 amounted to serious misconduct.

143. The Tribunal next considered the facts found proved in respect of paragraph 3 of the Allegation. The incident on 11 August 2022 began with Dr Sahu kissing Ms A on her cheek without her consent. He then told Ms A that he 'really liked' her or words to that effect, to which she responded that she liked him too but as a friend/colleague. Dr Sahu admitted that he then responded to Ms A saying 'friends with benefits'.

144. It was apparent that despite Ms A rejecting his advances, Dr Sahu continued his course of conduct, by saying that she had a nice bottom and touched her bottom without her consent. He asked to see her breasts. The Tribunal also found that Dr Sahu proceeded to move his hand to the zip on her top.

145. The Tribunal was mindful that Dr Sahu’s behaviour towards Ms A should be viewed in the context that there was an inherent power imbalance in their relationship. This was accentuated by the fact earlier during these events, Dr Sahu had been conducting a minor surgical procedure on Ms A’s leg, and so she was additionally vulnerable.

146. The Tribunal had regard to Good Medical Practice (2013) (GMP), in particular, paragraph 36:

*36 You must treat colleagues fairly and with respect.*

147. Dr Sahu’s conduct at paragraph 3 of the Allegation as found proved, was sexually motivated and constituted unlawful sexual harassment. The Tribunal found that there had been a clear breach of paragraph 36 of GMP, as he did not treat Ms A fairly, or with respect. It considered that Dr Sahu had continued with a course of conduct that was unwanted. His actions were disturbing and unacceptable.

148. The Tribunal has concluded that Dr Sahu’s conduct on 11 August 2022, fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to serious misconduct. Therefore, the Tribunal found Dr Sahu’s actions amounted to serious misconduct.

### Impairment

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

150. It considered that Dr Sahu’s conduct had brought the medical profession into disrepute. Further, by engaging in unwanted conduct of a sexual nature in circumstances where a power imbalance existed, he had breached one of the fundamental tenets of the profession.

151. The Tribunal considered whether Dr Sahu’s misconduct was capable of being remediated, has been remediated, and whether it was likely to be repeated. In so doing, it considered whether there was evidence of Dr Sahu’s insight into his misconduct and any steps taken by him to remediate it.

152. When the allegations were raised with Dr Sahu on 15 August 2022, he offered his unreserved apology to Ms A and to the Practice. He offered his immediate resignation in an email on the same day, as he considered that his position as a GP Partner was no longer

tenable. He had subsequently repeated the apology in his witness statement dated 19 February 2024 and in oral evidence.

153. The Tribunal carefully considered Dr Sahu's reflective statement, which had been finalised after he had listened to Ms A's oral evidence. It noted that Dr Sahu had reflected deeply on the impact his actions had on Ms A, his colleagues at the Practice, the GMC and the wider public. It considered that Dr Sahu understood what he did was wrong and why it was wrong. He accepted that he should not have acted in this manner. In particular, he had reflected on the oral evidence given by Ms A, when she said that she had considered looking for another job, due to Dr Sahu's behaviour. In his reflective statement, Dr Sahu said:

'I was shocked to hear how my actions have made her feel. I was totally unaware of the fact that Ms. A even considered leaving the job because of my behaviour. I now fully understand why Ms. A feels completely betrayed and angry. I understand that not only have I broken the foundation of our professional relationship based on mutual respect and trust, which was expected of me, but I also failed to ensure the wellbeing of XXX at work'.

154. The Tribunal found his repeated expressions of regret and remorse to be sincere, credible and genuine.

155. The Tribunal also considered that Dr Sahu had demonstrated a significant development of his understanding of the true nature of his relationship with Ms A in the important context that he was a GP Principal at the Practice, and she was XXX. It considered that Dr Sahu has reflected on the power imbalance between himself and Ms A, which he had not appreciated at the time. It was satisfied that Dr Sahu now fully understands the gravity of his misconduct and has a deeper understanding of its impact on his personal standing as a registered doctor and its potential impact on public trust and confidence.

156. In addition to the reflective statement, the Tribunal considered the additional extensive evidence of remediation. It noted that Dr Sahu had undertaken relevant training, including CPD courses on Professional Boundaries, and Ethics and Probity. In addition, on 4 December 2023, Dr Sahu attended an in-person one-to-one training course with Dr G on Medical Ethics. This course had been tailored to consider the circumstances of Dr Sahu's case. Within Dr Sahu's reflections, he describes how this session enabled him to fully appreciate the power differential between him and Ms A and how his offer to help Ms A with XXX 'snowballed' into a significant boundary violation.

157. The Tribunal also bore in mind that Dr Sahu has sought professional help XXX. This commenced only one month after the events of 11 August 2022, which demonstrated that Dr

Sahu had taken immediate steps to reflect on his behaviour. During these XXX sessions, Dr Sahu has discussed the circumstances of his case to understand his vulnerabilities, develop insight into his behaviour and put strategies in place to prevent similar behaviours.

158. The Tribunal also noted that Dr Sahu has also joined a mentorship program for General Practitioners by NHS Lothian for ongoing support and to reflect on any potential future situation by critically evaluating his behaviour and thinking.

159. The Tribunal also took into account the evidence of numerous positive items of feedback from Dr Sahu's colleagues, both in August 2022 and in October/ November 2023. The Tribunal also noted the comments made by his patients, which included 'we need more doctors like him'. It noted that Dr Sahu's score in his patient feedback 2023 forms compared favourably to the benchmark scores of his peers. It was clear to the Tribunal that Dr Sahu had continued to work to a high clinical standard following his departure from the Practice and that colleagues and patients had found him to be respectful. There has been no repetition of his misconduct.

