PUBLIC RECORD

Dates: 22/05/2025 – 30/05/2025
05/06/2025 - 06/06/2025

Doctor:	Dr Fakher GENDY
GMC reference number:	3642991
Primary medical qualification:	MB BCh 1974 University of Asyut

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

Summary of outcome
Erasure

Tribunal:

Legally Qualified Chair	Ms Rachel Jones
Registrant Tribunal Member:	Dr Richard Whiteside
Registrant Tribunal Member:	Dr Gabrielle Downey

Tribunal Clerk:	Ms Keely Crabtree Mr Sewa Singh – 27/05/2025

Attendance and Representation:

Doctor:	Present, not represented
GMC Representatives:	Mr Thomas Moran, Counsel: 22/05/2025 – 30/05/2025 Ms Jade Bucklow, Counsel: 05/06/2025 - 06/06/2025

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 - 23/05/2025

1. Dr Gendy qualified at Assuit University in Egypt in 1974. He has been registered with the General Medical Council (GMC) since 18 November 1992, and on the Specialist Register for obstetrics and gynaecology since 20 November 1996.

2. The background to the Allegation against Dr Gendy is as follows. On 16 May 2024 at North Cheshire Magistrates' Court, Dr Gendy was convicted of an offence that between 10 June 2023 and 12 June 2023, whilst trading as Fem Aesthetics, he carried out a regulated activity, namely a surgical procedure, as defined in Paragraph 1 of Schedule 1 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, without being registered to do so with the Care Quality Commission (CQC). The offence was committed contrary to Section 10(1) of the Health and Social Care Act 2008, in that he carried out a purported surgical labiaplasty on a service user whilst unregistered to do so.

3. Dr Gendy pleaded guilty to the offence. He was sentenced to a 16-week custodial sentence, suspended for 12 months, as well as 200 hours unpaid community work. He was also required to pay costs of £5000.

4. Dr Gendy completed the unpaid work requirement on 9 July 2024, and the suspended sentence order was completed on 15 May 2025.

5. The initial concerns were raised with the GMC by the CQC.

The Outcome of Applications Made during the Facts Stage

Amendment of the allegation

6. On the first day of the proceedings, the Tribunal discussed with the parties whether splitting the two sentences of paragraph 1(a) of the Allegation into two parts would clarify the issues. After hearing submissions from the parties, and pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), the Tribunal was satisfied that the amendment could be made without injustice to either party. The Allegation was therefore amended so that the two sentences of paragraph 1(a) became 1(a)(i) and 1(a)(ii).

The Allegation and the Doctor's Response

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

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

1. On 16 May 2024 at North Cheshire Magistrates' Court you were:

a. (i) convicted of an offence that between 10 June 2023 and 12 June 2023 at 99A Knutsford Road, Grappenhall, Warrington, Cheshire, WA4 2NS, trading as Fem Aesthetics, you carried on a regulated activity, namely a surgical procedure, as defined in Paragraph 1 of Schedule 1 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, without being registered to do so.
Admitted and found proved

(ii) The offence was committed contrary to Section 10(1) of the Health and Social Care Act 2008, in that you carried out a purported surgical labiaplasty on a service user whilst unregistered to do so;
To be determined

b. sentenced to:

i. imprisonment for 16 weeks, suspended for 12 months;
Admitted and found proved

ii. an unpaid work requirement of 200 hours, to be completed within 12 months.
Admitted and found proved

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

The Admitted Facts

8. At the outset of these proceedings, Dr Gendy made admissions to some sub-paragraphs of the Allegation in accordance with Rule 17(2)(d) of the Rules: namely, paragraphs 1(a)(i), 1(b)(i), and 1(b)(ii). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these sub-paragraphs of the Allegation as admitted and found proved, as set out above.

Witness Evidence

9. Dr Gendy provided a two-page written response to the Allegation and also gave oral evidence at the hearing.

Documentary Evidence

10. The Tribunal had regard to the documentary evidence provided by the parties for the facts stage, which comprised:

- Memorandum of conviction;
- CQC Case Summary;
- CQC letter to Dr Gendy dated 14 June 2023;
- Dr Gendy's response to CQC letter dated 7 July 2023;
- Emails between the GMC and HM Prison and Probation Service dated 28 February 2024;
- Dr Gendy's defence bundle (a two-page statement and a photograph of a prescription).

The Tribunal's Approach

11. 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. 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 also had regard to Rule 34(3) and 34(5) of the Rules:

'(3) Production of a certificate purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas that a person has been convicted of a criminal offence or, in Scotland, an extract conviction, shall be conclusive evidence of the offence committed.

(5) The only evidence which may be adduced by the practitioner in rebuttal of a conviction or determination certified in the manner specified in paragraph (3) or (4) is evidence for the purposes of proving that he is not the person referred to in the certificate or extract.'

12. The Tribunal reminded itself that it was only concerned with a single allegation, in the terms set out in paragraph 1(a)(ii).

The Tribunal's Analysis of the Evidence and Findings

13. The Tribunal noted that Section 10(1) of the Health and Social Care Act 2008 provides as follows:

"Any person who carries on a regulated activity without being registered under this Chapter in respect of the carrying on of that activity is guilty of an offence."

14. The Tribunal also noted that Schedule 1 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 sets out certain 'regulated activities' for the purposes of section 10(1), including:

'surgical procedures (including all pre-operative and post-operative care associated with such procedures) carried on by a health care professional for … cosmetic purposes, where the procedure involves the use of instruments or equipment which are inserted into the body'

15. Dr Gendy's evidence was that he saw a private patient in April 2023, which led to a labiaplasty procedure being carried out on 10 June 2023, for aesthetic reasons, in a clinic which is not CQC registered. He accepted before the Tribunal that he had, in fact, been convicted as set out in paragraph 1(a)(i) of the Allegation. Dr Gendy also accepted that he is the person named in the certificate of conviction. However, his documentary and oral evidence did not accept fully, without reservation, and unambiguously, that he had committed an offence, in breach of section 10(1) of the 2008 Act, by not registering himself with the CQC.

16. For example, in his written response, Dr Gendy stated that "the CQC allegations", i.e. the allegations which led to the conviction, "do not fully apply to me" and further that, after he pleaded guilty, his solicitor had advised him that he should not have pleaded guilty to the offence. In his oral evidence, Dr Gendy stated that he had made a "mistake" and said he should have checked the position as to registration. He further said he had not realised that labiaplasty for aesthetic purposes is a regulated procedure.

17. On behalf of the GMC, Mr Moran submitted that Dr Gendy's evidence was not necessarily accepted by the GMC but that in any event, it was not relevant at this stage, because the Tribunal was not entitled to 'go behind' the criminal conviction.

18. The Tribunal, having reminded itself of Rule 34 of the Rules, accepted the GMC's submission. It noted that it had a certificate of conviction, which set out that Dr Gendy committed an offence that, contrary to section 10(1) of the 2008 Act, while trading as Fem Aesthetics, he carried out a purported surgical labiaplasty on a service user whilst unregistered to do so.

19. The Tribunal concluded that it was not open to the Tribunal to 'go behind' the conviction. Accordingly, paragraph 1(a)(ii) of the allegation was found proved.

The Tribunal's Overall Determination on the Facts

20. The Tribunal has determined the facts as follows:

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

1. On 16 May 2024 at North Cheshire Magistrates' Court you were:

   a. (i) convicted of an offence that between 10 June 2023 and 12 June 2023 at 99A Knutsford Road, Grappenhall, Warrington, Cheshire, WA4 2NS, trading as Fem Aesthetics, you carried on a regulated activity, namely a surgical procedure, as defined in Paragraph 1 of Schedule 1 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, without being registered to do so.
   Admitted and found proved

   (ii) The offence was committed contrary to Section 10(1) of the Health and Social Care Act 2008, in that you carried out a purported surgical labiaplasty on a service user whilst unregistered to do so;
   Determined and found proved

b. sentenced to:

i. imprisonment for 16 weeks, suspended for 12 months;

Admitted and found proved

ii. an unpaid work requirement of 200 hours, to be completed within 12 months.

Admitted and found proved

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

Determination on Impairment - 30/05/2025

1. At the conclusion of the facts stage in relation to Dr Gendy's conviction for carrying out a surgical procedure without being registered with the CQC to do so ('CQC conviction'), Mr Moran informed the Tribunal that Dr Gendy was currently subject to an existing order of suspension in relation to a separate case. Mr Moran invited the Tribunal to review that matter ('the review case'), alongside the impairment and sanction stages of the CQC conviction, pursuant to rules 21A and 22 of the Rules.

2. The review case was first considered by a Medical Practitioners Tribunal (MPT) from 12 February 2024 to 1 March 2024 ('the 2024 Tribunal'). In sum, the 2024 Tribunal found that certain clinical failings on Dr Gendy's part in respect of two patients amounted to serious misconduct which impaired his fitness to practise, and directed a substantive 9-month suspension.

3. On Friday 20 December 2024, a new Tribunal ('the December 2024 Tribunal') convened to review the case of Dr Gendy. It was made aware that in the period between 1 March 2024, when the Tribunal's substantive order of a 9-month suspension was directed, and the review hearing convening, new allegations against Dr Gendy had arisen. The December 2024 Tribunal determined that it was obliged to adjourn the review hearing until after the new allegation had been resolved, and directed that the suspension of Dr Gendy's registration would be extended by a further 6 months, to 3 July 2025.

4. This Tribunal now has to decide, in accordance with Rules 21A and 22, whether Dr Gendy's fitness to practise is impaired by reason of his conviction and/or by reason of the serious misconduct which is the subject of the review case.

The Outcome of Applications Made during the Impairment Stage

5. At the outset of the review hearing, the Tribunal considered an application made by Dr Gendy for voluntary erasure ('VE application'). The application was refused. The Tribunal's full decision on the application is included at Annex A.

