PUBLIC RECORD

Dates: 15/04/2024 - 26/04/2024

Medical Practitioner's name: Mr Stephen KRIKLER

GMC reference number: 2648556

Primary medical qualification: MB BS 1980 University of London

Type of case
New - Misconduct

Outcome on facts
Facts relevant to impairment found proved

Outcome on impairment
Impaired

Summary of outcome
Suspension, 5 months
Immediate order imposed
Review directed

Tribunal:

Legally Qualified Chair	Mr Christopher Harper
Lay Tribunal Member:	Mrs Barbara Larkin
Medical Tribunal Member:	Dr Iftikhar Ahmed

Tribunal Clerk:	Mrs Jennifer Ireland

Attendance and Representation:

Medical Practitioner:	Not present, not represented
Medical Practitioner's Representative:	NA
GMC Representative:	Ms Rina Hill, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 18/04/2024

Background

1. Mr Krikler qualified in 1980 from The University of London. Following further training and education, Mr Krikler obtained his FRCS(Orth) in 1995 and took up a consultant post in Coventry in 1996, where he remained until 2012. Between 2012 and 2019, Mr Krikler worked privately, before taking the post of Chief of Surgery at Kettering General Hospital ('the Hospital') in 2019, where he worked at the time of the events in the Allegation, before leaving his role in late 2021. Mr Krikler relinquished his licence to practise in July 2022, having decided to retire.

2. The allegation that has led to Mr Krikler's hearing can be summarised as follows: Between approximately September 2019 and September 2021, Mr Krikler is alleged to have behaved inappropriately towards Ms A, a colleague, while working at the Hospital, by making comments of a sexual nature on three occasions. The first incident is alleged to have occurred in September 2019, while attending a course at the Hospital. During an exercise to introduce themselves to the group, Mr Krikler is alleged to have said words to the effect of '*blimey, you must be a bit of a goer'*, in response to Ms A saying that she had XXX.

3. In approximately August 2021, Mr Krikler and Ms A encountered one another while working at the Hospital. Ms A states that on the day of the incident she had chosen not wearing tights due to the warm weather, and Mr Krikler is alleged to have said words to the effect of '*you've got your legs out'* and '*seeing your legs like that reminds me of a t-shirt I once owned. It said "nice legs, what time do they open".'.*

4. In late September 2021, Ms A had cause to contact Mr Krikler by telephone regarding a patient, and it is alleged that Mr Krikler answered the call and told her '*it's funny how your*

name popped up on my phone just as I was talking about perineal massage cream' or words to that effect.

5. In November 2021, Ms A reported all three incidents to Dr B, Interim Medical Director for Kettering General Hospital NHS Foundation Trust ('the Trust').

6. It is further alleged that Mr Krikler's actions constituted 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 her.

7. The initial concerns were raised with the GMC on 20 April 2022, by Dr B, following a local investigation.

The Outcome of Applications Made during the Facts Stage

8. The Tribunal granted the GMC's application, made pursuant to Rules 15 and 40 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that notice of this hearing has been properly served on Mr Krikler. It also granted the GMC's application made pursuant to Rule 31 of the Rules to proceed with the case in Mr Krikler's absence. The Tribunal's full decision on both applications is included at Annex A.

9. The Tribunal granted an application, pursuant to Rule 41 of the Rules, for parts of the hearing relating to Mr Krikler's XXX be heard in Private. The Tribunal's full decision on the application is included at Annex B.

10. The Tribunal refused an application, made pursuant to Rule 34 of the Rules, to admit hearsay evidence contained within the documentation as evidence. The Tribunal's full decision on the application is included at Annex C.

The Allegation and the Doctor's Response

11. The Allegation made against Mr Krikler is as follows:

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

1. On one or more occasion(s) between around September 2019 and September 2021 during your employment at Kettering General Hospital, you behaved inappropriately towards Ms A, a colleague, in that you said to Ms A:

    a. 'blimey, you must be a bit of a goer', or words to that effect; To be determined

    b. 'you've got your legs out', or words to that effect; Admitted and found proved

    c. 'seeing your legs like that reminds me of a t-shirt I once owned. It said nice legs, what time do they open', or words to that effect; To be determined

    d. 'it's funny how your name popped up on my phone just as I was talking about perineal massage cream', or words to that effect. To be determined

2. Your actions as set out at paragraph 1 constituted sexual harassment as defined in Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. To be determined

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

The Admitted Facts

12. At the outset of these proceedings, the Tribunal considered and accepted Mr Krikler's written admission to sub-paragraph 1(b) of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced this sub-paragraph of the Allegation as admitted and found proved.

The Facts to be Determined

13. In light of Mr Krikler's response to the Allegation made against him the Tribunal is required to determine whether Mr Krikler made the inappropriate comments set out, and if found proved, whether these comments constituted sexual harassment as defined in Section 26(2) of the Equality Act 2010.

Witness Evidence

14. The Tribunal received oral evidence and witness statements on behalf of the GMC from the following witnesses:

- Ms A, by video link; and
- Ms C, Head of Therapies at the Hospital, by video link.

15. Mr Krikler provided his own witness statement, dated 21 February 2024, in which he set out his admissions and response to the Allegation.

Documentary Evidence

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

- Ms A's statement to the Trust, dated 8 November 2021;
- Ms C's statement to the Trust, dated 25 February 2022;
- Mr Krikler's Appraisal form dated March 2021 to April 2022; and
- A bundle of character statements and documents, dated between June 2022 and April 2023.

The Tribunal's Approach

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. Mr Krikler does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e., whether it is more likely than not that the events occurred.

The Tribunal's Analysis of the Evidence and Findings

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

Paragraph 1(a)

19. The Tribunal noted that there are no contemporaneous notes of this alleged incident and that it was not reported until more than two years after it occurred. There are three different versions of the incident, which differ in what precisely was said. All accounts agree that Ms A disclosed she had XXX in a group discussion and that Mr Krikler made a comment in response to that.

20. The Tribunal first had regard to the written evidence of Ms A. In her first statement to the Trust, Ms A stated:

> *'I am unable to recall the exact words Mr Krikler used but a comment was made along the lines of, "Blimey XXX!" and implied that I must be very sexually active.'*

21. In her statement to the GMC dated 26 September 2022, Ms A provided a similar version of events:

> *'After I had introduced myself and said I had XXX, when Dr Krikler made the comment 'blimey – you must be a bit of a goer''*

22. The Tribunal next considered the version provided in the evidence of Ms C, who, in her first statement to the Trust, stated:

> *'I don't remember exactly what SK said, but he said something to [Ms A] along the lines of "don't you have a TV? You need to get a new hobby"'*

23. In her statement to the GMC, dated 21 October 2022, Ms C stated:

> *'When Dr Krikler made the comment about [Ms A] getting a new hobby, [Ms A] appeared taken aback and wasn't laughing but was clearly uncomfortable.'*

24. The Tribunal considered Mr Krikler's version of the event. In his written statement to the GMC, dated 21 February 2024, Mr Krikler stated:

> *'Various people made comments about it, and I may well have said something along the lines of her being busy. I absolutely refute that I made any reference to her being sexually active…'*

25. The Tribunal also noted Mr Krikler's explanations about his general use of humour to *'flatten the hierarchy'* and to relieve tension. In his witness statement he indicates that:

> *'I am also careful to try not to make inappropriate jokes particularly after my experience in 2012. Having been on 'crossing boundaries' courses in 2013. I am more conscious of the risk of causing offence and I do my best to avoid this through humour.'*

26. The reference to an experience in 2012 was to a matter Mr Krikler disclosed, in his statement:

> *'In 2012, I behaved inappropriately towards female staff and unknowingly caused some upset, particularly to a female medical student. Amongst other things, I was wont to give staff hugs; some were grateful and positive about this, but I had failed to recognise that some staff were unhappy about my behaviour. I had never had any formal or informal complaints about it, and I was shocked to learn that I had been causing any upset.'*

27. The Tribunal first considered Ms A's statements and her oral evidence to the Tribunal. Overall, it found that Ms A was genuinely doing her best to assist the Tribunal. She was willing to make concessions where appropriate and admitted to a degree of fallibility due to the passage of time. Ms A did not allow herself to be drawn into speculation, and did not stick rigidly to her version of events, accepting that she did not have full recall.