160. The Tribunal was impressed with the substantial body of remedial work from Dr Sahu. It considered that Dr Sahu has made proactive and targeted steps by way of remediation which demonstrated a substantial shift in his attitudes.

161. The Tribunal accepted that Dr Sahu has carefully reflected on the consequences of his actions. It took the view that his written reflections were detailed and thorough, and it was satisfied that there was extensive evidence of remediation. Therefore, it concluded that there was a very low risk of Dr Sahu repeating his behaviour.

162. Notwithstanding its conclusions on Dr Sahu's high level of insight, substantial remediation efforts and a very low risk of repetition, the Tribunal considered that a reasonable and well-informed member of the public would expect a finding of impairment to be made in this case, both to mark the seriousness of the misconduct and to uphold proper standards across the medical profession. In addition, it considered that public confidence would be undermined if a finding of impairment were not made in this case.

163. Furthermore, Dr Sahu's conduct was serious as his actions had brought the medical profession into disrepute and breached a fundamental tenet of the profession.

164. Overall, the Tribunal considered that a finding of impairment by reason of misconduct was necessary in this case to uphold the second and third limbs of the overarching objective, namely, to promote and maintain public confidence in the medical profession, and to

promote and maintain proper professional standards and conduct for members of the profession.

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

#### **Determination on Sanction - 22/03/2024**

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

#### **The Evidence**

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

#### **Submissions**

##### On behalf of the GMC

168. Mr Brook submitted that the appropriate and proportionate sanction in this case was one of erasure.

169. Mr Brook submitted that in addition to Dr Sahu's breach of paragraph 36 of GMP, paragraphs 53 and 65 were also relevant, These paragraphs state:

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

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

170. He submitted that paragraph 53 of GMP was relevant because at the time of the minor procedure on 11 August 2022, Ms A was XXX.

171. Mr Brook drew the Tribunal's attention to its impairment determination. The Tribunal found that Dr Sahu had brought the medical profession into disrepute and had breached a fundamental tenet of the profession. It found a power imbalance in that Dr Sahu was a partner in the Practice and Ms A was an employee, but that Dr Sahu had reflected on that power imbalance. It found that Dr Sahu had carefully reflected on the consequences of his actions and there was extensive evidence of remediation and that there was a very low risk of him repeating his behaviour.

172. Although the Tribunal found that there was a very low risk of repetition due to Dr Sahu's remediation, Mr Brook submitted that sexual misconduct was hard to remediate. He stated that Dr Sahu had previously received a warning for failing to maintain a professional boundary, although he accepted that the actions that led to the warning were not sexually motivated.

173. Mr Brook submitted that despite Ms A rejecting his advances, Dr Sahu had told her that she had a nice bottom and touched her bottom without her consent. Dr Sahu also made the 'shocking request' to see Ms A's breasts. He submitted that this was sexually motivated behaviour that constituted unlawful sexual harassment of a colleague and a patient.

174. Mr Brook referred the Tribunal to paragraphs 108 and 109 (a), (b), (d), (e) and (f) of the Sanctions Guidance (November 2020) ('the SG') on erasure, which he submitted were of particular relevance:

*109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).*

*a A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.*

*b A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.*

*c ...*

*d Abuse of position/trust*

*e Violation of a patient's rights/exploiting vulnerable people*

*f Offences of a sexual nature, including involvement in child sex abuse materials*

*g ... j*

175. He submitted that these were serious departures from the principles set out in GMP, and that while there was no risk to patient safety, sexual misconduct with a colleague and a patient was fundamentally incompatible with being a doctor. He submitted that there was a



reckless disregard, as opposed to a deliberate disregard, of the principles set out in GMP. He referred to paragraph 65 of GMP and submitted that there was an abuse of a position of trust.

176. Further, Mr Brook submitted that 109(e) 'exploiting vulnerable people' was relevant in this case. He submitted that the Tribunal had referred to Ms A being vulnerable because Dr Sahu had conducted a minor procedure on her leg. He submitted that there was a power imbalance in that Ms A was a more junior colleague and a patient at the time (albeit temporarily registered) and in those circumstances, there was a degree of vulnerability in respect of Ms A.

177. The Tribunal observed what appeared to be a change in the GMC's presentation of the case involving Ms A, in that there was now a particular emphasis being placed on her status as a 'patient'. In these circumstances, Mr Brook was asked to clarify the GMC's position regarding risk to patient safety. Mr Brook confirmed that the GMC did not suggest that there was a risk to patient safety 'in the ordinary sense', as this was not a case involving clinical failings.

#### On behalf of Dr Sahu

178. Mr Brassington submitted that when considering the appropriate sanction, the Tribunal must do no more than necessary to achieve the statutory purpose. He submitted that the purpose of sanction was not to punish Dr Sahu. He submitted that the necessary and proportionate sanction in this case was one of suspension and not erasure.

179. Mr Brassington referred to the submissions of the GMC. He submitted that for the GMC to characterise this case as one of a doctor/patient relationship so late in proceedings, seemed unfair. There was no specific allegation in respect of Ms A being a patient, it had not been addressed in the evidence and it had not featured during the proceedings until today. He submitted that the Tribunal had found that the relationship between Dr Sahu and Ms A was one of colleagues and XXX. He submitted that Ms A was only temporarily registered for a matter of hours to allow the procedure to be conducted. Therefore, he did not accept that paragraph 53 of GMP was relevant in this case and submitted that it would be wrong for the Tribunal to approach the case in such a way at this stage.