Background

6. The facts found proved at Dr Gendy's 2024 Tribunal related only to two patients, Patients C and D. They can be summarised as follows.

Patient C

7. The 2024 Tribunal found that on 12 November 2020 Dr Gendy treated Patient C and that he did not adequately manage shoulder dystocia during the delivery of her baby, in that he continued to apply inappropriate axial traction to the baby's neck by using excessive force. The 2024 Tribunal noted that expert evidence described this as seriously below the standard to be expected of a doctor of Dr Gendy's experience.

8. The 2024 Tribunal considered that there was a potential risk of harm to Patient C's baby from the inappropriate force being applied by Dr Gendy.

9. The 2024 Tribunal concluded that Dr Gendy's actions were seriously below the standard to be expected, resulted in distress to his colleagues, and put Patient C's baby at risk of harm. The 2024 Tribunal considered Dr Gendy's conduct would be viewed as deplorable by other members of the profession and therefore amounted to serious misconduct.

Patient D

10. The 2024 Tribunal found that on 26 February 2021 Dr Gendy treated Patient D and failed to recognise, in a timely manner, that Patient D had suffered a maternal collapse. He then failed to respond to that, in that he did not: play an active role in resuscitating Patient D, consider the emergency delivery of Patient D's baby in light of the collapse, provide adequate guidance to the MDT, or communicate the urgency of the clinical picture to the attending anaesthetist.

11. The 2024 Tribunal also found that Dr Gendy failed to adequately manage Patient D's postpartum hemorrhage in that he did not recognise the significance of Patient D's blood loss

and failed to give timely consideration to; the tone of the uterus, any tissue remaining in the uterus, any trauma to the genital tract and/or uterus, or thrombin.

12. Further the 2024 Tribunal found that Dr Gendy failed to request in a timely manner the administration of the required medications, attempt to limit ongoing bleeding by performing bimanual compression to Patient D's uterus, and he failed to remain in theatre while Patient D was bleeding and instead leaving to contact Mr E.

13. Finally, the 2024 Tribunal found that Dr Gendy failed to recognise Patient D's massive obstetric haemorrhage, adequately perform bimanual compression of her uterus when asked to do so, and appropriately lead the MDT during the emergency.

14. The 2024 Tribunal found that in his treatment of Patient D, Dr Gendy had shown a clear departure from paragraphs 15 (a) and (b), and 16 (b) of GMP. It further found that in his communication with Dr E, Dr Gendy had shown a clear departure from paragraph 35 of GMP.

15. The 2024 Tribunal found that the management of Patient D's collapse was taken over by others in the room, and the description of Dr Gendy during the PPH as being '*like a rabbit in the headlights*' was accurate. The 2024 Tribunal bore in mind the notes written by Dr Gendy which fail to reflect in any way the seriousness of Patient D's condition at the outset.

16. The 2024 Tribunal concluded that Dr Gendy's failure to recognise Patient D's serious blood loss, to take the lead in the management of that situation, administer the appropriate drugs and inform the consultant what was happening, were further examples of Dr Gendy's poor communication with others and his poor leadership of the MDT during the incident.

17. The 2024 Tribunal found that the overall management of Patient D's condition by Dr Gendy fell seriously below the standard to be expected and would be regarded as deplorable by fellow members of the profession.

18. In regard to Dr Gendy's insight into his misconduct, the 2024 Tribunal accepted that Dr Gendy recognised the seriousness of the findings. However, it was concerned that Dr Gendy, in his oral evidence, had sought to blame others for mistakes made in the care of Patients C and D. The 2024 Tribunal therefore concluded that whilst Dr Gendy had shown some insight into his misconduct, it was limited.

19. In regard to remediation, the 2024 Tribunal noted the certificates provided by Dr Gendy, and the list of literature which he had reviewed. The 2024 Tribunal noted that this

evidence was not accompanied by any reflection from Dr Gendy on how the training had informed his practice going forward, or how he had learnt from the courses. The 2024 Tribunal further noted that the courses were not targeted towards all of the issues raised in the Allegation.

20. The 2024 Tribunal noted that in respect of his poor communication, while Dr Gendy had undertaken a course titled 'Managing human factors for safe practice', he had not provided a reflection on this learning and how he might improve his situational awareness, communication, teamworking, or leadership skills. Taking into account the lack of evidence of reflection, the 2024 Tribunal concluded that Dr Gendy had shown limited evidence of remediation.

21. The 2024 Tribunal took into account the positive testimonials provided by Dr Gendy and noted that they spoke highly of his skills as a clinician and raised no concerns about his ability to practise. The 2024 Tribunal also noted that Dr Gendy had previously worked at consultant level and had worked in obstetrics and gynaecology for a significant period of time, without concern. The 2024 Tribunal was mindful, however, that it had found proved serious allegations relating specifically to Dr Gendy's identification of Patient D's maternal collapse as well as management of her PPH/ massive obstetric haemorrhage. In addition, the 2024 Tribunal found Dr Gendy's clinical skills – in not performing the bimanual compressions effectively and applying excessive axial traction were seriously below the standard expected of a clinician of Dr Gendy's experience. The 2024 Tribunal therefore attached limited weight to the testimonials.

22. The 2024 Tribunal determined that while this may be a one-off incident in a long career, there were a number of serious departures from GMP, including the failure to recognise a maternal collapse, and then adequately manage the resulting PPH/ massive obstetric haemorrhage. The 2024 Tribunal did not consider that the failings identified were evidenced as being remediated by the CPD provided, and although some insight had been demonstrated, Dr Gendy had on occasion sought to attribute blame to others. The 2024 Tribunal was therefore satisfied that there remained a risk of repetition, given the limited insight and remediation.

23. The 2024 Tribunal found the following to be aggravating factors; Dr Gendy had shown limited insight into his misconduct, Dr Gendy had shown a failure to work collaboratively with colleagues, and his misconduct had the potential to cause serious harm to patients.

24. The 2024 Tribunal found the following to be mitigating factors; Dr Gendy had made a partial attempt at remediation with some relevant training, and had provided positive testimonials from colleagues.

25. The 2024 Tribunal determined that a finding of impairment was necessary to protect, promote and maintain the health safety and well being of the public, and given the seriousness of its findings in respect of the care of Patient D 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.

26. The 2024 Tribunal concluded that conditions would not be proportionate to mark the seriousness of Dr Gendy's misconduct and would be insufficient to maintain public confidence in the medical profession and promote and maintain proper professional standards and conduct for members of that profession.

27. The 2024 Tribunal concluded that while Dr Gendy's remediation was inadequate, there was no evidence to suggest that remediation may be unsuccessful in the future. The 2024 Tribunal determined that Dr Gendy's misconduct was not fundamentally incompatible with continued registration, however it was so serious that a suspension would be appropriate to maintain public confidence in the profession and to uphold and maintain proper professional standards and conduct for the profession.

28. The 2024 Tribunal determined that a period of 9 months would allow Dr Gendy a realistic opportunity to further develop his insight and to remediate the numerous failings identified in his practice. The 2024 Tribunal was mindful that this was a significant period of suspension, however it took into account that Dr Gendy's failings relate to two patients, and in Patient D's case the Tribunal had identified a wide range of serious failings.

29. The 2024 Tribunal determined to direct a review of Dr Gendy's case and considered that it may assist a reviewing Tribunal if Dr Gendy provided:

- Evidence that he has kept his clinical knowledge and skills up to date, including ongoing CPD;
- Evidence of learning and reflection in the following areas:
- effective communication and working collaboratively with colleagues, human factors and the importance of situational awareness in emergency situations, and diagnosis and identification of early warning signs on the management of obstetric emergencies such as shoulder dystocia, PPH, and Massive Obstetric Haemorrhage; and

- Any other material which Dr Gendy considers will assist the reviewing Tribunal.

Evidence and Documents

30. The Tribunal heard oral evidence from Dr Gendy at the impairment stage. The Tribunal took into account the documents provided at the facts stage, in respect of the CQC conviction.

31. The Tribunal was also provided with additional documents for the review case, including but not limited to the following:

- Record of Determination from the Medical Practitioners Tribunal (MPT) Hearing 12 February 2024 to 1 March 2024;
- Record of Determination for the MPT Review hearing dated 20 December 2024;
- Emails between the GMC and Dr Gendy/Dr Gendy's previous legal representative, MDDUS dated 1 May to 23 August 2024;
- Dr Gendy's defence Bundle which included reflections and Continuous Professional Development Certificates (CPD);
- Emails from the MPTS to Dr Gendy dated 20 December 2024 to 14 March 2025;
- Email from the GMC to Dr Gendy/MDDUS dated 26 March 2025;
- Written submissions on behalf of Dr Gendy from MDDUS dated 20 May 2025 in respect of the review matter only;
- Dr Gendy's statement in November 2024, entitled 'My Reflections'.

Submissions

CQC Conviction

32. On behalf of the GMC, Mr Moran referred the Tribunal to 'Good Medical Practice' ('GMP'), both the 2013 and 2024 versions. Mr Moran submitted that paragraphs 12 and 65 of the 2013 version were engaged, and also paragraphs 4 and 81 of the 2024 version.

33. Mr Moran submitted that Dr Gendy had downplayed the seriousness of his conviction in his evidence at the impairment stage, and was effectively saying that although he had been convicted, this was the result of defective legal advice, and he is not, in fact guilty.

34. Mr Moran submitted that Dr Gendy did not recognise the requirement to be registered with the CQC which provides a framework of regulation that protects the public. He submitted that there was a potential risk to patient safety in doing surgery when not

registered with the CQC and this was the reason why the court decided in Dr Gendy's case that it was so serious there had to be a custodial sentence, albeit suspended. He submitted that the requirement to be registered with the CQC is not merely a matter of bureaucracy or paperwork. It is imposed for a very good reason, to protect the public.