28. In her evidence, Ms A was asked to explain why she had not written the comment made by Mr Krikler that '*implied [she] must be very sexually active*' in her first account, but had in her second. She told the Tribunal that, when writing her initial statement to the Trust, she had known the words Mr Krikler had used but had not wanted to write them in her statement. She said she avoided doing so '*to be polite'*. The Tribunal was satisfied, on balance, Ms A's written accounts were consistent and did say the same thing in slightly different ways.

29. The Tribunal noted that this incident was not reported until 2021, as part of the wider complaint. It accepted Ms A's evidence that she had wrestled with whether to make any

report, and had not wanted to get anyone into trouble until reflecting on later events. The Tribunal found her to be a reliable witness, reluctant to complain, and doing her best to give a balanced account of matters.

30. The Tribunal also received oral evidence from Ms C regarding this incident. On the whole, it found Ms C's recollection less reliable than that of Ms A, but it was clear that she was genuinely doing her best to assist the Tribunal. Her account was dissimilar, in the detail, from the other evidence available to the Tribunal. She was clear, however, about the nature of the comment made, how she felt about it at the time, and her desire to step in and to comfort Ms A as a result. The Tribunal found it was able to place reliance on her evidence to that extent, but relied on other accounts for matters of detail.

31. The Tribunal noted the GMC submission that the statement Mr Krikler accepts making, in his version of events '*could only be sexual'* and did not accept that submission. It was of the view that, while the use of the word '*busy'* could have sexual connotations, it was not the only possible meaning. It noted, however, that Mr Krikler did not seek to clarify exactly what he had meant by his use of the word '*busy*'. The Tribunal looked to the circumstances in which the comment was made and noted how both Ms A and Ms C said they felt at the time. The Tribunal found it was likely that a comment with the meaning of that alleged was made.

32. The Tribunal noted that Mr Krikler consciously uses humour in the workplace and has, both in the past and in this case, failed to appreciate the impact his words and/or actions have on others. He did not explain his reasons for making the comment he did and offered no alternative meaning for the words he used. The Tribunal was of the view that, even if the words used were '*you have been busy*', the implication was of sexual activity.

33. Considering all of the evidence presented, the Tribunal found that, on the balance of probabilities, it was more likely than not that Mr Krikler did make a comment to the effect of '*blimey, you must be a bit of a goer*'. It found that, the wording is more likely to have been as Ms A describes it, though regardless of the precise words, the comment was sexual in nature, and that for that reason it was inappropriate, particularly in a work setting with a colleague he did not know well. Overall, it preferred the evidence of Ms A, as she had provided a consistent explanation for how she had felt following Mr Krikler's comment.

34. Accordingly, the Tribunal found paragraph 1(a) of the Allegation proved.

Paragraph 1(c)

35. The Tribunal first had regard to the evidence of Ms C, who stated in both her statements and her oral evidence, that Ms A had told her that Mr Krikler had quoted a Pink Floyd T-Shirt that he had owned, based on an album cover. She reported the words relayed to her as '*sun's out and your legs are open'.* The Tribunal was shown the album cover in question and noted that it does not include the wording that Ms A and Mr Krikler say was used, nor that which Ms C recalls. Ms C said that she had searched Pink Floyd albums after her conversation with Ms A, and that she had assumed that this was the album in question. There is no evidence that this album appeared on the T-shirt, or for the source of the alternative wording. The Tribunal therefore placed no weight on this evidence as it does not accord with the recollections of Ms A or Mr Krikler. The Tribunal accepted Ms C was doing her best to assist, but there is no basis on which to accept her evidence on this point.

36. The Tribunal noted that Mr Krikler, in his statement to the Tribunal, accepts that he had quoted the phrase '*nice legs, what time do they open*' to Ms A and that he had said he had seen it written on a T-shirt. He did not, however, admit this paragraph of the Allegation as set out, on the basis that he had not owned the T-shirt as it stated in the Allegation but rather, had seen it. The Tribunal noted, therefore, that he admitted what was alleged in this paragraph, subject to that qualification.

37. The Tribunal determined that the question of ownership of the T-Shirt did not impact the essence of the Allegation, which centred on the use of the words to Ms A rather than the possession of the garment which displayed them. It identified that the issue was quoting an inappropriate slogan to a work colleague. In all the circumstances, the Tribunal was of the view that Mr Krikler acted inappropriately towards Ms A in quoting the T-shirt phrase to her, which he admitted.

38. Therefore, the Tribunal found paragraph 1(c) of the Allegation proved.

Paragraph 1(d)

39. The Tribunal first noted that Mr Krikler accepts that he mentioned perineal massage cream in his phone call to Ms A, but he explained that this was in the context of explaining background noise on the call. In his statement, Mr Krikler explained:

'From time to time, [Ms D] still received post relating to her old job, and on one occasion she received a free sample of perineal massage cream. She opened the packet while [Ms E] (Head of Nursing for Surgery Division) was in the room. The two of them were laughing noisily about how inappropriate this was for [Ms D] and discussing what [Ms D] should do with it. As this noise was going on in the background, Ms A called me, so I apologised for the raucous background and explained that [Ms D] and [Ms E] were laughing about a sample of perineal massage cream. I am sorry Ms A took this as some sort of personal comment, I had no idea that she had misunderstood my explanation.'

40. In her oral evidence, Ms A told the Tribunal that he was '*chuckling as he said it*', which was consistent with Mr Krikler's version that there was joking around in the office. Ms A was very clear in her evidence to the Tribunal that she did not hear laughing in the background of the call and was consistent with this assertion. There is no evidence before the Tribunal from the other two people reported to be present in the office at the time of the call.

41. The Tribunal considered the circumstances of the call and assessed Mr Krikler's explanation. The Tribunal accepted there may be situations in which background noise would have to be explained. However, the Tribunal took the view that the detail of the joke causing noise in the background would be unlikely to form part of that explanation. Mr Krikler has not explained his reason for going into that level of detail and the Tribunal concludes that Ms A's explanation is more likely to be accurate.

42. Mr Krikler also referred in his witness statement to being '*good at "flattening the hierarchy"*'. Mr Krikler went on to explain this approach as:

'I feel strongly that it is important to be approachable and to show respect to all members of the team who are nominally at a 'lower level'. I used humour as part of my strategy to help create an atmosphere in which people who might feel intimidated by my seniority can see that I am human, and they can feel comfortable raising a concern.'

43. It is clear to the Tribunal that Mr Krikler is a person who intentionally uses humour as a tool, and that he accepts that he has in past unintentionally caused upset to a colleague

with his humour. The Tribunal noted that in his 2021/22 Appraisal documents, a colleague gave the following feedback:

'Sometimes in meetings maybe need to leave the jokes out!'

44. The Tribunal also noted that Mr Krikler has repeatedly mentioned instances where he has been unaware of the impact of his behaviour on other people. It formed the view that Mr Krikler has accepted a lack of self-awareness throughout his statement to the GMC.