180. Mr Brassington submitted that the misconduct on 11 August 2022 related to a single event involving a colleague on a single day. There was no evidence to demonstrate that Dr Sahu has behaved in a similar way with any other colleague. Dr Sahu was extremely well regarded and supportive of his colleagues. He submitted that Dr Sahu's actions were entirely

out of character and that Dr Sahu was not a ‘habitual harasser’ of colleagues, rather he was someone who had conducted himself very poorly in respect of one colleague.

181. Mr Brassington referred to the mitigating features in this case and submitted that Dr Sahu has complete insight. Dr Sahu has accepted that he should have behaved differently, has shown empathy and understanding, and has offered profuse apologies to Ms A. He submitted that Dr Sahu took timely steps to remediate. He reminded the Tribunal that Dr Sahu engaged with his psychologist almost immediately after the events of August 2022.

182. Mr Brassington submitted that Dr Sahu adheres to important principles of good practice, as evidenced in his last appraisal and multi-source feedback from different practices. He submitted Dr Sahu is highly regarded and plainly a good doctor with no previous fitness to practise history. He did acknowledge that Dr Sahu has a warning for a boundary violation, albeit not in respect of sexually motivated conduct.

183. Mr Brassington submitted that at the time of these events, Dr Sahu was isolated, working away from home for a long period of time during COVID-19, and Dr Sahu accepted that he began to lose sight of his professional boundaries. He submitted that Dr Sahu has continued to work since leaving the Practice and there has been no suggestion of any repetition of his behaviour. He submitted that Dr Sahu has remediated his behaviour to the extent that the Tribunal found that his actions were very unlikely to be repeated.

184. Mr Brassington invited the Tribunal to consider the various testimonials in support of Dr Sahu from his colleagues, including Ms H, Ms I and Ms J (listed below). He stated that Dr Sahu was also described as a diligent clinician, a thorough team player, reliable and approachable. He is well liked and respected as a member of the GP community.

185. In respect of aggravating factors, Mr Brassington conceded that Dr Sahu has failed to work collaboratively with colleagues and plainly made Ms A feel uncomfortable. Dr Sahu has acknowledged that he abused his professional position, and he now recognises the power imbalance at the time of the incident with Ms A. Dr Sahu had XXX which included frivolous conversation which sometimes ‘descended’ into sexual innuendo, and he had lost sight of the hierarchy within the Practice. Mr Brassington did however oppose any suggestion that Ms A should be classed as a ‘vulnerable person’, bearing in mind the definition in paragraphs 145 and 146 of the SG.

186. Mr Brassington took the Tribunal through the various paragraphs of the SG relating to erasure. He accepted that Dr Sahu had shown a ‘reckless disregard’ for GMP and that there had been an abuse of position of trust. He submitted that it was clear that Ms A felt uncomfortable, and she considered leaving her job, however at many points during her

evidence she said that most of Dr Sahu's behaviour was not of serious concern to her. As such, he submitted that the Tribunal could not readily find that 'serious harm' had been caused to Ms A. Mr Brassington submitted that Dr Sahu's conduct was not 'difficult to remediate' and he did not accept that Ms A should be viewed as a patient for the purposes of paragraph 109(e) of the SG.

187. Furthermore, Mr Brassington reminded the Tribunal that Dr Sahu has continued to engage with his clinical psychologist and now receives GP mentoring. He submitted that this was an important factor that attests to Dr Sahu's desire to maintain his clinical skills.

188. Mr Brassington submitted that a sanction of suspension was appropriate for conduct that is serious, but falls short of being fundamentally incompatible with continued registration (paragraph 92 of the SG). He submitted that Dr Sahu's misconduct fell into this category and that paragraphs 97 (a) and (e)-(g) were relevant, in that Dr Sahu had demonstrated insight, engaged in extensive remediation and there had been no repetition of his conduct.

189. Therefore he submitted that a reasonable member of the public, apprised of all of the circumstances in this case, would agree that erasure of Dr Sahu's name from the Medical Register would be disproportionate.

190. Mr Brassington did not address the Tribunal as to the length of any suspension and submitted it was a matter for the Tribunal.

### **The Tribunal's approach**

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

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

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

## The Tribunal's Determination on Sanction

### Aggravating and Mitigating Factors

194. Before considering what action, if any, was appropriate in this case, the Tribunal considered and balanced the aggravating and mitigating factors. In particular, it referred to paragraphs including 25-49 of SG for mitigating factors and paragraphs 50-56 for aggravating factors.

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

- Dr Sahu had failed to work collaboratively with colleagues, namely that he failed to respect boundaries and maintain a professional relationship with Ms A.
- There had been an abuse of professional position by Dr Sahu in that he was a GP Principal at the Practice, and Ms A was an employee. However, the Tribunal did not consider that this was a case of predatory behaviour or that Ms A was a vulnerable patient.
- This was a case of sexual misconduct, where Dr Sahu's actions had amounted to unlawful sexual harassment of a work colleague. During the incident on 11 August 2022, Dr Sahu had kissed Ms A's cheek and touched her bottom without her consent. He had also asked to see Ms A's breasts.