35. Mr Moran stated that the procedure undertaken by Dr Gendy was significant surgery, and certainly more than removing a skin tag as Dr Gendy had described. He submitted that it was difficult to see how Dr Gendy could have thought that this was not a regulated activity.

36. Mr Moran submitted that there was a lack of insight into the seriousness of the offence in that Dr Gendy had been preoccupied with saying he is not guilty rather than reflecting on the seriousness of it and why it is an offence.

37. Mr Moran submitted that Dr Gendy's focus had been on his own personal suffering rather than his own conduct, regret or reflection of committing the offence. However, it was accepted that there had been serious consequences for Dr Gendy as a result of his conviction.

38. Mr Moran said that it was difficult to say whether this had been a deliberate flouting of the rules or a careless error but whichever it was, the Tribunal should regard it as serious. He submitted that the conviction on its own (without the review matter) should lead to a finding of impaired fitness to practise.

Review case

39. Mr Moran stated that Dr Gendy had to his credit provided a significant amount of evidence in response to the previous 2024 Tribunal's decision and what a future Tribunal would be assisted by. This included a significant amount of learning, undertaking various courses and he said the right things in his witness statement. However, it would be up to the Tribunal to decide whether or not what Dr Gendy has done is perfunctory for the purpose of meeting what he was told to do or a reflection of a deep-seated change and recognition of failings with a need for a different approach.

40. Mr Moran stated that the evidence from Dr Gendy at stage 2 and his evidence in relation to his voluntary erasure application questions his level of insight into the previous findings. Mr Moran reminded the Tribunal that Dr Gendy had described some of the 2024 Tribunal's most serious findings in relation to Patient D as being absolutely false. Dr Gendy said that the problem lay with the hospital which was known to the GMC to have a lot of

problems, and that the doctors and nurses hated each other. Dr Gendy said that he had suffered as a result of this, and the 2024 Tribunal should have 'waived all of her claims', which appeared to be a reference to a witness.

41. Mr Moran stated that in Dr Gendy's evidence at the impairment stage, when invited to reflect on paragraph 203 of the 2024 Tribunal's determination which relates to his level of insight and his tendency to look to fault in others rather than to examine his own fault, he effectively doubled down on blaming others and said that it was not his mistake. Mr Moran said that this hearing was not a chance for Dr Gendy to relitigate the findings made by the 2024 Tribunal.

42. Mr Moran said that despite the number of courses Dr Gendy had undertaken, he submitted that it would appear that his insight had not moved on from the position of the 2024 hearing. Furthermore, Dr Gendy had not completed any learning in the last 6 months.

43. Mr Moran stated that even if the review matter was considered entirely separately, it was the GMC's position that it would be appropriate to continue to find that Dr Gendy's fitness to practises was impaired and the persuasive burden on him has not been discharged to show the contrary.

Dr Gendy's closing submissions

44. Dr Gendy gave oral evidence to the Tribunal about both the CQC conviction and the review case. Dr Gendy also gave closing submissions in response to Mr Moran's submissions, above, which were in summary as follows.

45. Dr Gendy said that he was convicted because he was not registered with the CQC but said that he did not have any clinics to register, therefore this registration requirement did not apply to him. He said that he originally pleaded guilty because he felt he had performed the operation in a non CQC registered setting, however he later felt that he should not have pleaded guilty. Dr Gendy said that he should have consulted the GMC or the defence union before he did the operation. However, he said that in actual fact, he was not guilty of the allegations of which he was convicted. Dr Gendy said that he had both regret and insight. He said that he had also felt embarrassment and guilt.

46. As to the review case, Dr Gendy said that he knew that the 2024 Tribunal would suspend him and he accepted that and accepted that it was his own fault because he had made a mistake.

47. Dr Gendy gave the Tribunal an overview of what he said had happened. He said that he still felt that the midwife who provided evidence at his 2024 hearing was telling lies. He said that he was not blaming others for his mistakes, but that he still believes it is not his mistake.

48. Dr Gendy said that he had not done any learning/ CPD since November 2024. This was because he could not afford it and did not intend to carry on working and he wished to resign.

49. The Tribunal also received and considered written submissions on behalf of Dr Gendy by the MDDUS dated 20 May 2025.

The Relevant Legal Principles

50. 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.

51. In approaching its decision in respect of the CQC conviction, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct which was serious, and then whether any serious misconduct could lead to a finding of impairment.

52. The Tribunal also bore in mind that, in respect of the review case, Dr Gendy bears a "*persuasive burden"* to demonstrate that his fitness to practise is no longer impaired by reason of the serious misconduct found by the 2024 Tribunal: *Abrahaem v GMC* [2008] EWHC 183 (Admin).

53. The Tribunal reminded itself it must determine whether Dr Gendy'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.

54. The Tribunal considered that, whilst there is no statutory definition of impairment, 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 927 (Admin) ('*Grant*') would be of assistance in its consideration of impairment. In particular the Tribunal should consider

whether its finding of facts showed that the doctor's fitness to practise is impaired in the sense that he:

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

55. Finally, as to insight, the Tribunal reminded itself of Sawati v GMC [2022] EWHC (Admin), paragraph 76, and Sayer v General Osteopathic Council [2021] EWHC 370 (Admin), in particular paragraph 25. Those paragraphs in their entirety were relevant, but in particular the Tribunal was taken to the following principles:

- As a general principle insight means "an acknowledgment and appreciation of a failing, its magnitude, and its consequences for others".

- Insight is essential for the doctor's failing to be "properly understood, addressed and eliminated for the future". If the doctor's conduct is faulty, but they do not have insight into that, that can give good grounds for concern that the doctor is unlikely to be able to address the conduct, and hence that they pose a continuing risk.

- However, denial of misconduct is not an "absolute bar" to a finding of insight. It is possible to deny the misconduct, and still demonstrate that you understand the gravity of the offence and are unlikely to repeat it. Nonetheless, attitude to the underlying allegation is properly to be taken into account when assessing insight. Where the doctor continues to deny that they acted improperly, that makes it more difficult for them to demonstrate insight.

56. The Tribunal has borne in mind all three limbs of the statutory overarching objective: to protect and promote the health, safety and wellbeing 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 the medical profession.

The Tribunal's Determination on Impairment

Background to the CQC conviction

57. The Tribunal had regard to Dr Gendy's oral and written evidence at both the facts and impairment stage. The Tribunal reminded itself of its facts determination in respect of the CQC conviction and sentence.

58. In summary, in May 2024, Dr Gendy was convicted of carrying out a "*regulated activity*" – namely, a surgical procedure – on a patient without being registered with the CQC to do so, contrary to section 10(1) of the Health and Safety Act 2008. Dr Gendy's sentence included a suspended custodial sentence of 16 weeks.

59. Dr Gendy's evidence was that he had seen a patient privately in a beauty clinic which he used on an *ad hoc* basis; and that in June 2023, he carried out a "*surgical private operation*" on the patient at that clinic, under local anaesthesia.

60. The Memorandum of Conviction described that procedure as a "*purported surgical labiaplasty*". Dr Gendy described it as a labiaplasty for aesthetic purposes.

61. The Tribunal reminded itself that, at the facts stage, Dr Gendy had not clearly or fully accepted that he was guilty of the offence of which he had been convicted.

62. Dr Gendy developed his position in oral evidence at the impairment stage. He denied that he was, as an individual practitioner, required to register with the CQC before carrying out the surgical procedure in June 2023. Rather, Dr Gendy argued that it was not possible for him to register personally with the CQC. He said that CQC registration only applies to places; it does not apply to individuals. He said that if he owned a clinic and did not register it then the CQC conviction would be "*fair enough*", but he did not own any clinic to register.

63. Dr Gendy further said the reason for his conviction was the "*ignorance and fault of my solicitor*" and that he should not been sentenced but should have only received a fine. He went on to say he was not guilty of the offence for which he was convicted.

64. Dr Gendy also said that at the time of the procedure, he had understood that labiaplasty for "*aesthetic reasons*" did not require CQC registration, as opposed to labiaplasty

for "*medical reasons*". He said that he accepted that this understanding was wrong, and a mistake.

65. Dr Gendy further stated, when asked by GMC counsel why regulations exist requiring CQC registration, that it was right that regulated procedures are done in a place which is well-equipped for those procedures, and referred to his "*mistake and ignorance"*.

66. In closing, Dr Gendy said: *"I was not guilty of not being registered with the CQC because I don't have a place to register. That doesn't mean I don't recognise seriousness of the problem … I am saying I was sentenced for actual allegations that I did not do…* [but] *I do recognise the seriousness and I regret, I made a mistake, I did not know. It's my fault."*

Misconduct

67. The Tribunal first considered whether the CQC conviction amounted to misconduct. It concluded that it did, in particular for the following reasons.

68. Dr Gendy carried out a surgical procedure on a patient without being registered with the CQC to do so. In so doing he committed a criminal offence.

69. The Tribunal noted that at the time of the surgical procedure, the 2013 version of '*Good Medical Practice*' ('GMP') was in force, but at the time of Dr Gendy's conviction, the 2024 version was in force. The two versions were in materially similar terms for relevant purposes.

70. The Tribunal had regard to the following passages from GMP (2013):

> Paragraph 1: "*Good doctors … act with integrity and within the law"*
>
> Paragraph 12: "*You must keep up to date with, and follow, the law, our guidance and other regulations relevant to your work."*
>
> Paragraph 65: "*You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession."*

71. The Tribunal also had regard to relevant passages of GMP (2024), in particular paragraphs 4 and 81.

72. The Tribunal concluded that Dr Gendy had committed a criminal offence and had, thereby, clearly contravened fundamental tenets of good medical practice. The conduct in question was linked to his practise of medicine and brought the profession into disrepute. It was, therefore, misconduct.