45. The Tribunal noted that this comment was in keeping with other comments made of a sexual nature to Ms A. It accepted that, in the right circumstances, this could form part of a pattern of suggestive banter between two friendly colleagues. It is clear to the Tribunal that Mr Krikler felt he had that sort of relationship with Ms A, and it does, on the face of it, seem like something he may have said in that context. Ms A, however, did not feel that this was the relationship they had, and did not feel comfortable with the sexual nature of these jokes.

46. Ms C told the Tribunal that conversations with Mr Krikler would often begin with reference to the fact that she was single. The Tribunal took the view that Mr Krikler appeared, in that relationship, to focus on a single point of interest. That is consistent, the Tribunal found, with Ms A's experience. Mr Krikler describes Ms A as having a *'ribald sense of humour'* in his witness statement. The Tribunal concluded that Mr Krikler appeared to have taken an early view that sexualised humour was a feature of the relationship with Ms A, which was acceptable to her and therefore welcomed by her, and he conducted himself in that belief. The Tribunal considered it consistent with his view of Ms A, and his relationship with her, that he would make this sort of comment.

47. The Tribunal therefore concluded that it was likely for Mr Krikler to have made a comment in the manner alleged, and for him to have not thought anything untoward of it. While the Tribunal noted Mr Krikler's explanation of the comment, the Tribunal could not ignore that this was a work-related call, from a colleague, and the comment was made unprompted and unrelated to the call. The Tribunal considered that if the room was loud, as he said, then it would have been appropriate for him to step out to a quieter space. The Tribunal also noted that Mr Krikler by this point has a propensity to make comments of this nature to Ms A. It may be that Mr Krikler is accurately retelling the context of the call,

however, the Tribunal was of the view that there was no justifiable reason for Mr Krikler to have mentioned perineal massage cream in this way.

48. Taking all of the above into consideration, the Tribunal determined on the balance of probabilities that it is more likely to have occurred in the way Ms A described. On that basis, the Tribunal found paragraph 1(d) of the Allegation proved.

Paragraph 2

49. The Tribunal first considered whether the comments found proved could be considered sexual in nature. The Tribunal was of the view that all four comments have sexual connotations. It concluded that, while commenting that a person has their '*legs out*' is not strictly sexual, when taken in context with the additional comment regarding the T-shirt then it becomes of a sexual nature.

50. The Tribunal heard evidence from Ms A about Mr Krikler's body language, looking her up and down. Mr Krikler denies that. Such body language appears to the Tribunal to be consistent with the comments being made, even if they were made in a joking manner. Regardless of the body language, the comments are sexual on their face.

51. The Tribunal next concluded that this conduct was unwanted by Ms A. In her statement to the GMC, Ms A reports:

> *'I remember being shocked and thinking it was explicit and upfront comment to make and I felt very uncomfortable.*
> …
> *…I remember feeling so embarrassed….'*

52. In her oral evidence she described herself variously as '*really, really embarrassed*', *'disgusted'*, *'demeaned'*, feeling '*embarrassment and shock'* and described the comments in paragraph 1(a) as *'completely inappropriate and unwelcome'*.

53. Mr Krikler accepts, in his witness statement, that his comments in respect of the T-shirt, offended Ms A.

54. The Tribunal also had regard to Ms A's comments regarding her interactions with Mr Krikler as set out in her statement to the Trust, dated 8 November 2021:

> *'This made me feel very uncomfortable and particularly self-conscious….*
>
> *… walked away feeling highly embarrassed and very self-conscious. I am highly disgusted and offended not only by his comments but also his body language which seriously disconcerted me. His body language added to the offensiveness of his comments and made them appear very suggestive.*
>
> *…*
>
> *… Following the call I felt confused – I could not understand what had led Mr Krikler to make this sexually suggestive comment which left me feeling embarrassed and absolutely disgusted.*
>
> *…*
>
> *…Mr Krikler makes me feel very uncomfortable and quite wary of what I would be subjected to in terms of innuendo, lewd conversation and ogling….*
>
> *…*
>
> *…Mr Krikler's behaviour has therefore begun to affect my work which is wholly unacceptable.'*

55. The Tribunal was of the view that it was reasonable for Ms A to have felt the way she did following her interactions with Mr Krikler. She was clear in her evidence that these were unwanted and unprompted comments of a sexual nature, and the words she used to describe her feelings led the Tribunal to conclude that Mr Krikler's actions had the effect of violating Ms A's dignity.

56. On all accounts, the first incident occurred during a course that both attended and on Ms A's account was the first time Ms A and Mr Krikler had met or interacted. Ms A had only recently been appointed to her role XXX.

57. The Tribunal considered that Mr Krikler, while stating that he thought Ms A would find his comments amusing, as he had *'concluded that she had a ribald sense of humour',* he provided only a single example:

'I can't remember exactly which session it was but during one full-group session on the XXX course, … At this point, Ms A said loudly and clearly "That's because he's knobbing her!"'

58. The Tribunal noted that, in oral evidence, Ms A denied having any conversation about the people said to have been the subjects of that comment. In any event this comment, had it been made, comes after the first incident, and so could not feature in the reasoning for that interaction. Further, the Tribunal noted that the word *'knobbing'* is colloquial language used as a description of the actions of a third party to a group, rather than a comment directly aimed at a person within the group. Therefore, it would not be reasonable to perceive this as a welcome to inappropriate jokes. The Tribunal noted that Ms A, in addition to denying having made this comment, stated that she does not engage in innuendo at work or personally, and that she is unaware of having acted in a way that would give Mr Krikler the impression she welcomed it.

59. The Tribunal accepted Ms A's evidence. In doing so the Tribunal did not take into account how Ms A presented to the Tribunal when giving oral evidence, as it recognises that this is an unfamiliar and often stressful environment in which a person may present differently to how they would normally.

60. The Tribunal has already found that Mr Krikler appeared to have taken an early view that sexualised humour was an acceptable feature of the relationship he had with Ms A. It concluded that he was wrong in that view.

61. Taking all of the above into consideration, the Tribunal concluded that Mr Krikler's actions had created a degrading, humiliating or offensive environment for Ms A. The Tribunal noted that while making an offensive comment does not necessarily create an offensive environment, in this case as the offense occurs from the very first meeting, and is repeated, it could consider this to be an offensive environment. The Tribunal accepted Ms A's evidence that she had reported the incidents collectively because she felt uncomfortable at the prospect of meeting privately with Mr Krikler. That, the Tribunal found, demonstrates the environment in which she was working.

62. The Tribunal was of the view that Mr Krikler had not acted in the way he did with the purpose of violating Ms A's dignity or creating the environment he did, but rather from a lack

of self-awareness. The Tribunal took into account that Mr Krikler has previously had incidents where he has not understood that his behaviour is causing upset. It was clear to the Tribunal that Mr Krikler has a manner of interacting with people that can be successful and appropriate, as evidenced by the positive character references he has provided to the Tribunal. However, it is clear that in this case, his approach was not received in the manner he intended and caused Ms A to feel embarrassed, self-conscious, and uncomfortable. The Tribunal acknowledged that it was unlikely that Mr Krikler intended to make Ms A feel this way but his actions had that effect.