196. The Tribunal did consider Mr Brook's submission in respect of Ms A being a 'vulnerable patient'. It took into account paragraphs 55(d)(i), 145 and 146 of the SG relating to vulnerable patients. The paragraphs explaining the meaning of the term 'vulnerable patient' state:

*145 Where a patient is particularly vulnerable, there is an even greater duty on the doctor to safeguard the patient. Some patients are likely to be more vulnerable than others because of certain characteristics or circumstances, such as:*

*a presence of mental health issues*

*b being a child or young person aged under 18 years*

*c disability or frailty*

*d bereavement*

*e history of abuse or neglect.*

*146 Using their professional position to pursue a sexual or improper emotional relationship with a vulnerable patient is an aggravating factor that increases the gravity of the concern and is likely to require more serious action against a doctor.*

197. In its determination on facts, the Tribunal found that Dr Sahu and Ms A were colleagues XXX. It considered that the minor surgical procedure on 11 August 2022 should be viewed in the context of Dr Sahu offering to help Ms A as a colleague XXX, for her convenience. XXX. The Tribunal had simply considered that Ms A was physically in a vulnerable position for part of the events on 11 August 2022, as she was lying on an examination couch.

198. The Tribunal considered that in describing Ms A as a ‘vulnerable patient’, the submissions from the GMC did appear to place emphasis on Ms A’s position as a patient, which different from how the GMC had presented its case throughout the proceedings. It also noted that both parties agreed that this was not a case involving risks to patient safety.

199. Therefore, given the circumstances, the Tribunal considered that Ms A could not be described as a vulnerable patient.

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

- Dr Sahu has expressed regret and apologies to Ms A, the GMC and the public. His reflective statement describes his remorse and regret for his actions. The Tribunal found his apologies to be sincere, credible and genuine. Dr Sahu has accepted he should have behaved differently, and he has demonstrated timely development of insight.
- Dr Sahu has demonstrated his commitment to continuing his remediation by his reflections, his CPD and through engaging in a mentorship programme. The Tribunal noted that Dr Sahu independently began psychological therapy sessions at an early stage of this process (September 2022). It noted that he has explored causative factors with his psychologist, and this has enabled him to gain insight into his actions and their consequences.
- The Tribunal noted that in his witness statement, Dr Sahu said that he was experiencing personal and professional difficulties during 2020-2022 such as social isolation and work-related stress from the Covid-19 pandemic. The Tribunal acknowledged that Dr Sahu’s behaviour occurred in the context of his personal stressors but considered that these did not excuse his behaviour.

201. The Tribunal also bore in mind paragraph 25(b) of the SG which states that an example of a mitigating factor could be *‘Evidence that the doctor is adhering to important principles of good practice (ie keeping up to date, working within their area of competence), and of the doctor’s character and previous history. This could include evidence that the doctor has not previously been found to have impaired fitness to practise by a tribunal, a previous MPTS panel or by the GMC’s previous panels or committees.’*

202. The Tribunal noted Mr Brassington’s submission that Dr Sahu has no previous findings of impaired fitness to practise. However, it was mindful that Dr Sahu had previously received a GMC warning for failing to maintain professional boundaries with a patient. While it accepted that his actions giving rise to the warning were not sexually motivated, the Tribunal did not consider that Dr Sahu’s previous history amounted to a mitigating factor.

### **No action**

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

204. The Tribunal determined that there were no exceptional circumstances in this case. Given the findings in relation to sexual misconduct and impairment, the Tribunal considered that action was required in order to uphold and maintain public confidence in the profession. It would not be sufficient, proportionate, or in the public interest to conclude this case by taking no action.

### **Conditions**

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

206. The Tribunal noted that neither party submitted that an order of conditions was an appropriate sanction in this case. The Tribunal had regard to the various paragraphs of the SG which indicate the cases in which conditions might be appropriate.

207. This case involved unlawful sexual harassment of a work colleague where there had been an abuse of professional position. The Tribunal did not consider that conditions would be workable, nor would they mark the seriousness of the misconduct found. Further, the Tribunal did not consider that conditions would be appropriate, proportionate or satisfy the demands of the Overarching Objective.

### **Suspension**

208. The Tribunal then went on to consider whether imposing a period of suspension on Dr Sahu’s registration would be appropriate and proportionate. It considered the SG in

relation to suspension, in particular the relevant parts of paragraphs 91, 92, and 97 which state:

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

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

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

*a A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.*

*...*

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

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

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

209. The Tribunal also bore in mind paragraphs 149 and 150 the SG which relate to sexual misconduct:

*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.*

210. The Tribunal had determined Dr Sahu's sexual misconduct included a serious breach of GMP and fell short of the standards of conduct reasonably expected of a doctor. It was of the view that the sexual misconduct was serious and had consequences for Ms A, his own reputation and that of the medical profession as a whole.

211. The Tribunal reminded itself of its findings in relation to insight and remediation in its impairment determination. It was satisfied that Dr Sahu had a high level of insight as demonstrated by the substantial body of remedial work he has undertaken. It had concluded that there was a very low risk of repetition.