Serious misconduct

73. The Tribunal next considered whether the misconduct was "*serious*". In addition to its conclusions above, the Tribunal had regard to its determination in respect of Dr Gendy's VE application, specifically its conclusion that the CQC conviction was a "*serious*" offence, by reference to the following factors:

- Dr Gendy was sentenced to 16 weeks' imprisonment, suspended for 12 months, and an unpaid work requirement of 200 hours. He was also required to pay a surcharge to fund victim services of £154, and costs of £5000. Dr Gendy's guilty plea was taken into account when imposing his sentence.

- The Memorandum of Conviction further states that the suspended custodial sentence was imposed because "*Offence so serious*".

- The CQC, an independent regulator, considered the matter serious enough to prosecute Dr Gendy for a criminal offence.

- The Tribunal noted the CQC's description of its role in a letter to 14 June 2024 to Dr Gendy, as follows: "*CQC registers health and adult social care service providers in England and checks, through registration, monitoring and inspection, that the required standards are being met. We make sure health and social care services provide people with safe, effective, compassionate, high-quality care and we encourage care services to improve…"*

74. The Tribunal considered that the same factors were equally relevant here and, overall, strongly indicated that this misconduct was "*serious*". While mindful that criminal and fitness to practise proceedings have different purposes, the Tribunal agreed with the GMC's submission that the presence of a custodial sentence, albeit suspended, was a clear indicator of the gravity of Dr Gendy's offence.

75. Further, while bearing in mind that the conviction does not involve any criticism of the surgery itself i.e. its nature or performance, the Tribunal did have regard to the definition

of a "*surgical procedure",* as set out in its facts determination. The Tribunal considered that, by its very nature, such a procedure has the potential to have serious consequences for patients: because it "*involves the use of instruments or equipment which are inserted into the body*".

76. In this context, the Tribunal accepted the GMC's submission that the requirement to be registered with the CQC is not merely a matter of bureaucracy or paperwork. It is imposed for a very good reason, to protect the public. That is reinforced by the CQC's role as set out above.

77. Finally, the Tribunal considered that in all the circumstances, Dr Gendy's CQC conviction would be considered deplorable by other members of the profession.

78. The Tribunal concluded that Dr Gendy's conviction in respect of carrying out a surgery on a patient while unregistered with the CQC to do so, amounts to serious misconduct.

Insight and remediation

79. The Tribunal went on to consider the issues of insight and remediation. The Tribunal had regard to all the written and oral evidence from both parties.

80. As to insight, the Tribunal considered whether there had been "*an acknowledgment and appreciation of a failing, its magnitude, and its consequences for others".* It considered that this was essential in order for Dr Gendy's failings to be remediated: i.e. properly understood, addressed and eliminated for the future.

81. The Tribunal noted that Dr Gendy had, in his oral evidence, appeared to accept that it was important that regulated procedures should be regulated by the CQC, in response to a question from the GMC. Dr Gendy also gave expressions of regret and referred to making mistakes. However, viewing his evidence as a whole, the Tribunal was not satisfied that, since his conviction, Dr Gendy has sufficiently reflected on and acknowledged the potential risks to patient safety, and to the reputation of the profession, of a doctor carrying out surgery while unregistered with the CQC to do so. These issues hardly featured in his evidence.

82. Overall, the Tribunal agreed with counsel for the GMC's submission that Dr Gendy did not appear fully to appreciate the seriousness of the misconduct.

83. Further, the Tribunal considered that Dr Gendy was preoccupied with his argument that it was impossible for him to register with the CQC as an individual practitioner and that, therefore, he should not have pleaded guilty to the offence.

84. The Tribunal reminded itself of the facts found proven. It considered that, given the conviction and in accordance with rule 34 of the FTP Rules, it had to proceed on the basis that Dr Gendy was wrong in his understanding that it is impossible for an individual doctor to register with the CQC. The necessary premise of Dr Gendy's conviction was to the contrary: that he could and should have registered with the CQC.

85. The Tribunal bore closely in mind that denial of misconduct is not an absolute bar to finding insight, but considered that Dr Gendy's attitude to the underlying offence was relevant when assessing insight. It considered that Dr Gendy's denial that he was properly convicted made it difficult for him to show full insight into his wrongdoing. In any event, the Tribunal felt that Dr Gendy does not appear to fully appreciate either what he had done wrong, or the gravity of the offence of which he was convicted.

86. While the Tribunal noted Dr Gendy's acknowledgment that he had been mistaken in thinking 'aesthetic' surgery, as opposed to 'medical' surgery, is not a regulated procedure, the Tribunal did not consider this to detract from the seriousness of his misconduct. Further, the Tribunal was concerned that Dr Gendy's apparent misunderstanding about CQC registration has persisted despite his conviction.

87. Overall, the Tribunal concluded that Dr Gendy's insight is very limited. Further, that he has not, through proper reflection, remediated his misconduct since the conviction.

88. In light of this conclusion, and in all the circumstances, the Tribunal also concluded that there is a real risk of repetition. The Tribunal was particularly concerned that, given the importance of oversight by the CQC as an independent regulator, the risk of repetition entails a potential risk to public safety.

89. The Tribunal had regard to the four questions set out at paragraph 76 of the Council for Healthcare Regulatory Excellence v NMC and Paula Grant [2011] EWHC 927 (Admin) ('CHRE'). It concluded that the first three of those questions were engaged, namely that the doctor's misconduct had and/or was liable to put a patient or patients at unwarranted risk of harm; had and/or was liable to bring the medical profession into disrepute; and/or had and/or was liable to breach fundamental tenets of the medical profession. Further, the Tribunal considered that the CQC conviction engaged all three limbs of the overarching objective:

namely, the need to protect, promote and maintain the health, safety and well being of the public, to promote and maintain public confidence in the profession, and to promote and maintain proper professional standards and conduct for the profession.

90. The Tribunal considered that, had it been looking at the CQC conviction matter in isolation, it would find that Dr Gendy's fitness to practice was impaired. However, it considered it was appropriate to first go on to consider the review case before reaching an overall conclusion.

The review case

91. The Tribunal reminded itself of the overarching objective and that there is no burden or standard of proof at the impairment stage; the question is a matter for the Tribunal's judgement. The Tribunal also noted that in a review case, there is a "*persuasive burden"* on the practitioner to satisfy the reviewing Tribunal that he is safe to return to unrestricted practice.

Insight

92. The Tribunal considered that the critical issue in the review case was whether Dr Gendy had developed his insight into those clinical failings which the 2024 Tribunal had found amounted to serious misconduct on his part, concerning Patients C and D.

93. The Tribunal first had regard to the written evidence in Dr Gendy's defence bundle, and in particular to his statement of November 2024. In that statement, Dr Gendy gave evidence that he had undertaken a significant amount of CPD and learning directed to the areas where the 2024 Tribunal had identified deficiencies in his practice, for example, diagnosis and identification of obstetric emergencies.

94. The Tribunal further had regard to paragraph 203 of the 2024 Tribunal's determination:

> "*The Tribunal accepted that Dr Gendy recognises the seriousness of the findings, however it was concerned that Dr Gendy, in his oral evidence, had sought to blame others for mistakes made in the care of Patients C and D… The Tribunal therefore concluded that whilst Dr Gendy had shown some insight into his misconduct, it was limited."*

95. In his oral evidence at the impairment stage, by reference to paragraph 203, Dr Gendy told the Tribunal that he was not to blame for the clinical failings described in that paragraph. In particular, he said as follows:

- In respect of paragraph 203 of the 2024 Tribunal's determination, he stated that he was not, in fact, at fault in any of the three cases where the Tribunal had said he had blamed others. As to the tranexamic acid, he stated that this was an error of the part of the anaesthetist. As to blood loss, he said this was an error on the part of the midwives. As to calling the consultant, he said that this had been the senior midwife's responsibility, not his.

- Dr Gendy stated, "*If it is not my mistake I can't admit it*". He said that he was not seeking to blame others, but rather seeking to explain the truth of what had happened.

- In closing, Dr Gendy told the Tribunal that he felt the midwife, i.e. one of the witnesses before the 2024 Tribunal, "*was telling lies*" when she said that Dr Gendy had not recognised that the patient had suffered a collapse.

96. The GMC submitted that the Tribunal should also have regard to the oral evidence given by Dr Gendy in the course of his voluntary erasure application, in which Dr Gendy told the Tribunal that some of the findings made against him by the 2024 Tribunal in respect of Patient D were "*absolutely false*".

97. The Tribunal did not consider Dr Gendy's oral evidence in isolation but looked at it in the round with all the evidence and submissions received. It noted in particular that at paragraph 1 of his November 2024 statement, Dr Gendy said: "*I have taken the report of the tribunal very seriously to learn from my mistakes and to make sure they will never be repeated again.*"

98. However, the Tribunal considered there to be a significant disconnect between Dr Gendy's written statement in November 2024, and the oral evidence given to the Tribunal in these proceedings, specifically his evidence at the impairment stage. The Tribunal concluded it clear that Dr Gendy continued to seek to blame others for his own, serious clinical failings which had led to the 2024 Tribunal finding impairment.

99. While again reminding itself that denial of misconduct does not *necessarily* equate to lack of insight, the Tribunal considered that in the circumstances of this case, Dr Gendy had

failed to fully and critically reflect on his serious misconduct, especially with respect to Patient D. Rather, he had 'doubled down' on blaming others for his errors.

100. The Tribunal accepted that, to his credit, Dr Gendy has undertaken a considerable amount of CPD following the 2024 Tribunal's determination and has, to that extent, made an effort to remediate his previous failings. However, it considered this to be of limited weight when set against his continuing failure to develop full insight. The Tribunal noted that more than a year has passed since the 2024 Tribunal's determination. The Tribunal considered that Dr Gendy has not, in this time, fully remediated his serious misconduct, and that it would be difficult for him to do so going forward, while he maintained the position that others were to blame.