63. Accordingly, the Tribunal found paragraph 2 of the Allegation proved.

The Tribunal's Overall Determination on the Facts

64. The Tribunal has determined the facts as follows:

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

1. On one or more occasion(s) between around September 2019 and September 2021 during your employment at Kettering General Hospital, you behaved inappropriately towards Ms A, a colleague, in that you said to Ms A:

    a. 'blimey, you must be a bit of a goer', or words to that effect; **Determined and found proved.**

    b. 'you've got your legs out', or words to that effect; **Admitted and found proved**

    c. 'seeing your legs like that reminds me of a t-shirt I once owned. It said nice legs, what time do they open', or words to that effect; **Determined and found proved.**

    d. 'it's funny how your name popped up on my phone just as I was talking about perineal massage cream', or words to that effect. **Determined and found proved.**

2. Your actions as set out at paragraph 1 constituted sexual harassment as defined in Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. **Determined and found proved.**

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

Determination on Impairment - 19/04/2024

65. The Tribunal next had to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it had found proved as set out before, Mr Krikler's fitness to practise is impaired by reason of misconduct.

The Evidence

66. The Tribunal took into account all the evidence received during the facts stage of the hearing, both oral and documentary.

67. In addition, the Tribunal received a further bundle of evidence which contained:

- A copy of a Warning previously issued to Mr Krikler by the GMC, which was in effect from 5 June 2015 to 5 June 2020; and
- Dr Krikler's unredacted witness statement, dated 21 February 2024.

Submissions

68. On behalf of the GMC, Ms Hill submitted that Mr Krikler's conduct amounted to serious misconduct and that his fitness to practise is currently impaired. Throughout her submissions, Ms Hill referred the Tribunal to the relevant authorities on determining misconduct and impairment as well as to paragraphs 1, 36, 37 and 65 of Good Medical Practice (2013) ('GMP').

69. Ms Hill submitted that the conduct in this case was repeated on three separate occasions, in September 2019 and in the latter part of 2021. She submitted that the comments were cumulative in effect such that Ms A was fearful of meeting with Mr Krikler and felt that, if she was unable to do so, she was failing in her job. Ms Hill submitted that

such conduct amounts to serious professional misconduct, undermines public confidence in the profession and brings the profession into disrepute.

70. Ms Hill directed the Tribunal to the Warning issued to Mr Krikler in 2015, which arose from his dismissal in 2012. She submitted that this Warning was imposed in response to conduct that was similar in nature.

71. Turning to the matter of impairment, Ms Hill submitted that a troubling aspect of this case is that despite Mr Krikler stating that he is careful not make inappropriate jokes, particularly after his experience in 2012, and despite attending a course covering professional boundaries, he has conducted himself in way that violated the dignity of Ms A and created a degrading, humiliating or offensive environment for her. She submitted that it does not appear that Mr Krikler has modified his conduct following the Warning in 2015 or, if he has, that he has relapsed insofar as his conduct towards Ms A is concerned.

72. Ms Hill submitted that there is little evidence before the Tribunal of remediation, although matters might be remediable. Further, she submitted that Mr Krikler has failed to demonstrate that he has insight into his conduct. She submitted that Mr Krikler has shown very little or no empathy or understanding of the impact of his conduct on Ms A, nor has he acknowledged the risks to the reputation of the profession as a whole by reason of his conduct. Ms Hill submitted that, beyond offering an apology to Ms A, Mr Krikler lacks insight into his behaviour as he has failed to recognise that his conduct is inappropriate or demonstrate that he understands professional boundaries. She submitted that, when considering all of the information the Tribunal has before it, the likelihood of repetition in this case is high.

73. Ms Hill submitted that a finding of impairment was justified to reaffirm clear standards of professional conduct, so as to maintain public confidence in the profession. Further, she submitted that the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made.

The Relevant Legal Principles

74. 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.

75. 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 then, whether the finding of misconduct could lead to a finding of impairment.

76. The Tribunal must determine whether Mr Krikler's fitness to practise is impaired today, taking into account his 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.

77. In relation to misconduct, the Tribunal bore in mind the case of *Roylance v General Medical Council (No.2)* [2000] 1 A.C. 311, which provided:

> *'Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a* [medical] *practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word professional which links the misconduct to the profession* [of medicine]. *Secondly, the misconduct is qualified by the word serious. It is not any professional misconduct which would qualify. The professional misconduct must be serious.'*

78. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the *Fifth Shipman Report*, as adopted by the High Court in *CHRE v NMC and Paula Grant* [2011] EWHC 297 Admin. The Tribunal noted that any of the following features are likely to be present when a doctor's fitness to practise is found to be impaired:

> *a. …*
>
> *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. …'

79. The Tribunal also had regard to the case of *Cohen v General Medical Council* [2008] EWHC 581 (Admin) which provides:

> *'It must be highly relevant in determining if a doctor's fitness to practice is impaired that first his or her conduct which led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated.'*

The Tribunal's Determination on Impairment

Misconduct

80. In determining whether Mr Krikler's fitness to practise is impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amount to misconduct.

81. The Tribunal had regard to paragraphs 1, 36, 37 and 65 of GMP, which provide:

> *'1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.*
>
> *…*
>
> *36 You must treat colleagues fairly and with respect.*
>
> *37 You must be aware of how your behaviour may influence others within and outside the team.*
>
> *…*
>
> *65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.'*

82. In the facts found proved, the Tribunal has already concluded that Mr Krikler's comments were inappropriate and amounted to sexual harassment of a colleague. This carries with it a degree of seriousness and impropriety that the Tribunal took into account.

83. Mr Krikler has emphasised in his statement that he uses jokes and banter as a tool to *'flatten the hierarchy'*. The Tribunal accepted that it was not his intention to cause Ms A to feel uncomfortable, to violate her dignity or to create an environment for Ms A that was degrading, humiliating or offensive.

84. The Tribunal was of the view that, on the face of it, all of the facts found proven amount to misconduct. The comments were inappropriate, sexual in nature and amounted to sexual harassment. In short, Mr Krikler failed to respect his colleague. His conduct affected Ms A's ability to do job and limited her freedom to do it without being made to feel upset and uncomfortable. In her oral evidence, Ms A was asked why she had reported Mr Krikler. She told the Tribunal that she had not *'wanted to get him into trouble'* but had *'felt by not reporting it, it sent a message to him that would say this is OK'*, and that she '*shouldn't have to feel uncomfortable meeting him'*.

85. The Tribunal has therefore concluded that Mr Krikler's conduct fell so far short of the standards reasonably to be expected of a doctor as to amount to serious misconduct.

Impairment by reason of misconduct

86. Having determined that the facts found proved amounted to serious misconduct, the Tribunal went on to consider whether, as a result of that misconduct, Mr Krikler's fitness to practise is currently impaired.

87. The Tribunal considered whether Mr Krikler's misconduct was capable of being remediated, has been remediated, and whether it was highly unlikely to be repeated. It looked for evidence of insight and remediation and balanced those against the three limbs of the statutory overarching objective, namely to:

- protect and promote the health, safety and wellbeing of the public;
- promote and maintain public confidence in the medical profession; and

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

88. Mr Krikler denied some paragraphs of the Allegation, which the Tribunal subsequently found proved. The Tribunal bore closely in mind that a denial does not equate to a lack of insight (*Sawati v GMC* [2022] EWHC 283 (Admin)). It therefore considered whether there was evidence either way of the presence or lack of insight. The Tribunal did not have the benefit of any submissions from Mr Krikler since the facts were found proved against him. The Tribunal accepts that Mr Krikler has shown some remorse for the fact that Ms A was upset. The Tribunal considered that Mr Krikler has not shown insight into why his conduct would have such an effect on her, nor on how it would impact on confidence in the profession.

89. The Tribunal considered that Mr Krikler's actions could be remedied. It noted that following his Warning in 2015, Mr Krikler undertook steps to remedy his past conduct. However, Mr Krikler has not provided any evidence of current remediation to the Tribunal.