212. In particular, the Tribunal took into account the evidence of numerous positive feedback comments from Dr Sahu's colleagues, both in August 2022 and in October/November 2023. These comments included:

- 'Dr Sahu treats staff with respect and equality.'
- 'Great team member, good relationships with members across the medical and non-medical staff'.
- 'Very approachable and easy to work with. Always responds quickly and professionally to requests.'
- 'As one of the partners, takes his responsibility with patient care and welfare and well-being of colleagues seriously'.
- 'It has been a pleasure to work with Dr Sahu. He contributes greatly to the practice team and is hard working. He is respected by patients and colleagues'.
- 'Excellent very professional doctor who supports others within the team. Well-liked by patients, appears to work well under pressure and does not appear flustered. I have always felt very supported with my own professional development by Dr Sahu.'
- 'I would say one of the most approachable, helpful, caring, and respectful doctors I've worked with... Nothing is ever too much trouble, whether it be work related or personal'.

213. The Tribunal considered the testimonial letters from Dr Sahu's colleagues as referenced in Mr Brassington's submissions. Ms H, a colleague of Dr Sahu, said that:

'I have known Dr Sahu for 8 years, as a colleague and a friend where we both worked at the same practice...



Dr Sahu is a trusted friend where I have found him to be incredibly supportive and dependable during some challenging and indeed difficult circumstances in my personal life. He has shown a great deal of kindness, compassion and empathy whilst keeping professional boundaries within our friendship. Sometimes, during challenging times, it can be difficult to see the positives in a situation, and Dr Sahu is very good at bringing positivity and coaching resilience’.

Ms I, a Community Advanced Nurse Practitioner and past mentee of Dr Sahu, said:

‘During the summer of 2020, I had some issues in my personal life.... On one occasion...I suddenly started crying when I was talking to Dr Sahu. He listened to my issues and concerns but kept a professional and physical distance from me. I always felt safe in Dr Sahu’s presence and at no point did I feel I was at risk nor did I find him inappropriate towards me.’

214. The Tribunal also referred itself to an email sent to Dr Sahu by Ms J, Crewe Medical Centre’s Practice Manager in March 2024. She said:

‘I just wanted to say a massive thank you for all of your help over the last year. You have been an asset to the practice and a huge support to all of us. We have loved having you and it has been an absolute pleasure working with you. Best of luck next week. We will be thinking of you. If you need anything at all. Please do not hesitate to get in touch. We would be delighted to welcome you back to the practice given the chance.’

215. The various testimonials, his latest appraisal and the colleague feedback surveys demonstrate that Dr Sahu is clinically well regarded and that there have been no other complaints about his behaviour.

216. Having considered the relevant factors in relation to suspension, the Tribunal went on to consider the paragraphs of the SG which set out possible factors that may indicate erasure where erasure is the appropriate sanction. The Tribunal identified the following as potentially relevant in this case:

*‘109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).*

*a A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor*

*b A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.*

*c ...*

*d Abuse of position/trust (see Good medical practice, paragraph 65: ‘You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession’).*

*e ...*

*f ...’*

217. The Tribunal considered that Dr Sahu’s actions demonstrated a reckless disregard for and a serious departure from, the principles set out in GMP. He had abused a professional position of trust. The issue for the Tribunal was whether his behaviour was fundamentally incompatible with continued registration.

218. Given the evidence, the Tribunal did not consider that Dr Sahu’s conduct was a sign of a deep-seated personality trait. The Tribunal was mindful that Ms A was clearly distressed following the incidents with Dr Sahu, but it was of importance that there has been no suggestion of any future risk to patient safety.

219. The Tribunal was also of the view that Dr Sahu’s misconduct was not ingrained nor was it incapable of remediation. His behaviour could be described as out of character, involving one set of events on one day with a colleague. The Tribunal also reminded itself of its positive conclusions in respect of Dr Sahu’s high level of insight and extensive remediation. The Tribunal found that his behaviour was not fundamentally incompatible with his continued registration.

220. The Tribunal considered that it was in the public interest to retain a valuable doctor on the register, who normally works collaboratively with his colleagues and serves his patients well. In oral evidence, Ms A said, *“I wouldn’t like to see him lose his job, he is a good doctor, but there are things that happened that needed to stop.”* The Tribunal was of the view that a member of the public with full knowledge of the facts, including the usual way in which Dr Sahu conducts himself and the fact he has worked for 18 months since the incidents without repetition, would not want the public to be deprived of a good doctor.

221. The Tribunal took the view that a sanction as severe as erasure would be disproportionate. It took the view that the public interest could be served, and professional standards maintained by a period of suspension rather than erasure.

222. Therefore, in all the circumstances, the Tribunal concluded that imposing a period of suspension on Dr Sahu’s registration would be appropriate and proportionate. The Tribunal

also considered that a period of suspension would reflect the gravity of Dr Sahu’s misconduct. A suspension would have a deterrent effect and serve to maintain public confidence in the profession. It would send a clear message to Dr Sahu, the profession and the wider public regarding the conduct expected of a registered doctor.

### Duration of Suspension

223. Having decided that the appropriate sanction was one of suspension, the Tribunal went on to consider the length of suspension. The length of the suspension may be up to 12 months and is a matter for the Tribunal’s discretion, depending on the seriousness of the particular case.