101. The Tribunal noted that the 2024 Tribunal had, at paragraph 208 of its determination, determined that a finding of impairment was necessary in respect of all three limbs of the overarching objective. The Tribunal considered that, had it been looking at the review case in isolation, it would have reached the same conclusion.

Conclusion

102. In light of its conclusions above, and after having considered the CQC conviction and the review case 'in the round', the Tribunal concluded that a finding of impairment was necessary in this case in respect of all three limbs of the overarching objective: to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the profession, and to promote and maintain proper professional standards and conduct for the profession.

Determination on Sanction - 06/06/2025

1. Having determined that Dr Gendy's fitness to practise is impaired by reason of conviction and misconduct, the Tribunal now has to decide, in accordance with Rules 21A and 22 of the Rules, the appropriate sanction, if any, to impose.

The Evidence

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

Submissions

3. On behalf of the GMC, Mr Moran submitted that the proportionate sanction is erasure. He addressed the Tribunal on the conviction and the review cases separately but submitted that, when making a decision, the Tribunal is concerned with the overall position.

CQC conviction

4. With regard to aggravating factors in this case, Mr Moran submitted that there was a lack of insight and previous findings of impaired fitness to practise with a sanction already imposed on Dr Gendy's registration. Mr Moran said that the previous findings dealt with clinical failings, which the conviction did not. However, the conviction did relate to the running of his clinical practice, i.e. the lack of registration.

5. Mr Moran said that, whilst the GMC encouraged the Tribunal to form its own view when deciding upon mitigating factors in relation to the conviction, the GMC's position was that it was difficult to identify any mitigating factors in this case.

6. Mr Moran referred the Tribunal to the Sanctions Guidance (the 'SG'). He stated that this was clearly not a case where no action should be taken, and similarly, it was not a conditions case.

7. Mr Moran submitted that for conditions to be workable Dr Gendy would have to have insight, which was not the case here. There was also evidence to demonstrate that remediation would be unlikely to work. Mr Moran said that it was Dr Gendy's own position that he had not done any learning for 6 months because he did not intend to continue practising. Therefore, the GMC's case was that conditions would not be appropriate.

8. Mr Moran referred the Tribunal to paragraphs 93 and 97 of the SG, which indicate when suspension may be appropriate. Mr Moran submitted that Dr Gendy's removal from the Medical Register was in the public interest. He said that remediation would appear to be difficult in his case and there was evidence that it would be unsuccessful.

9. Mr Moran stated that it was right to acknowledge that there had been no evidence of repetition of similar behaviour since the incident.

10. Mr Moran said that paragraph 97(g) is an important factor operating against the imposition of suspension. He submitted that the Tribunal would need to be satisfied Dr

Gendy had insight and did not pose a significant risk of repeating behaviour. The GMC's position was that it would be difficult, just looking at the conviction matter alone, for the Tribunal to support a sanction of suspension.

11. Mr Moran referred the Tribunal to paragraphs 107, 108 and 109 of the SG, which deal with erasure.

12. Mr Moran reminded the Tribunal that it may erase a doctor from the medical register in any case where this is the only means of protecting the public. He stated that erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. Mr Moran submitted that there was an element of patient safety involved, not just in the review matter, but also the conviction.

13. Mr Moran submitted that paragraphs 109 (a) and (j) of the SG were engaged in this case. He submitted that there had been a serious departure from the principles set out in GMP where the behaviour was fundamentally incompatible with being a doctor and Dr Gendy's persistent lack of insight into the seriousness of his actions or the consequences.

Review

14. Mr Moran stated that the 2024 Tribunal had imposed a suspension at the upper end of nine months. He submitted it was therefore a case that was at least approaching the sanction of erasure.

15. Mr Moran submitted that the balance was now tipped towards erasure, not just by the addition of the conviction but also what has or, more importantly, has not happened since the 2024 Tribunal's decision.

16. With regard to insight, Mr Moran said that the GMC had not sought Dr Gendy's erasure at the 2024 Tribunal hearing. Mr Moran referred the Tribunal to the GMC's submissions, as recorded at paragraph 216 of the 2024 Tribunal's sanction determination. He said that in 2024, the GMC were not arguing that there was a persistent lack of insight because at that stage it was too soon to assert that.

17. Mr Moran reiterated that a persistent lack of insight is a factor in paragraph 109 of the SG which indicates that erasure may be appropriate. He submitted that the GMC's position has changed since the 2024 case, due to the evidence this Tribunal has received

from Dr Gendy, in particular his oral evidence during the voluntary erasure application and at the impairment stage. Mr Moran submitted that erasure would now be appropriate.

18. Mr Moran said that the 2024 Tribunal had been satisfied that paragraph 97 (g) of the SG was engaged, namely that Dr Gendy had insight and did not pose a significant risk of repeating behaviour. He referred the Tribunal to paragraph 238 of the 2024 Tribunal's sanction determination.

19. Mr Moran said that the 2024 Tribunal's imposition of a suspension should now be seen in the context of the evidence Dr Gendy had given over a year later. In light of that evidence, he submitted, it would now be difficult to find that paragraph 97 (g) of the SG did apply.

20. Mr Moran said it was never a happy position to be in, to be making a submission for erasure, for a doctor who has been a doctor for many years. However, the findings against him are now such that the GMC submitted that the Tribunal is driven towards a sanction of erasure; given the lack of insight, which is essential in order for there to be remediation. Mr Moran reminded the Tribunal of its observations at the impairment stage, in which it also found that there was a real risk of repetition. Mr Moran submitted that it was now difficult to see how full remediation could realistically take place.

21. Dr Gendy submitted that the appropriate sanction was a matter for the Tribunal's judgement and stated that he wished that the GMC had accepted his application for voluntary erasure.

The Tribunal's Approach

22. The Tribunal was reminded that the decision as to the appropriate sanction, if any, to impose was a matter of its judgement.

23. The Tribunal was advised to have regard to the Sanctions Guidance, and to give case-specific reasons for any departure from that guidance. This included, but was not limited to, the paragraphs on which counsel for the GMC had relied.

24. The Tribunal also bore in mind that the purpose of a sanction is not to be punitive, albeit that a sanction may have a punitive effect.

25. It reminded itself that, in determining whether to impose a sanction and if so, which, the Tribunal should have regard to the principle of proportionality and should consider the available sanctions in ascending order, i.e. start by considering the least restrictive option.

26. The Tribunal was, finally, advised that the reputation of the medical profession as a whole is more important than the interests of an individual doctor: *Bolton v Law Society* [1993] EWCA Civ 32.

27. The Tribunal had regard to the statutory overarching objective in section 1 of the Medical Act 1983 throughout its deliberations.

The Tribunal's Determination on Sanction

Aggravating factors

28. Before considering what action, if any, to take in respect of Dr Gendy's registration, the Tribunal considered the aggravating and mitigating factors in this case.

29. The Tribunal noted the following paragraphs of the SG:

> *'51 It is important for tribunals to consider insight, or lack of, when determining sanctions …*
>
> *52 A doctor is likely to lack insight if they:*
>
> *a refuse to apologise or accept their mistakes*
>
> *b promise to remediate, but fail to take appropriate steps, or only do so when prompted immediately before or during the hearing*
>
> *c do not demonstrate the timely development of insight*
>
> *…*
>
> *54 Where the GMC, or another regulator, has previously made findings of impaired fitness to practise and imposed a sanction on the doctor's registration, the tribunal may wish to consider this as an aggravating factor in relation to the case before it.*

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

…

b a failure to work collaboratively with colleagues…'

30. As to the CQC conviction matter, the Tribunal reminded itself of its conclusion, at the impairment stage, that Dr Gendy does not accept that he is guilty of the offence. He had also not properly reflected on and acknowledged the potential risks to patient safety, and to the reputation of the profession, of a doctor carrying out surgery while unregistered with the CQC.

31. The Tribunal also noted that, at the time of the CQC conviction, Dr Gendy was already subject to a finding of impaired fitness to practise; and at the time of the procedure which is the subject of that conviction, Dr Gendy was under investigation by the GMC.

32. As to the review case, the Tribunal considered that Dr Gendy had shown a failure to work collaboratively with colleagues. Further, the Tribunal noted that more than a year has passed since the 2024 Tribunal's determination. This Tribunal has found in its impairment determination that Dr Gendy had failed to critically reflect on his serious misconduct in that time. Rather, he continued to blame his colleagues for the serious clinical failings which led to the previous finding of impairment.

33. Finally, while the Tribunal noted Dr Gendy has at times during the hearing expressed regret, it was not satisfied there has been, in either the conviction or the review case, meaningful remediation of his serious misconduct. It noted its findings in the impairment determination that in both cases, Dr Gendy's lack of insight makes it difficult for him to reflect upon and remediate his misconduct. The Tribunal was of the view that Dr Gendy's continued lack of full insight into the serious misconduct in both cases, and consequently his limited remediation, was an aggravating feature.

34. The Tribunal therefore considered that aggravating factors, in particular those in paragraphs 52(a) to (c), 54 and 55(b) of the SG, were present in this case.

<u>Mitigating factors</u>

35. As to mitigating factors, the Tribunal was not satisfied that any of the factors in the SG fully applied to either of Dr Gendy's cases. The Tribunal agreed with the GMC's submission that it was difficult to identify any mitigation of significance in this case. Overall, the only mitigating factor which the Tribunal was satisfied fully applied was paragraph 26(d) of the SG: that Dr Gendy has cooperated with the GMC's inquiries.