90. The Tribunal also considered the risk of repetition in this case. It noted that this is repeated conduct, both within the facts of the case, and in relation to a previous similar matter which occurred in 2012. The conduct in 2012 led to regulatory action in the form of a Warning and his dismissal.

91. Mr Krikler told the Tribunal in his witness statement that following the issues in 2012, that he was being vigilant about his behaviour, particularly relating to physical contact such as hugging. He told the Tribunal that, as a result of his previous matter he *'is careful to try not to make 'inappropriate' jokes, particularly after my experience in 2012'.* With Ms A, he failed to do that, and further, failed to realise that his actions were causing upset. The Tribunal acknowledged that, from the testimonials Mr Krikler has provided, this is not a universal issue. Mr Krikler appears generally considered to be competent, approachable and likeable, however, there is a clear issue with how Mr Krikler uses humour in some cases.

92. The Tribunal noted that there were three separate incidents in this case, although they all arise from Mr Krikler's misreading of the relationship he had with Ms A. The misconduct in this case could not, therefore, be said to be an isolated incident of his previous remediation failing.

93. The Tribunal therefore concluded that there remained a meaningful risk of repetition. It was of the view that Mr Krikler uses humour which has the risk of offending. The facts of this case show that he can be unaware of when he has crossed a line and caused upset, which is a risk he takes by deploying humour with a sexual element. The Tribunal considered that Mr Krikler is capable of remediation and has shown willingness to remediate in the past. It noted that he has been able to reflect and he does possess the ability to work to improve his shortcomings.

94. The Tribunal considered the case of *Grant.* The Tribunal determined that Mr Krikler's actions have brought the profession into disrepute, by virtue of the nature of the misconduct. It noted that the first incident occurred at a time when Mr Krikler was still subject to an active Warning for similar conduct. It concluded that Mr Krikler's misconduct breached fundamental tenets of the profession, as evidenced by his departure from the principles set out in GMP, in particular the need to work well with and respect his colleagues.

95. The Tribunal took into account the statutory overarching objective. Overall, the Tribunal concluded that a finding of impairment was justified and appropriate to promote and maintain public confidence in the profession, and to promote and maintain proper professional standards.

96. The Tribunal considered that the nature and circumstances of the misconduct are such that public confidence in the profession would be undermined if a finding of impairment was not made. It was necessary to reaffirm clear standards of professional conduct, and to mark the unacceptability of Mr Krikler's misconduct.

Determination on Sanction - 26/04/2024

97. Having determined that Mr Krikler'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.

Submissions

98. On behalf of the GMC, Ms Hill submitted that the appropriate sanction in this case was one of suspension. She referred the Tribunal to the Sanctions Guidance (2024) ('the SG') and the Tribunal's own findings at the previous stages of the hearing.

99. Ms Hill submitted that the Tribunal should consider aggravating and mitigating factors in this case. In respect of mitigation, she submitted that Mr Krikler admitted allegations 1(b) and 1(c) (with the relevant caveat). The Tribunal accepted that he had shown some remorse for the fact that Ms A was upset. Further, in respect of lapse of time she submitted that Mr Krikler resigned from Kettering General Hospital NHS Foundation Trust on 10 November 2021, relinquished his licence to practise in July 2022 and intends to make an application for voluntary erasure of his name from the Medical Register once this hearing is concluded. She directed the Tribunal to the testimonials provided by Mr Krikler and noted that he is generally considered competent, approachable and likeable, although there is an issue with how he uses humour in some cases.

100. Ms Hill submitted that, in respect of aggravating factors, the Tribunal should consider that overall Mr Krikler lacks insight into his behaviour. It is accepted that Mr Krikler has shown some remorse, he has not shown insight into why his conduct would have such an effect on Ms A, nor on how it would impact on confidence in the profession. She submitted that he has not provided any evidence of current remediation.

101. Further Ms Hill reminded the Tribunal that at the time of the first incident, Mr Krikler was subject to an active Warning for similar conduct. Ms Hill submitted that sexual misconduct is an aggravating factor that is likely to lead the Tribunal to consider taking more serious actions.

102. Turning to the available sanctions, Ms Hill submitted that there are no exceptional circumstances in this case which would justify taking no action against Mr Krikler. She submitted that undertakings would not be appropriate, nor sufficient and conditions are not appropriate in Mr Krikler's case because of the nature and type of allegations proved, and in light of the aggravating factors present. She submitted that that it would not be possible to formulate a set of conditions that would be appropriate, proportionate, workable, and measurable.

103. Ms Hill submitted that the proven allegations in this case amount to misconduct that was serious and sexual in nature. She submitted that Mr Krikler has demonstrated some insight, and these matters are remediable. In respect of Mr Krikler's request that erasure be considered, she submitted that the GMC does not consider Mr Krikler's behaviour to be fundamentally incompatible with being a doctor. She submitted that erasure would be inappropriate in this case.

104. Ms Hill submitted that a sanction of suspension, with a review was the most appropriate sanction in this case. She made no submission as to the length of any suspension.

Mr Krikler's written submissions

105. Mr Krikler, through his legal representatives, provided written submissions to the Tribunal, which are summarised below.

106. Mr Krikler submitted that he has now retired completely from clinical practice. He relinquished his licence to practise in July 2022 and has no wish to remain on the Medical Register. He submits that due to his retirement the risk of repetition is zero.

107. Mr Krikler submitted that his desire is to make an application for voluntary erasure of his name from the Medical Register but he recognised that this is unlikely to be accepted by the GMC whilst there are ongoing fitness to practise proceedings.

108. Mr Krikler submitted that if the Tribunal is minded to consider a suspension as the appropriate sanction, then he requests that no review hearing be ordered. He submitted that it would neither be possible nor appropriate for him to undertake any remediation during a period of suspension, due to his retirement.

109. The submissions concluded with:

> *'Dr Krikler understands that the GMC is submitting that a review hearing is appropriate in this case. Whilst the GMC has not expanded on its reasons for this submission, Dr Krikler finds himself in the invidious position of requesting that the Panel conclude this case with erasure rather than suspension including a review hearing.'*

The Relevant Legal Principles

110. The Tribunal reminded itself that the decision as to the appropriate sanction to impose, if any, was a matter for it alone, exercising its own judgment. In reaching its decision on sanction, the Tribunal had regard to the SG, reminding itself that it is guidance and could be departed from with good reason. It bore in mind that the purpose of a sanction is not to be punitive, but to protect patients and the wider public interest, although it noted that any sanction imposed may have a punitive effect. It reminded itself that in deciding what sanction, if any, to impose, it should consider the sanctions available, starting with the least restrictive, and imposing a sanction that was proportionate in all the circumstances.

111. Throughout its deliberations, the Tribunal had regard to the overarching objective, which includes the protection of the public, the maintenance of public confidence in the profession, and the promotion and maintenance of proper professional standards and conduct for members of the profession. It applied the principle of proportionality, balancing Mr Krikler's interests with the public interest.

The Tribunal's Determination on Sanction

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

Aggravating factors

113. The Tribunal first considered the aggravating factors. The Tribunal took into account that it has made a finding of sexual harrassment against Mr Krikler. It noted that there was no physical component to the harrassment. The Tribunal accepted that Mr Krikler had not intended to cause offence or upset to Ms A, and that there was no allegation, or finding, of sexual motivation for his conduct. The Tribunal considered paragraphs 149 and 150 of the SG and was of the view that these paragraphs are more targeted at contact sexual offending and abuse. It therefore considered that these do not apply in this case and characterised Mr Krikler's misconduct as inappropriate banter with a sexual overtone. The sexual element made this harassment more serious than a non-sexual equivalent, but the Tribunal took the view that it was not the sort of conduct targeted in paragraphs 149 and 150.