224. In determining the length of the suspension, the Tribunal took account of the need to mark the seriousness of Dr Sahu’s misconduct and also to declare and uphold proper standards of behaviour. The Tribunal considered paragraphs 100 and 101 of the SG in that regard:

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

- a the risk to patient safety/public protection*
- b the seriousness of the findings and any mitigating or aggravating factors (as set out in paragraphs 24–60)*
- c ensuring the doctor has adequate time to remediate*

**101** *The tribunal’s primary consideration should be public protection and the seriousness of the findings. Following any remediation, the time all parties may need to prepare for a review hearing if one is needed will also be a factor.*

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

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

226. Dr Sahu’s conduct was serious and involved sexual harassment of a work colleague in circumstances where he had abused a position of trust. Balanced against this, the Tribunal had determined that Dr Sahu had sufficiently addressed the serious concerns raised by his misconduct and the risk of repetition was very low. It found that Dr Sahu had demonstrated clear and well-developed insight and that there was evidence of extensive remediation commencing as early as September 2022. Furthermore, it was mindful of Dr Sahu’s

continuing efforts at remediation. Dr Sahu has joined a mentorship programme for GPs for ongoing support, and he continues his therapy sessions with his clinical psychologist. It also noted that Dr Sahu has continued to work in two other GP practices without any incidents since August 2022.

227. The Tribunal concluded that a period of nine month suspension was the appropriate and proportionate sanction in this case. It was satisfied this period of suspension was necessary in order to uphold proper standards within the profession, and to maintain public confidence in the profession.

### **Review hearing**

228. The Tribunal then considered whether it ought to direct a review hearing of Dr Sahu's case. It had regard to the SG where it states that no doctor is allowed to resume unrestricted practice following a period of suspension unless the Tribunal considers that they are safe to do so. The SG also states that in some misconduct cases it may be self-evident, that following a short suspension, there will be no value in a review hearing but that in most cases the Tribunal will need to be reassured that the doctor is fit to resume practice.

229. The Tribunal considered paragraph 164 of the SG which indicated where a review hearing was likely to be necessary. It noted that whilst a review hearing is likely to be necessary in most cases, it concluded that Dr Sahu had fully appreciated the gravity of his misconduct. This was evident upon reading the significant and timely steps that he has taken over the past 18 months to remediate and demonstrate insight into his behaviour. Further, he had not reoffended. Patients will not be placed at risk by the resumption of his practice.

230. The Tribunal determined that a review hearing would serve no purpose and that the public interest had been met by the length of the suspension. It was satisfied that the need to promote and maintain both public confidence in the medical profession and proper professional standards and conduct for members of the profession would be served upon the expiration of Dr Sahu's nine month suspension and there would be no concerns about him resuming unrestricted practice afterwards.

231. In conclusion, the Tribunal determined not to direct a review in the specific circumstances of this case, and that the suspension should end after nine months.

### **Determination on Immediate Order - 22/03/2024**

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

### Submissions

233. On behalf of the GMC, Mr Brook submitted that it was necessary to impose an immediate order. He drew the Tribunal’s attention to paragraphs 172 and 173 of the Sanctions Guidance (November 2020) (‘the SG’). In particular he referred to the examples in paragraph 173 of where an immediate order might be inappropriate, namely that Dr Sahu had abused a special position of trust and that it was necessary to protect public confidence in the medical profession.

234. Mr Brook submitted that Dr Sahu’s registration had been subject to interim conditions and that if there were no immediate order in place, Dr Sahu would be able to practise unrestricted pending any appeal. Accordingly, he submitted that an interim order was necessary to protect public confidence in the profession.

235. On behalf of Dr Sahu, Mr Brassington submitted that it was a matter for the Tribunal to consider whether an immediate order was appropriate in this case.

### The Tribunal’s Determination

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

237. The Tribunal considered the relevant paragraphs of the SG which deal with immediate orders, in particular paragraphs 172 and 173 which states:

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

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

238. The Tribunal noted that the example of 'abuse of position of trust' in paragraph 173 above appeared to relate to cases involving a risk to patient safety. In this case, it was agreed that there were no patient safety risks, therefore an immediate order was not necessary to protect members of the public.

239. However, given the nature of the allegations and the seriousness of the findings in this case, the Tribunal determined that an immediate order was necessary to protect public confidence in the medical profession.

240. The Tribunal therefore determined to impose an immediate order of suspension on Dr Sahu's registration.

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

242. The interim order is hereby revoked.

243. That concludes the case.

ANNEX A – 14/03/2024

Application under Rule 17(2)(g)

244. At the close of the GMC’s case, Mr Brassington on behalf of Dr Sahu, made an application under Rule 17(2)(g) of the General Medical Council (Fitness to Practise Rules) 2004, as amended (‘the Rules’) that there had not been sufficient evidence adduced in respect of paragraph 2 and paragraph 3(e) of the Allegation, which are as follows:

*‘2. On 6 June 2022, whilst performing a stomach massage, you touched Ms A inappropriately, without her consent, in that you moved your hands to just below her pants line when she had replied ‘no’ to you asking if you could move your hands lower.’*

and

~~‘3. On 11 August 2022 you made further unwanted sexual advances towards Ms A in that you:~~

*e. hugged Ms A without her consent;’*

**Submissions**

On behalf of Dr Sahu

245. Mr Brassington submitted that the GMC had not adduced sufficient evidence upon which it could properly rely, to find paragraphs 2 and 3(e) proved.

246. Mr Brassington referred to *R (on the application of Sharaf) v GMC [2013] EWHC 3332 Admin*, in which the court acknowledged that 17(2)(g) provides an important safeguard and that it is oppressive and unjust for an accused person in regulatory proceedings to be required to meet a case that has not been established on sufficient evidence. Mr Brassington emphasised that for the Tribunal to continue where there is insufficient evidence is plainly oppressive and unjust.