36. The Tribunal noted that, prior to Dr Gendy's 2024 hearing there had been no previous adverse findings against him in his lengthy career in the NHS. However, it did not consider his previous history to amount to a mitigating factor, when viewed overall. Dr Gendy has now received two findings of impaired fitness to practise, both concerning serious matters, in a relatively short time period.

37. The Tribunal also reminded itself that Dr Gendy had given evidence about his difficult financial circumstances, and the impact on him of the suspension. However, it was not suggested by Dr Gendy that these difficulties explained or excused the CQC conviction. The relevance of his personal circumstances therefore appeared to be limited.

38. With respect to the review case, the Tribunal had regard to the considerable amount of CPD which, to his credit, Dr Gendy has undertaken following the 2024 Tribunal's determination. However, it has found at the impairment stage that Dr Gendy does not have insight and has not meaningfully remediated his misconduct by reflecting on what went wrong.

39. The Tribunal considered the positive patient and colleague feedback provided by Dr Gendy, but noted the passage of time since those two reports were produced. In all the circumstances, including the seriousness of the misconduct, the Tribunal considered the feedback reports to be of little relevance or weight.

40. Throughout its deliberations on the appropriate and proportionate sanction to impose, if any, the Tribunal had in mind the aggravating and mitigating factors. The Tribunal considered each sanction in ascending order of severity, starting with the least restrictive.

No action

41. The Tribunal first considered whether to conclude the case by taking no action. The Tribunal determined that there are no exceptional circumstances in this case which would warrant the taking of no action in the context of the facts found proved and the Tribunal's

determination on impairment. It considered that the taking of no action would not be sufficient, proportionate, or in the public interest.

Conditions

42. The Tribunal next considered whether to impose conditions on Dr Gendy's registration. In so doing, it bore in mind that any conditions imposed would need to be appropriate, proportionate, workable, and measurable. It had regard to the SG, especially paragraphs 80 to 81 (as to the purpose of conditions), 82 and 84.

43. The Tribunal noted the following paragraphs of the SG in particular:

> *'82 Conditions are likely to be workable where:*
>
> > *a the doctor has insight*
> >
> > *b a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings*
> > *…*
> >
> > *d the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised.'*

44. In light of its findings at the impairment stage, the Tribunal concluded that paragraphs 82(a), (b) and (d) of the SG above do not apply. The Tribunal determined that it would not be possible to formulate a set of appropriate or workable conditions which could adequately address Dr Gendy's conviction and misconduct.

45. The Tribunal further considered that none of the factors in paragraph 84, which indicate that conditions may be appropriate, are present. On the contrary, by reference to paragraph 84(a) and 82(d) of the SG, the Tribunal considered that the evidence shows that remediation is unlikely to be successful.

46. In any event, the Tribunal concluded that a period of conditional registration would not be an appropriate or proportionate sanction to satisfy the public interest; noting the purpose of conditions as described at paragraphs 80 to 81 of the SG. It considered conditions would not be sufficient to mark the seriousness of the misconduct in issue.

Suspension

47. The Tribunal next considered whether it would be appropriate and proportionate to suspend Dr Gendy's registration.

48. The Tribunal first noted paragraph 93 of the SG:

> *"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."*

49. As to the review case, the Tribunal noted that the 2024 Tribunal had, at that time, viewed Dr Gendy's serious clinical failings as potentially remediable, and had imposed a lengthy suspension. However, the Tribunal considered that matters had moved on since the 2024 Tribunal; in particular, in light of the CQC conviction and the oral evidence which this Tribunal has received from Dr Gendy during the hearing. The CQC conviction and review case now had to be assessed 'in the round', alongside this Tribunal's findings as to the extent of Dr Gendy's insight and remediation.

50. With respect to both the CQC conviction and the review case, the Tribunal had regard to its findings at the impairment stage. It considered that there has not been a clear acknowledgment of fault in either case. On the contrary, it has found that Dr Gendy lacks insight, and that there is a risk of repetition of his serious misconduct in both cases. Further, the Tribunal bore in mind that, in both cases, his misconduct had the potential to cause risks to patient safety.

51. The Tribunal was of the view that while 'on paper' Dr Gendy has tried to remediate the serious clinical failings which the 2024 Tribunal found, by completing various training courses, in his oral evidence to the Tribunal he remained adamant that he had done nothing wrong. Thus, Dr Gendy's efforts to remediate in respect of the review case had not resulted in him critically reflecting on the seriousness of the failings or gaining insight. As to the CQC conviction, the Tribunal has similarly found that Dr Gendy lacks proper insight and has not remediated the misconduct, for the reasons set out in its impairment determination.

52. The Tribunal concluded, therefore, that paragraph 93 of the SG does not operate in favour of suspension, in this case.

53. The Tribunal next considered paragraph 97, namely factors which, if present, may indicate that suspension is appropriate. It considered that paragraphs 97(c) and (d) were not relevant. It had regard to each of the remaining sub-paragraphs:

> *'97 Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.*
>
> > *a A serious departure from Good medical practice, but where the misconduct is not so difficult to remediate that complete removal from the register is in the public interest. However, the departure is serious enough that a sanction lower than a suspension would not be sufficient to protect the public.*
> >
> > *b In cases involving deficient performance where there is a risk to patient safety if the doctor's registration is not suspended and where the doctor demonstrates potential for remediation or retraining.*
> >
> > *…*
> >
> > *e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.*
> >
> > *f No evidence of repetition of similar behaviour since incident.*
> >
> > *g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.'*

54. In summary, the Tribunal concluded none of the above sub-paragraphs operate in favour of suspension, for the following reasons.

55. As to paragraph 97(a): the Tribunal considered that in both the CQC conviction and the review case, there was a serious departure from GMP. The Tribunal had concluded as such in relation to the CQC conviction in its impairment determination, and it noted and agreed with the 2024 Tribunal's conclusions to this effect in its determination on the clinical failings. The Tribunal considered the CQC conviction to be a serious offence, for all the reasons set out in its impairment decision, including because it attracted a suspended custodial sentence, and by reference to the important role of the CQC. While in principle,

both the conviction and the clinical failures were capable of being remediated, the Tribunal considered that could only be so where the doctor had reflected very carefully and self-critically on the wrongdoing, developed insight, and taken steps to remediate, which was not the case here. Rather, the Tribunal considered that given Dr Gendy's very limited insight in both cases, coupled with the passage of time since the 2024 determination, realistically it now appears unlikely that he will remediate his behaviour.

56. As to paragraphs 97(b) and (e): the Tribunal considered that the review case did concern "*deficient performance where there is a risk to patient safety",* but that, as above, the Tribunal is not satisfied that there is potential for successful remediation. On the contrary, the evidence, especially Dr Gendy's oral evidence, has led the Tribunal to conclude that remediation is unlikely to be successful. In respect of the review case in particular, Dr Gendy has already had more than a year to reflect upon the 2024 Tribunal's findings but has continued to blame others for the clinical failings; there has not been progression in his insight.

57. As to paragraph 97(f): the Tribunal noted that there is no evidence of repetition of "*similar"* clinical failings since the decision of the 2024 Tribunal. However, since that time, Dr Gendy received the CQC conviction.

58. As to paragraph 97(g): again, the Tribunal was not satisfied that Dr Gendy has insight, and considered he does pose a significant risk of repeating behaviour. The Tribunal agreed with the submission on behalf of the GMC that paragraph 97(g) is an important factor operating against suspension in this case.

59. In light of the Tribunal's conclusions above, which did not indicate that imposing a period of suspension would be adequate to uphold the overarching objective, the Tribunal went on to consider the option of erasure.

Erasure

60. The Tribunal noted the following:

- The CQC conviction concerned a serious offence. The Tribunal has concluded that Dr Gendy lacks insight into this serious misconduct, and that he has not remediated it. Specifically, Dr Gendy does not accept the correctness of that conviction, nor does he appear to fully appreciate the offence's seriousness.

- The review case concerned serious clinical failings in respect of two patients, with the potential for serious harm to the patients and/or their babies.

- To the extent that Dr Gendy has sought to remediate the serious misconduct which the 2024 Tribunal found proven, through engaging in training courses, these efforts have not resulted in his gaining full insight. Nor has the lengthy suspension which Dr Gendy has served since the 2024 Tribunal's decision resulted in his developing full insight into his wrongdoing. On the contrary, Dr Gendy has evinced a persistent lack of insight.

61. Against that background, the Tribunal went on to consider paragraphs 107 and 108 SG:

> *'107 The tribunal may erase a doctor from the medical register in any case – except one that relates solely to the doctor's health and/or knowledge of English – where this is the only means of protecting the public.*
>
> *108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.'*

62. As to these paragraphs, the Tribunal noted that in its determination on impairment, it had concluded that Dr Gendy *does* present a risk to patient safety, since there is a risk of repetition both of the conduct which gave rise to the CQC conviction and of the serious clinical failings, responsibility for which he does not fully accept.

63. The Tribunal next had regard to the factors in paragraph 109 of the SG indicating erasure may be the appropriate sanction, and found the following to be engaged:

> *'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 difficult to remediate.*
>
> *…*

> *c Doing serious harm to others (patients or otherwise), either deliberately or through incompetence and particularly where there is a continuing risk to patients…*
>
> *j Persistent lack of insight into the seriousness of their actions or the consequences.'*

64. As to (a), the Tribunal had regard to its impairment determination and to its earlier conclusions in considering whether suspension was an appropriate option, by reference to paragraph 97(a) of the SG.

65. As to (c), the Tribunal noted the findings of the 2024 Tribunal that Dr Gendy's serious clinical failings in respect of Patients C and D had the potential to cause serious harm, and again had regard to its conclusions at the impairment stage that there is a risk of repetition of Dr Gendy's serious misconduct, with attendant risks to public safety.