114. The Tribunal noted that sexual harassment is specifically highlighted as a feature of '*failure to work collaboratively with colleagues*' which makes serious outcomes more likely, at

paragraph 138(c) of the guidance. The Tribunal was of the view that this fairly characterised the situation in this case.

115. The Tribunal also had regard to the fact that Mr Krikler's conduct was committed against a colleague in the workplace. He failed to work collaboratively with Ms A by limiting her freedom to do her job without feeling upset and uncomfortable.

116. The Tribunal noted that at the time of the first incident, Mr Krikler was subject to an active GMC Warning for similar conduct. The Tribunal could therefore not ignore that this was repeated conduct, both within the facts of the case, and historically. It did note, however, that concerns about that incident were not brought to Mr Krikler's attention at the time.

117. The Tribunal lastly considered insight. The Tribunal have found Mr Krikler has insight in some respects but have found that he lacks insight into why his conduct would have such an effect on Ms A, and how it would impact on confidence in the profession. Mr Krikler has outlined the root cause of some of this misconduct as his use of humour to '*flatten the hierarchy',* in the context of having misunderstood his relationship with Ms A. Beyond this recognition, Mr Krikler has not demonstrated what he would do to avoid upset in the future and how he would behave differently, nor how he might go about understanding the nature of professional relationships better in the future. The Tribunal has not seen any evidence of active remediation at this stage and notes that greater awareness of the potential for causing upset, arising from his previous incident, did not prevent this one from occurring.

Mitigating factors

118. The Tribunal next considered mitigating factors. The Tribunal noted that Mr Krikler has apologised multiple times to Ms A in his statements and expressed a desire to apologise in person. There is a recognition, albeit after Ms A made her complaint, that he had overstepped Ms A's boundaries and caused upset. The Tribunal acknowledged that Mr Krikler has reflected on the root cause of some of this misconduct, which he accepts is a feature of his character.

119. The Tribunal had regard to the extensive testimonials it has received in support of Mr Krikler. It acknowledged that there was not universal concern with Mr Krikler in relation to inappropriate behaviour. To the contrary, Mr Krikler is highly regarded, and others find him

to be likeable. He is variously described as *'polite'*, '*engaging*', '*approachable'*, '*highly respected'*, '*considerate*', '*compassionate*', and *'well liked'*.

120. The Tribunal accepted that Mr Krikler had used humour as a tool, which he failed to use appropriately in this specific case. It noted the character references make specific reference to positive use of humour and Mr Krikler's ability to put people at ease.

121. The Tribunal also acknowledged the passage of time since the last incident as a mitigating factor. More than two years has passed since the final incident, and there has been no repetition or further complaints in that time that the Tribunal is aware of.

122. The Tribunal balanced the aggravating and mitigating factors throughout its deliberations and went on to consider each sanction in order of ascending severity, starting with the least restrictive.

No action

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

124. The Tribunal acknowledged that Mr Krikler has relinquished his licence to practise. As a practical measure, this prevents repetition, however, the Tribunal was of the view that this does not remedy the identified issues. The Tribunal did not, therefore consider this to be an exceptional circumstance.

125. The Tribunal was satisfied that there were no exceptional circumstances in Mr Krikler's case which could justify it taking no action. Further the Tribunal considered that concluding the case by taking no action would be insufficient to protect the public interest and would not mark the seriousness of Mr Krikler's misconduct.

Conditions

126. The Tribunal next considered whether it would be appropriate to impose conditions on Mr Krikler's registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable. The Tribunal noted that conditions may be workable where a doctor has insight into their misconduct, is likely to comply with

conditions, and where a doctor is likely to respond positively to remediation or retraining. The Tribunal accepted that Mr Krikler would be likely to comply with conditions and that he has shown a previous willingness to remediate.

127. The Tribunal acknowledged that there is an identifiable area of shortcoming in this case, albeit a wide one, namely Mr Krikler's interpersonal interactions and collaboration with colleagues. However, there was no condition that the Tribunal could impose that would appropriately target this issue and that would provide short-term protection against repetition while he remediates, were he to find himself in the workplace again.

128. In addition, the Tribunal considered that conditions would not reflect the seriousness of Mr Krikler's conduct and would be insufficient to maintain public confidence in the profession and to promote and maintain proper standards of conduct. The Tribunal considered that this was not a case in which conditions would sufficiently address the issues of the case.

Suspension

129. The Tribunal then went on to consider whether a period of suspension would adequately protect the public, maintain public confidence in the profession and uphold proper standards for its members. In considering whether to impose a period of suspension on Mr Krikler's registration, the Tribunal had regard to paragraphs 91, 92, 93 and 97(a), (e), (f) and (g) of the SG which provide:

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

93 *Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions.*

…

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

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

…

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

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

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

130. The Tribunal had regard to the factors it has identified as aggravating and mitigating Mr Krikler's misconduct. The Tribunal considered that the nature of Mr Krikler's conduct, in addition to his limited insight and remediation, was serious but, on the spectrum of cases involving a sexual element, was at the less serious end. It was satisfied that this case fell within the ambit of paragraphs 91 to 93 of the SG as set out above. It considered that the matters listed above from paragraph 97 of the SG fitted this case.

131. The Tribunal took into consideration the written submissions made on behalf of Mr Krikler, which requested that it should consider erasure was it minded to suspend Mr Krikler and direct a review.

132. The Tribunal had regard to the written submissions, which stated:

> *'In the current circumstances, it would neither be possible nor appropriate for Dr Krikler to undertake any remediation during a period of suspension as he has retired from all medical practice, relinquished his licence to practise and confirmed that he wishes to voluntarily erase his name from the medical register. It would therefore be impossible for Dr Krikler to satisfy a review Panel that he was safe to return to practise, such that a further order for suspension would likely be imposed leaving Dr Krikler trapped in a continuous cycle of suspension tantamount to erasure.'*

133. The Tribunal had regard to Dr Mr Krikler's actions, and considered that whilst his misconduct was serious, it was remediable. The Tribunal noted the suggestion that due to Mr Krikler not practising that remediation would be impossible. The Tribunal did not accept that submission. It took the view that there are routes to remediate available to a doctor who is not working, such as attending courses on interpersonal communication and workplace conduct, reading and reflecting on how to be respectful, and seeking to develop insight on when and how humour as a tool is appropriate in the workplace.

134. Further, the Tribunal noted that by definition any doctor who was suspended from the medical register would be unable to practise for the duration of that suspension. To suggest that remediation in those circumstances would be impossible is inaccurate. The Tribunal was of the view that to erase on the basis of that assumption would be to do a disservice to an otherwise good and competent doctor.

135. Overall, the Tribunal decided that this case was not one where Mr Krikler's misconduct is '*fundamentally incompatible with continued registration*' and therefore it considered that erasure would not be appropriate or proportionate, nor would it be in the public interest. Erasure would deny the public an otherwise competent and well-regarded doctor.

136. In light of the above, the Tribunal determined that a period of suspension would be an appropriate and proportionate sanction when considering Mr Krikler's interests alongside the public interest. The Tribunal took into account the impact that this sanction may have upon Mr Krikler. However, in all the circumstances the Tribunal concluded that his interests are outweighed by the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and behaviour.

Length of Suspension

137. In determining the length of the suspension, the Tribunal had regard to paragraphs 99 to 102 of SG and the table following paragraph 102.