247. Mr Brassington referred the Tribunal to the case of *R v Galbraith [1981] 73 Cr App R 124* (‘*Galbraith*’) which was authority for the proposition that where there is no evidence, or evidence of a tenuous character, for example because of inherent weakness or vagueness, a Tribunal should stop a paragraph of the Allegation from going forward. Mr Brassington’s

submissions were based on limb 1 of Galbraith, namely that there is no evidence that the act alleged has been committed by the doctor.

248. Mr Brassington submitted that in oral evidence, Ms A was crystal clear that as soon as she told Dr Sahu to remove his hand and go no further, he did so and his response was immediate. He submitted that if the Tribunal was to conclude that Ms A's evidence was correct, clear and cogent, then it cannot be said that the act was without her consent. Mr Brassington submitted that in essence, the GMC was inviting the Tribunal to ignore Ms A's oral evidence and retreat to a previous position which she had departed from.

249. In respect of paragraph 3(e) of the Allegation, Mr Brassington submitted that Ms A wasn't entirely clear how the hug happened. He submitted that her best recollection was that Dr Sahu put his arms out, Ms A leaned in, and she put her arms around his shoulders and a brief hug took place. Mr Brassington submitted that the hug was consensual and therefore no further consideration of paragraph 3(e) was needed.

#### On behalf of the GMC

250. Mr Brook submitted that Mr Brassington's 17(2)(g) application in respect of paragraph 3(e) of the Allegation was unopposed by the GMC. The GMC did however oppose the application in respect of paragraph 2.

251. Mr Brook submitted that a lack of consent was central to paragraph 2. He referred to Ms A's timeline of events document and her witness statement, whereby she stated that Dr Sahu asked if he could go down further to massage her lower abdomen and she said "no" because the pain was not there, but he then proceeded to put his hands further down, where he touched the brim of her underwear, and his hands went slightly inside. Mr Brook submitted that these two accounts were consistent with one another and in each account, it was clearly non-consensual, indicated by her telling him that he could not go further down, which he ignored.

252. Mr Brook submitted that there were two elements to what Ms A stated. Firstly, Dr Sahu asking if he could go further down, and being told "no", and, secondly, proceeding to put his hands further down, putting his hand into her underwear/touching the brim of her underwear when his hands went slightly inside, when she told him to "stop".

253. Mr Brook also referred the Tribunal to Ms A's oral evidence about whether she told Dr Sahu "no" when he asked if he could go further down her abdomen. She stated that she asked him to "stop", when he proceeded to place his fingers into her underwear. She also said in evidence "no he did slightly and that's when I said stop". Mr Brook submitted that Ms



A felt that where his hand was, was quite inappropriate, and he stopped straightaway. Mr Brook submitted that Ms A had been entirely consistent, in her written and oral evidence in terms that the hand had not simply brushed across the panty line, but had gone in slightly.

254. Mr Brook submitted that Ms A had not resiled from her evidence, recorded in her notes which were more contemporaneous, and in her subsequent GMC witness statement. She had repeated in her oral evidence that the doctor had asked if he could go further down, and that she said “no”. He submitted that on any sensible interpretation of her answer to Tribunal questions, she was clearly limiting it to the fact that when he put his hand in the top part of her underwear, when she said “stop”, he stopped immediately. He submitted that at no stage did she gainsay the evidence immediately preceding that, and she had not disavowed her witness statement.

255. Mr Brook referred to the GMC’s note of Ms A’s answers in response to Tribunal questions, in which she had stated she said “no” to Dr Sahu and she said he stopped immediately. Mr Brook submitted that if this note is correct, then Ms A’s evidence may have been mistakenly understood by the Tribunal conflating Ms A saying “no” with “stop”, which were separate and distinct responses to different features of the evidence.

256. In conclusion, Mr Brook submitted that there was a plethora of evidence, underpinning allegation 2, on which the Tribunal could find the allegation proved.

### The Relevant Legal Principles

257. The Tribunal had regard to Rule 17(2)(g), this states:

*‘The practitioner may make submissions as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed no further as a result, and the Medical Practitioners Tribunal shall consider any such submissions and announce its decision as to whether they should be upheld.’*

258. The Tribunal reminded itself that, at this stage, its purpose was not to make findings of fact, but to determine whether sufficient evidence, taken at its highest, has been presented by the GMC, such that the Tribunal could properly find the relevant paragraphs proved.

259. Pursuant to the case law of *R v Galbraith [1981] 1 WLR 103*, the Tribunal took the following approach:

a. Where the Tribunal concludes that the GMC’s evidence in respect of any part of the allegation, taken at its highest, is such that it, after being properly directed as to the law, the Tribunal could not properly make a positive finding of fact upon it, it is the Tribunal’s duty to stop the case in respect of that paragraph of the allegation;

b. Where GMC’s evidence in respect of any part of the allegation is such that its strength or weakness depends on the view taken of a witness’s reliability, or other matters which are generally speaking within the province of the Tribunal in its jury role and where, on one possible view of the facts, there *is* evidence upon which the Tribunal could properly come to the conclusion that a positive finding of fact can be made in respect of that part of the allegation, then the Tribunal should allow the case to proceed;

## The Tribunal’s decision

### Paragraph 2

260. The Tribunal carefully considered the evidence it received regarding paragraph 2 of the Allegation. This included the documentation and oral witness evidence.