66. Paragraph 109(c) cross-refers to paragraphs 129 to 132 SG, to which the Tribunal also had regard. Paragraph 130 states: "*A particularly important consideration … is whether a doctor has developed, or has the potential to develop, insight into these failures. Where insight is not evident, it is likely that conditions … or suspension may not be appropriate or sufficient.*"

67. Similarly, paragraph 109(j) refers to: "*Persistent lack of insight into the seriousness of their actions or the consequences*".

68. As to both paragraph 109(j) and 130 of the SG, the Tribunal reminded itself of its earlier conclusions about Dr Gendy's insight and remediation, and noted the passage of time since the 2024 Tribunal's decision. The Tribunal also had regard to paragraph 164 of the SG, the relevant parts of which describe three purposes of a review hearing at (a), (c) and (d), namely that:

> "*… the tribunal can consider whether the doctor has shown all of the following (by producing objective evidence):*
>
> *a they fully appreciate the gravity of the offence*
>
> *…*

c they have maintained their skills and knowledge

d patients will not be placed at risk by resumption of practice or by the imposition of conditional registration."

69. The Tribunal, noting its conclusions at the impairment stage, observed that Dr Gendy has not satisfied it of any of (a), (c) or (d). It noted that Dr Gendy has in his own evidence stated that he does not intend to undertake any further CPD.

70. The Tribunal concluded that Dr Gendy has not taken the opportunity provided by the suspension which the 2024 Tribunal imposed to learn from his misconduct, reflect upon it, and remediate it. In all the circumstances, it considered that Dr Gendy has now demonstrated a persistent lack of insight into the seriousness of his actions and their consequences, both for patients and for public confidence in the profession. More generally, it considered his lack of insight into both the clinical failings and the conviction to be an important factor weighing in favour of erasure.

71. Overall, while the Tribunal was acutely aware that erasure is a measure of last resort, it concluded that it was the only means to sufficiently meet the three limbs of the overarching objective: to protect the public, promote and maintain professional standards, and maintain public confidence in the profession. Erasure was the necessary, appropriate and proportionate sanction in this case. In reaching this conclusion, the Tribunal balanced the potential impact of erasure on Dr Gendy against the public interest.

72. The Tribunal therefore determined to erase Dr Gendy's name from the medical register.

73. The MPTS will send Dr Gendy a letter informing him of his right of appeal and when the direction and the new sanction will come into effect. The current order of suspension will remain in place during the appeal period.

ANNEX A – 29/05/2025

Application for Voluntary Erasure

1. The Tribunal agreed, in accordance with Rule 41 of the Rules, that parts of this hearing should be heard in private where the matters under consideration are confidential, namely where they involve reference to XXX. As such, this determination will be read in private but a redacted version will be published following the conclusion of this hearing, with those matters relating to XXX removed.

2. Dr Gendy applied to the GMC for voluntary erasure ('VE') on 22 May 2025. The application was referred to the Tribunal pursuant to the GMC (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004/2609. The Tribunal received that application on the first day of the hearing. As a matter of case management, the Tribunal first had to consider when to hear it.

3. The Tribunal considered the MPTS Guidance: *"The stage at which a tribunal may consider an application for voluntary erasure"*. The Tribunal noted that this guidance advised it was "*likely to be proportionate to consider*" the application at the outset in circumstances where a significant proportion of the Allegation is admitted. The Tribunal considered that this paragraph applied to this case as only one allegation, paragraph 1(a)(ii) of the Allegation, was not admitted. Nonetheless, the Tribunal concluded, having regard to the overarching objective, the guidance, and the parties' submissions, that it was appropriate to conclude the facts stage before hearing Dr Gendy's VE application, to ensure it had sufficient knowledge of the facts and circumstances of the case to make a decision that protects the public. In reaching this conclusion, the Tribunal noted that the GMC was proposing to open its case on paragraph 1(a)(ii) before the VE application was heard in any event, that only a single, limited allegation was not admitted by the doctor, and that the doctor had requested that the VE application be determined as soon as possible. It considered that it should be possible to conclude the facts stage expeditiously.

4. The Tribunal's determination on the facts was announced on the second day of the hearing. All the allegations in paragraphs 1(a) and 1(b), in respect of Dr Gendy's conviction and sentence on 16 May 2024 at North Cheshire Magistrates' Court, were found proved. The VE application was heard thereafter.

Documents

5. In respect of the VE application, the Tribunal had regard to the documents provided by the parties, including but not limited to the following:

- Dr Gendy's email to the GMC dated 22 May 2025;
- The decision of a GMC's Assistant Registrar to refer Dr Gendy's application to this MPT hearing;
- XXX;
- GMC decision letter dated 29 December 2020;
- Skeleton argument in support of Dr Gendy's previous application for VE from his previous counsel, Mr F, dated 28 February 2024;
- Patient feedback questionnaire for Dr Gendy;
- Colleague feedback questionnaire for Dr Gendy;
- XXX.

Submissions

6. Mr Moran, Counsel for the GMC, opposed the application. Mr Moran submitted that there is a strong public interest in Dr Gendy's fitness to practise being properly explored, and that this outweighed Dr Gendy's circumstances.

7. After the Tribunal had announced its determination on the facts of the conviction case, and by way of background to the VE application, Mr Moran provided the Tribunal with an overview of a previous fitness to practise case against Dr Gendy, heard in February/March 2024 by the MPTS ('2024 Tribunal'). Mr Moran submitted that the 2024 Tribunal had found proven certain clinical failings by Dr Gendy in relation to two patients, Patients C and D. The 2024 Tribunal had found Dr Gendy's fitness to practise impaired in respect of those matters only and imposed a suspension.

8. Mr Moran informed the Tribunal that, during those previous proceedings, Dr Gendy had applied for VE in similar terms to the present application. The previous application was refused by the 2024 Tribunal.

9. Mr Moran submitted that, whilst Dr Gendy's present application relies on XXX, there is limited evidence as to XXX; and nothing to show a "*significant change*" since his last VE application was refused. Further, that there are changes that support the application being

opposed. Specifically, Dr Gendy's conviction. He submitted the conviction matter is serious, as shown by the fact that it was deemed to merit a custodial sentence, albeit suspended.

10. Mr Moran further said that, in Dr Gendy's previous VE application, significant emphasis was placed on his intention not to practise again. However, since that application was refused, Dr Gendy had provided a statement dated November 2024, in which he referred a number of times to what his clinical practice would be 'in the future'. Mr Moran argued that this was suggestive of him contemplating a return to practice. He stated that there was no compulsory retirement age XXX.

11. XXX

12. XXX

13. XXX

14. Mr Moran referred the Tribunal to *'Guidance on making decisions on voluntary erasure applications and advising on administrative erasure',* in particular paragraphs 16, 17, 23(a), 24(b), 25 and 47. Mr Moran submitted that paragraph 23 of the Guidance was the "*crucial"* part: "*Cases where VE and AE should not proceed unless there are exceptional circumstances"*. Mr Moran pointed to paragraph 23(a): *'Ongoing police investigations or convictions for serious offences'*. Mr Moran submitted that in Dr Gendy's case, both were present. Further, paragraph 47 said:

> "*47. VE or AE should usually be refused in cases of a serious nature involving allegations of misconduct, ongoing police investigations or convictions and determinations by other regulatory bodies. By cases of a serious nature, we mean that public confidence in doctors would be undermined if a full investigation did not take place…"*

15. Mr Moran stated that, if paragraph 23 is engaged, there may nonetheless be exceptional circumstances when it is appropriate to allow voluntary erasure prior to the conclusion of the fitness to practise process. He submitted that only one of the exceptional circumstances in the Guidance was potentially relevant, paragraph 24(b):

> *'where the allegation does not involve violence or dishonesty but is at the lower end of the spectrum of seriousness of conduct that attracts a presumption of impairment and*

the fact that the likelihood of the doctor ever returning to practice is extremely remote ....'

16. Mr Moran submitted that it was "*strongly arguable*" that this exceptional circumstance did not apply to Dr Gendy, because it was not at the lower end of seriousness and the prospect of him returning to practice was not extremely remote.

17. XXX

18. He therefore invited the Tribunal to refuse Dr Gendy's application for VE.

19. Dr Gendy, who represented himself, provided a written reply to Mr Moran's submissions for the GMC, and gave oral evidence about his application.

20. Dr Gendy stated he had applied once before for VE, at which time he was 74. He is now seeking VE again "*because of my age which will be 76 in November 2025 and XXX.*"

21. Dr Gendy said that he wished to summarise the fitness to practise history, XXX, so that the Tribunal would have the full picture. In summary, he said that he was referred to the GMC and further to MPTS hearings for two obstetric cases, and later for a gynaecological case. At the hearing before the 2024 Tribunal, the Tribunal had found some of the allegations proven, and some were found not proven. The MPTS suspended him. Dr Gendy explained he had already been suspended since July 2023 as a result of a different matter, XXX.

22. Dr Gendy stated that his suspension had now continued for 2 years and had affected him badly professionally, socially and financially. He said he was in deep debt, with loans and credit card debt, could not afford his mortgage, and could not afford a solicitor or barrister for his case. He said he gets some financial help from XXX, and relied on his state pension which was not enough to cover the bills. XXX.

23. Dr Gendy further told the Tribunal that, following the decision of the 2024 Tribunal, he was subjected to negative and false reports in newspapers which he said had seriously affected his professional, social and XXX state.

24. XXX

25. XXX

26. Dr Gendy stated that the hospital sent three complaints about him: to the CQC, to the GMC and to the police. He said the complaint to the GMC resulted in the GMC referring Dr Gendy to an MPTS hearing in July 2023, where his registration was suspended. XXX. As to the complaint to the CQC, in summary, Dr Gendy told the Tribunal this resulted in him being accused of doing a regulated procedure while not registered with the CQC, and his conviction in 2024.