138. The Tribunal considered the aggravating factors in this case and acknowledged that this was a serious departure from the principles set out in GMP. Mr Krikler created a degrading, humiliating and offensive environment for Ms A with his inappropriate comments. The Tribunal has found that Mr Krikler lacks insight in specific areas, and that he has yet to remediate for the concerns raised.

139. The Tribunal also had regard to the mitigating factors of the case in considering the length of the suspension.

140. Taking all these elements into account, the Tribunal was satisfied that imposing a period of five months' suspension was appropriate and proportionate. In the Tribunal's view this would be sufficient to satisfy the need to promote and maintain public confidence and to send out a clear message to the profession that this type of conduct is unacceptable, in order to maintain proper professional standards. A reasonable and well-informed member of the public or the profession would be satisfied that this was a proportionate response to Mr Krikler's behaviour.

141. A period of five months will also give Mr Krikler sufficient time to deepen and broaden his insight, reflect further, and remediate his misconduct. The Tribunal was of the belief that remediation and reflection could be successful in a relatively short time. The Tribunal acknowledged that Mr Krikler struggles with effect of receiving correspondence regarding these proceedings. It therefore took into account that Mr Krikler may need time to consider the determinations of this Tribunal, reflect upon them and consider his next steps, and that his retirement may make access to some resources difficult.

142. Accordingly, the Tribunal determined to suspend Mr Krikler's registration for a period of five months.

Review

143. The Tribunal determined to direct a review of Mr Krikler's case. A review hearing will convene shortly before the end of the period of suspension. The Tribunal wishes to clarify that at the review hearing, the onus will be on Mr Krikler to demonstrate how he has developed insight, taken remedial steps and reflected on his actions. It therefore may assist the reviewing Tribunal if Mr Krikler provides:

- Demonstration of deeper and wider insight, particularly in relation to the impact of his conduct on Ms A, and how it would impact on confidence in the profession;
- An understanding of practical measures Mr Krikler could take around how he uses humour in the workplace;
- Evidence that he has considered how he interacts with different people, and how they may respond to him; and
- Evidence of remediation focusing on:
    - Interpersonal skills;
    - Working with colleagues including outside of the medical profession.

Determination on Immediate Order - 26/04/2024

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

Submissions

145. On behalf of the GMC, Ms Hill submitted that an immediate order is not necessary in this case as there is no risk to patient safety. She reminded the Tribunal that Mr Krikler is not currently practising, having retired in 2022. She submitted that an immediate order is not necessary to protect members of the public, nor is it otherwise in the public interest, or in the best interests of Mr Krikler.

The Tribunal's Determination

146. In reaching its decision, the Tribunal considered the relevant paragraphs of the SG and exercised its own independent judgement. In particular, it took account of paragraphs 172, 173 and 178:

> *'172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they … may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.*
>
> *173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.*
>
> *…*
>
> *178 Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.'*

147. The Tribunal took into consideration that there were no clinical concerns in this case, nor an immediate risk to patient safety. Notwithstanding the lack of a risk to patient safety, the Tribunal reminded itself of its finding that there remained a risk of repetition of the misconduct in this case. Until Mr Krikler has completed further remediation, that risk remains. The Tribunal accepted as genuine his stated intention not to return to practice. Therefore, an immediate order would only have an impact on him were that intent to change.

148. The Tribunal had regard to paragraph 178 of the SG and took the view that the seriousness of this matter and of any potential repetition made it inappropriate for Mr Krikler to be able to return to unrestricted practice before the substantive order takes effect. The Tribunal took the

view that the risk of repetition, and consequent impact on colleagues, was such that the suspension should be in place immediately.

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

150. There is no interim order to revoke.

151. That concludes this case.

ANNEX A – 18/04/2024
Service and Proceeding in Absence

152. Mr Krikler was neither present nor legally represented at this hearing. The Tribunal noted that in order to proceed with the hearing in Mr Krikler's absence, it needed to be satisfied that Mr Krikler had been properly served with notice of the hearing and that it was appropriate for the hearing to proceed in his absence.

153. The Tribunal was provided with a copy of a Service Bundle from the General Medical Council (GMC). The Service Bundle indicates that on 23 October 2023, the GMC received an email from Ms Juliette Mellman-Jones advising that she was instructed to act on behalf of Mr Krikler in relation to these proceedings, and that *'the protracted nature of these proceedings have caused Mr Krikler significant concern such that he no longer wishes to be contacted by yourselves other than where there is a statutory basis for doing so.'*

154. The Tribunal noted that on 5 March 2024 at 2:39pm the GMC sent a letter to Ms Mellman-Jones via email, enclosing a copy of the Allegation and the bundle. An email response was received from Ms Mellman-Jones on the 6 March 2024 at 8:05am, in which she acknowledged receipt of the GMC letter and stated that she would pass the information on to Mr Krikler.

155. The Tribunal also noted that, on 6 March 2024 at 2:07pm, the MPTS sent Ms Mellman-Jones a Notice of Hearing letter by email, confirming that Mr Krikler's hearing would commence virtually on 15 April 2024 and that it was expected to last seven days. The MPTS email also requested confirmation from Mr Krikler as to whether he would be attending and provided information as to the support available in relation to the hearing. Ms Mellman-Jones acknowledged receipt of the email on the same day at 2:57pm and informed the MPTS that Mr Krikler would not be attending or represented at the hearing.

156. The Tribunal had regard to Mr Krikler's witness statement and to a letter from his doctor which outlined XXX. He indicated that he meant no disrespect by not attending, but that his XXX. He invited the Tribunal to consider the points raised in his witness statement when making decisions in this matter.

GMC's Submissions

157. On behalf of the GMC, Ms Hill took the Tribunal through the service bundle and highlighted that the Notice of Hearing had been sent to Mr Krikler by email to his nominated representative in good time before the hearing. She invited the Tribunal to conclude that service had been effected in accordance with the GMC (Fitness to Practise) Rules 2004, as amended ('the Rules').

158. Ms Hill invited the Tribunal to consider Rule 31 of the Rules which provides that where a practitioner was neither present nor represented, the Tribunal may nevertheless proceed to consider and determine the allegation if it is satisfied that all reasonable efforts have been made to serve the practitioner with notice of the hearing in accordance with the Rules. She submitted that Mr Krikler has deliberately and voluntarily absented himself from the hearing and given notice of this to both the GMC and MPTS in email correspondence.

159. Ms Hill submitted that an adjournment would not result in Mr Krikler attending the hearing, nor has he requested an adjournment. She submitted that there would be no disadvantage to Mr Krikler as he has provided all of the documents upon which he wishes to rely. She submitted the onus was on Mr Krikler to engage with proceedings, and the hearing should therefore proceed in the absence of Mr Krikler.

Tribunal's Determination

Service

160. The Tribunal had regard to Rule 40(2) of the Rules which provides that a notice or document required to be served under the Rules may be served by ordinary post or by electronic mail to an electronic mail address that the practitioner had notified to the Registrar as an address for communications. Rule 40(4) provides that service of any notice or document under the Rules may be provided by a number of methods including a confirmation of receipt of the notice or document sent by electronic mail.

161. In light of the evidence of emails containing the Notice of Allegation and the Notice of Hearing being served by email to Mr Krikler's nominated legal representative, and the responses to those emails, the Tribunal was satisfied that Mr Krikler had been properly served with the Notice of Hearing in accordance with Rules 15 and 40 of the Rules.

Proceeding in Mr Krikler's Absence

162. In making its determination the Tribunal noted that the decision as to whether or not the hearing should proceed in Mr Krikler's absence was a matter for its discretion and that such discretion was to be exercised with great care and caution.