261. The Tribunal considered the evidence from two of Ms A’s colleagues who saw Ms A following the 6 June 2022 alleged incident with Dr Sahu. In her email to the Practice Manager on 12 August 2022, Mrs B described Ms A as “*agitated/rattled*” when she came back XXX after the stomach examination. In Mrs B’s oral evidence, she stated that Ms A was “*noticeably flustered*”, “*agitated*” and “*rummaging around in things*”.

262. In a written document prepared by Ms C on 15 August 2022, Ms C recalls Ms A saying on 6 June 2022 that she would not end up in that position again. In her oral evidence, she stated that by Ms A’s facial expressions, she seemed “*a bit angry*” and that Ms A said to her she would never be in a room alone with [Dr Sahu] again. Ms C also described that she was left feeling “*confused*” after this interaction with Ms A.

263. The first written account of the 6 June 2022 alleged incident comes from an investigatory meeting on 12 August 2022, held with Ms C, XXX and Mr D, XXX. Mr D made notes during that meeting and an extract from the notes was as follows:

*“While in the room, Ms A consented to a stomach massage and lay on the bed in the Treatment room. Dr Sahu asked Ms A to undo her top trouser button to which she complied. He began to massage her stomach explaining what to do. He then asked Ms A if he could move his hand lower to which she replied no. He ignored her and moved*

*his hand to just below her pants line at which point she immediately said to stop and that it was inappropriate.”*

264. Ms A subsequently prepared written a timeline of events document which contained notes of each alleged incident. This had been completed on 15 August 2022, following the investigatory meeting. Within this document, Ms A described the 6 June 2022 alleged incident. The notes contained the following extract:

*“I lay on the couch and he put gel on his hands, I had to take my top button out and zip down, he started to gently massage my tummy, he tapped on my tummy and it made a sound, he advised me that I was full of gas, he put more gel on his hands and massaged my lower abdomen and asked if he could go further down, I told him no as the pain wasn’t further down, he then proceeded to put his hand in my underwear, I told him to stop, he said okay and I told him that was inappropriate and I got up and fastened my trousers...”*

265. In Ms A’s witness statement dated 1 March 2024, she stated:

*“I laid on the bed and he put gel on his hands, I opened the top button of my trousers, and I pulled the zip down so that he could reach to my stomach. He started to massage my stomach, and he tapped on it, and it made a sound. He told me that my stomach was full of gas, and he put extra gel on his hands and started massaging my lower abdomen. Dr Sahu then asked whether he could go further down. I told him no since the pain wasn’t there, but he proceeded to put his hands further down where he touched the brim of my underwear and his hands went slightly inside. However, he did not go any further as I told him to stop.”*

266. The Tribunal next considered Ms A’s oral evidence. Ms A stated in cross-examination that Dr Sahu asked if he could go further down her abdomen, but she said ‘no’, as she felt that the position of his hand was inappropriate. It was subsequently put to her by Mr Brassington that Dr Sahu immediately stopped once Ms A had told him to. This was accepted by Ms A.

267. During Tribunal questions, it was put to Ms A that her timeline of events note seemed to say that she had said ‘no’ to Dr Sahu and then Dr Sahu proceeded to put his hand into the brim of her underwear. Ms A responded, *“that might have been...it was so long ago...I just know what happened, how it happened, and he didn’t put his hand right in, it was the top and then when I said stop, he did stop immediately.”*

268. The Tribunal further asked Ms A about the sequence of events and asked Ms A, “*did you say no and then he continued, or did you say no and he stopped immediately?*”. Ms A responded, “*No I said no and he stopped immediately*”.

269. The Tribunal considered Mr Brassington’s assertion that there was no evidence upon which to find paragraph 2 of the Allegation proved.

270. The Tribunal noted that there were three written accounts which described the events as subsequently set out in paragraph 2 of the Allegation. Two of these were completed within about 10 weeks of 6 June 2022. Therefore, the Tribunal did not accept that there was no evidence upon which it could properly find paragraph 2 of the Allegation proved.

271. For the purposes of this stage, the Tribunal was tasked to consider whether the GMC’s evidence in respect of paragraph 2 of the Allegation, taken at its highest, was such that the Tribunal could not make a positive finding of fact from it. The Tribunal considered that the GMC’s evidence in respect of paragraph 2, is such that its strength or weakness depends on the view taken of matters which are within the province of the Tribunal in its jury role.

272. On the basis of the current evidence, taken at its highest, the Tribunal determined that there was evidence upon which the Tribunal could properly come to the conclusion that a positive finding of fact can be made in respect of that part of the Allegation. The Tribunal concluded, therefore, that there was a case to answer in respect of paragraph 2 of the Allegation.

273. In respect of paragraph 2 of the Allegation, the Tribunal determined to refuse the application made on behalf Dr Sahu, pursuant to Rule 17(2)(g) of the Rules.

#### Paragraph 3(e)

274. The Tribunal was mindful that the GMC did not oppose the application in respect of paragraph 3(e).

275. The Tribunal, however, went on to consider Ms A’s evidence regarding the paragraph 3(e) of the Allegation. The Tribunal had received no evidence that the hug on 11 August 2022 was not consensual. While the evidence as to who initiated the hug was unclear, the evidence suggests that a hug took place.

276. In respect of paragraph 3(e) of the Allegation, the Tribunal determined to accept the application made on behalf Dr Sahu, pursuant to Rule 17(2)(g) of the Rules and finds that there is no case to answer in respect of that paragraph.