27. XXX

28. XXX

29. Dr Gendy said that he has stopped medical work for around two years, and he has suffered a lot through the process of hearings. He stated that he had made some mistakes, has learnt lessons, and will never do them again. He stated that he does not intend to do any medical work in the UK or abroad, as he is nearly 76 and needs to rest. In response to questions by the GMC's counsel, Dr Gendy clarified that it is not his case that XXX, but that he does not intend to do so.

30. Dr Gendy further said that, if his application is rejected, there will be no change in the circumstances next year, but his suffering will extend for months. He stated that he will not be able to show improvement in his clinical knowledge as he has resigned from the RCOG, his academic body, which will result in his inability to do any further CPD, and further said that he simply cannot afford to do further courses in any event. However, he stated that he has already done CPD covering him to August 2025.

31. Finally, Dr Gendy invited the Tribunal to consider his many years of good medical practice in the UK, by reference to colleague and patient reviews accompanying his VE application. He also asked the Tribunal to consider his age and XXX status. He said that he had had enough pain and suffering for the last four years, and that he apologised for mistakes he has done and that he never intended to do them. He invited the Tribunal to allow his VE application.

32. In addition to the submissions and evidence from Mr Moran and Dr Gendy, Dr Gendy relied on a skeleton argument dated 28 February 2024 prepared by his previous counsel, Mr F, in support of his previous VE application to the 2024 Tribunal. The GMC's counsel did not object to the Tribunal considering these submissions in addition to Dr Gendy's written and oral statements.

The Tribunal's Approach

33. The Tribunal, throughout its decision-making process, bore in mind the overarching statutory objective in section 1 of the Medical Act 1983: 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.

The Tribunal's Decision

34. The Tribunal considered all the submissions and evidence which it had received from the parties.

35. The Tribunal was referred to '*Guidance on making decisions on voluntary erasure applications and advising on administrative erasure*' ('the Guidance'). The Tribunal, while noting that the Guidance is directed at GMC Case Examiners, considered it to be relevant to its consideration of the VE application.

36. The Tribunal, in agreement with the GMC's submission, considered that paragraph 23 was the crucial part of the Guidance for the purposes of this VE application. Paragraphs 23 and 24 of the Guidance read as follows:

> *'23 The following are examples of cases where (except in exceptional circumstances) it will not be in the public interest to allow voluntary erasure or proceed with administrative erasure before the conclusion of fitness to practise proceedings, including a MPT hearing in some cases. This is because they involve a conviction for a serious criminal offence or the allegation carries a presumption of impaired fitness to practise.*
>
> > *a. Ongoing police investigations or convictions for serious offences*
> > *Although it is not possible to provide an exhaustive list, the key issue is whether public confidence would be undermined if the GMC did not fully investigate the matter.*
> >
> > *b. Allegations of sexual assault or indecency*
> >
> > *This encompasses a wide range of behaviour including allegations of sexual assault and abuse, allegations in relation to indecent images of children and*

allegations of sexual harassment in the workplace. This category also includes misconduct within a clinical setting where there is an allegation the doctor's behaviour was sexually motivated. For example, performing an intimate examination with no clinical justification or failing to maintain professional boundaries when treating a patient by making a remark of a sexual or inappropriate personal nature.

c. Allegations of sexual or improper emotional relationships with a patient or someone close to them including that the doctor:

i behaved in a sexualised way towards a patient or someone close to them

ii pursued a sexual relationship with a patient or someone close to them, particularly but not exclusively where at the time of the professional relationship the patient was additionally vulnerable, for example due to their personal circumstances or mental health problems

iii abused their professional position by engaging in an inappropriate emotional or financial relationship with a patient or someone close to them.

d. Allegations of violence

e. Allegations of dishonesty

f Allegations of unlawful discrimination in relation to characteristics protected by law

g Allegations of knowingly practising without a licence

h Allegations of gross negligence or recklessness about a risk of serious harm to patients.

The above is not an exhaustive list and there is clearly a public interest in allowing all allegations of serious misconduct to be fully investigated and, if there is a realistic prospect of establishing impairment, ventilated in public at a tribunal.'

'24 There may sometimes be exceptional circumstances when it is appropriate to allow voluntary or administrative erasure prior to the conclusion of the fitness to practise process, even if a case falls into one of the categories above.

These may include cases:

a involving violence and dishonesty where a careful balancing of the relevant factors leads to the conclusion that the presumption of impairment is rebutted because the doctor's behaviour is at the lower end of the spectrum and does not pose a risk to public protection and therefore it would be appropriate for erasure to proceed. For example, the doctor has assaulted someone in a pub or engaged in an act of minor dishonesty such as stealing a low value item. It would be disproportionate to not allow erasure to proceed in these circumstances.

b where the allegation does not involve violence or dishonesty but is at the lower end of the spectrum of seriousness of conduct that attracts a presumption of impairment and the fact that the likelihood of the doctor ever returning to practice is extremely remote due to the stage of their career, their retirement status and/or the length of time they have been out of practice amounts to an exceptional circumstance that would make it appropriate for erasure to proceed. For example, an isolated incident of a doctor prescribing without a licence.

c where the doctor does not have capacity to understand the allegations or to seek/act on legal advice [see paragraphs 53 to 57 below]

d where the doctor is suffering from a terminal or very serious illness and there is no prospect they will recover sufficiently to practise medicine again.'

37. Both GMC counsel and Dr Gendy drew the Tribunal's attention to XXX:

Overarching issues

38. In the course of its deliberations, the Tribunal considered three overarching issues.

39. First, the GMC submitted that Dr Gendy had previously made an application for VE, which had been rejected by the 2024 Tribunal. The GMC stated that this Tribunal should consider whether there had been any 'significant change' since that refusal. The Tribunal did not agree with this approach. Rather, the Tribunal concluded that it was not bound by any previous Tribunal determination as to the previous VE application, and that it should exercise its own independent judgement on the application now before it. This involved balancing Dr Gendy's personal interests with the wider public interest in allowing fitness to practise proceedings to reach a conclusion. In particular, the need to maintain public confidence in the profession, by ensuring serious cases are fully investigated.

40. Second, in submissions made by Dr Gendy's previous counsel in support of his previous VE application, it was suggested that public confidence could be upheld even if the VE application were granted, by proceedings in different fora. XXX.

41. The Tribunal rejected this submission. The Tribunal considered that fitness to practise proceedings serve a different function to criminal or coronial proceedings. It may be necessary, in order to maintain public confidence in the medical profession, to continue fitness to practise proceedings notwithstanding any other proceedings.

42. Third, in his oral and written statements, Dr Gendy sought at points to set out XXX.

<u>The CQC conviction</u>

43. The Tribunal noted that it has not yet reached the stage of considering either impairment or sanction in respect of the CQC conviction matter.

44. In respect of the CQC conviction, the Tribunal considered the following factors:

- Dr Gendy was sentenced to 16 weeks' imprisonment, suspended for 12 months, and an unpaid work requirement of 200 hours. He was also required to pay a surcharge to fund victim services of £154, and costs of £5000. Dr Gendy's guilty plea was taken into account when imposing his sentence.

- The Memorandum of Conviction further states that the suspended custodial sentence was imposed because the "*Offence so serious*".

- The CQC, an independent regulator, considered the matter of sufficient seriousness to proceed to a prosecution for a criminal offence. The Tribunal noted the CQC's

description of its role in a letter to 14 June 2024 to Dr Gendy, as follows: "*CQC registers health and adult social care service providers in England and checks, through registration, monitoring and inspection, that the required standards are being met. We make sure health and social care services provide people with safe, effective, compassionate, high-quality care and we encourage care services to improve…"*

- The conviction did not involve any criticism of the surgery itself.

45. The Tribunal noted the fact that Dr Gendy's prison sentence was suspended, but was mindful that criminal proceedings serve a different purpose to fitness to practise proceedings, bearing in mind the statutory objective in s.1 of the 1983 Act.

46. The Tribunal considered that in all the circumstances, the CQC conviction fell within paragraph 23(a) of the Guidance, i.e. it was a conviction for a "serious offence".

47. In light of this conclusion, and applying paragraph 24 of the Guidance, the Tribunal next considered whether there were "exceptional circumstances". It considered that the only potentially relevant "exceptional" circumstance was paragraph 24(b). The Tribunal did not accept that the CQC conviction was "at the lower end of the spectrum of seriousness of conduct …", having regard to the factors above, and in particular Dr Gendy's sentence.

48. The Tribunal was also not satisfied that: "*the likelihood of the doctor ever returning to practice is extremely remote…".* Having carefully considered Dr Gendy's evidence, the Tribunal concluded that even if his present intention was not to practise as a doctor, there was a real risk that Dr Gendy's intentions may change in future, particularly given his evidence about his very difficult financial circumstances. The Tribunal further bore in mind that, while Dr Gendy XXX, it was not his position that he is unfit to work.

49. The Tribunal therefore considered that it was not in the public interest, in particular because it would not uphold public confidence, to grant voluntary erasure before the conclusion of the fitness to practise proceedings currently before it, in respect of the CQC conviction.

XXX

50. XXX

51. XXX

52. XXX

53. XXX. The Tribunal further had regard to its earlier conclusion that it could not rule out the prospect of Dr Gendy seeking to return to practice in future.

54. The Tribunal therefore considered that it was not in the public interest, in particular because it would not uphold public confidence, to grant the VE application, in light of XXX.

55. XXX

XXX

56. XXX

57. XXX

58. XXX

59. However, the Tribunal considered that, taking a step back and looking at the matters 'in the round', the fact that XXX, lent some further support to the position that voluntary erasure would undermine public confidence and would not be in the public interest.

Conclusion

60. The Tribunal concluded that, in all the circumstances, Dr Gendy's VE application should be refused.