163. The Tribunal had regard to the legal authority of *General Medical Council v Adeogba* [2016] EWCA Civ 162, which states that a practitioner has a right to be present at a hearing and a right to be legally represented but that those rights can be waived where a Practitioner voluntarily absents themselves from a hearing and/or withdraws instructions from those representing them.

164. The Tribunal noted that Ms Mellman-Jones had responded to correspondence sent to her regarding this hearing and stated that Mr Krikler would not be attending the hearing. The Tribunal took note of Mr Krikler's indication that he did not feel able to attend a hearing XXX. There was no indication that this reasoning would change with time. The Tribunal also noted that this was a virtual hearing, making attendance as convenient and inexpensive as possible were Mr Krikler to want to attend. The Tribunal concluded, in light of the information before it, that Mr Krikler had voluntarily absented himself from this hearing, having provided his explanation as to why he would not be in attendance.

165. The Tribunal considered whether an adjournment would result in Mr Krikler attending the hearing. Setting aside that there had been no application for an adjournment, there was no evidence before the Tribunal that an adjournment would result in Mr Krikler attending. The Tribunal formed the view that Mr Krikler's representative had made it clear in her correspondence with the GMC and MPTS that he did not intend to attend the hearing, and it found no reason to believe that situation would change with time.

166. The Tribunal also considered whether any decision to proceed in Mr Krikler's absence may result in disadvantage or prejudice to him. It noted that Mr Krikler had provided a detailed witness statement, exhibits to support it, and a bundle of character references. He had, therefore, had an opportunity to engage in the hearing, and his account could be considered. The Tribunal was mindful that Mr Krikler would be disadvantaged by not being able to ask questions at the hearing, not being able to respond to the oral evidence of witnesses, or submissions on behalf of the GMC, and that his evidence would be untested. The Tribunal balanced that against other factors including the statutory overarching objective and the public interest. The Tribunal noted that the public interest included ensuring that a

hearing should take place within a reasonable time of the events to which it related and the need for a fair, economic, expeditious and efficient disposal of the hearing. These matters should be balanced against any prejudice to Mr Krikler. The Tribunal also noted that the MPTS had advised Mr Krikler in its correspondence to him that the Tribunal could hear the case in his absence. The Tribunal took the view that the correspondence indicated, though it was not explicit, that Mr Krikler understood and accepted that the hearing could go ahead in his absence.

167. Having considered each of the relevant factors, the Tribunal determined that it is fair, just and in the public interest to proceed with the hearing in Mr Krikler's absence.

ANNEX B – 18/04/2024

Application for parts of the hearing to be heard in private

168. On day one of the hearing, Ms Hill made an application at the request of Mr Krikler's legal representative, pursuant to Rule 41 of the Rules, for parts of the hearing to be held in private.

Submissions

169. Ms Hill, on behalf of the GMC, submitted that Mr Krikler had submitted to the GMC some limited evidence of XXX that had prevented him in part from attending the hearing. She indicated that it was not her intention to refer to these matters in great detail, particularly at early stages of the hearing, however all information related to those issues should be heard in private.

The Tribunal's Decision

170. In making its decision, the Tribunal first had regard to Rule 41 of the Rules, which provides:

> *'(1) …hearings before … a Medical Practitioners Tribunal shall be held in public.*
>
> *(2) The …Medical Practitioners Tribunal may determine that the public shall be excluded from the proceedings or any part of the proceedings, where they consider*

that the particular circumstances of the case outweigh the public interest in holding the hearing in public.

171. The Tribunal had regard to the evidence provided by Mr Krikler, XXX, dated 18 January 2024. The Tribunal was mindful that Mr Krikler has opted not to attend the hearing XXX. The Tribunal recognised the importance of hearings being held in public. The Tribunal was mindful that the detail of XXX did not bear directly on the matters to be determined. As such, the public interest in hearings being held in public would not be undermined by hearing those parts of the evidence in private. The Tribunal was satisfied that the particular circumstances of this case outweighed the public interest in holding that part of the evidence in public.

172. The Tribunal determined on that basis to grant the application for parts of the hearing where they relate to XXX to be heard in private.

ANNEX C – 18/04/2024
Application to admit hearsay evidence

173. At the outset of the hearing, the Tribunal raised concerns about parts of some documents which were contained within the main hearing bundle, as they appeared to be hearsay. Ms Hill, on behalf of the GMC reviewed the sections of the bundle and agreed that some sections should be removed. However, she made an application pursuant to Rule 34 of the Rules, for one of the elements of hearsay to be admitted.

174. That evidence, found in Ms A's witness statement and a local statement exhibited within it, referred to a nickname given to Mr Krikler, as well as a reputation he was said to have, which the Tribunal considered to be anonymous hearsay.

Submissions

175. Ms Hill submitted that the evidence presented to the Tribunal, with agreement from Mr Krikler and his representatives, was included to present a full picture to the Tribunal from both sides. She noted that Mr Krikler had made reference to a previous dismissal, and lessons he says he learned from that experience. She submitted that was balanced by reference to his wider reputation. She reminded the Tribunal that the relevance of each piece of evidence

and the weight given to it is a matter for the Tribunal, guided by the principle of fairness to both sides.

176. Ms Hill submitted that Mr Krikler has chosen to put forward information regarding his previous dismissal for inappropriate conduct in 2012 as well as his past appraisals, and character witness evidence. She submitted that it was agreed between the parties that Mr Krikler could not '*cherry pick'* which parts of his character or reputation he put before the Tribunal and on that basis the GMC have sought to present a picture of both sides.

The Tribunal's decision

177. The Tribunal considered the principle reiterated in *El Karout v NMC* [2019] EWHC 28 (Admin), that it should consider the admissibility of any hearsay evidence initially. Only if the evidence could be fairly admitted, should matters of weight be considered.

178. The Tribunal had regard to the statement and noted that its concerns related to the use of a nickname, reported to be used by staff at the Hospital to describe Mr Krikler. The Tribunal noted that this is the only statement in which this nickname is contained, and that no other person has stated that this was the nickname Mr Krikler had. There is no evidence about the basis for that nickname from anyone who is said to have used it, nor about how widespread its use is.

179. In regards to relevance, the Tribunal noted that it provided support to the Allegation in the broadest sense, in that it was suggestive that Mr Krikler had a reputation for being inappropriate. Even if that reputation can be said to be relevant to the facts in this case, there is no way for the Tribunal to assess the fairness of that nickname, or the reasons for it. It is prejudicial to Mr Krikler that evidence of that sort should be admitted. He cannot properly challenge the basis on which it is used, because that basis does not form part of the evidence, and so the Tribunal could not determine what weight should be given to it were it to be admitted. To the extent that witnesses are able to comment on their own interactions with Mr Krikler, his wider conduct already forms part of the evidence.

180. The Tribunal did not consider that the use of the nickname, or the reference to a wider reputation, did anything to balance the suggestion of learning from a previous case. In making that assessment, it was mindful that Mr Krikler has made admissions to some inappropriate behaviour in this case, in that paragraph 1(b) of the Allegation is admitted and

paragraph 1(c) is admitted save for one word. In that context, the Tribunal was not of the view that admission of these pieces of evidence were necessary to ensure a full picture was presented.

181. The Tribunal took the view that admitting these pieces of evidence would prejudice Mr Krikler in a way he could not properly challenge, and that the evidence could not assist the Tribunal in reaching a decision on the facts. In those circumstances, they could not fairly be admitted.

182. The Tribunal therefore determined to exclude references to this nickname from the bundle and refused the GMC's application.