

**PRIVATE RECORD****Dates:** 28/04/2025 - 15/05/2025**Doctor:** Dr Kapila Shankapani BENARAGAMA**GMC reference number:** 6083476**Primary medical qualification:** MB BS 2001 University of Peradeniya

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Consideration of impairment not reached

**Summary of outcome**

Case concluded

**Tribunal:**

Legally Qualified Chair	Mrs Emma Boothroyd
Lay Tribunal Member:	Ms Sarah McAnulty
Registrant Tribunal Member:	Dr Jeffrey Phillips
Tribunal Clerk:	Miss Racheal Gill

**Attendance and Representation:**

Doctor:	Present, represented
Doctor's Representative:	Mr Chris Gillespie, Counsel, instructed by Medical Protection
GMC Representative:	Ms Katie Jones, Counsel

**Attendance of Press / Public**

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

## Overarching Objective

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

## Determination on Facts - 15/05/2025

### Background

1. Dr Benaragama qualified with MB BS in 2001 from the University of Peradeniya in Sri Lanka. He moved to the UK in 2005. At the time of the events Dr Benaragama was practising as a Consultant Vascular and Endovascular Surgeon employed by the Royal Free London NHS Foundation Trust ('the Trust').
2. The matters that have led to Dr Benaragama's hearing, arise from his alleged conduct towards Ms A, between 25 September 2023 to 3 October 2023. Ms A was a XXX colleague, and she first met Dr Benaragama XXX at University College London Hospitals ('UCLH').
3. It is alleged that Dr Benaragama behaved inappropriately towards Ms A between 25 September 2023 to 3 October 2023. It is alleged that on those dates Dr Benaragama's conduct constituted sexual harassment, was sexually motivated and was an abuse of his senior position.
4. Ms A had reported her concerns to her XXX at University College London ('UCL'). Dr Benaragama was informed of the complaint to the Trust on 10/11 October 2023 and a disciplinary investigation was carried out by the Trust.
5. Following the formal Trust investigation, the concerns were raised with the GMC on 12 February 2024 by Dr F, Dr Benaragama's Responsible Officer.

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

6. The Tribunal granted the GMC's application, made pursuant to Rule 35(4) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that three witnesses are anonymised to Ms A, Ms D and Mr E. Mr Chris Gillespie, Counsel on behalf of

Dr Benaragama, did not oppose the application. The Tribunal's full decision on the application is included at Annex A.

7. On day eight of the hearing, Ms Katie Jones, Counsel on behalf of the GMC made an application to amend paragraph 5b of the allegation in accordance with Rule 17(6) of the Rules. The application was not opposed by Mr Gillespie. The Tribunal was satisfied that the amendment could be made without injustice. It was also satisfied that the amended application better reflected the evidence upon which the Allegation is based. It therefore decided to grant the application and amend paragraph 5b of the allegation, in accordance with the proposed amendments set out below.

8. On day nine of the hearing, following closing submissions from Ms Jones, the Tribunal raised the issue that Paragraph 7 of the allegation was pleaded to apply to paragraph 1 of the allegation. The Tribunal considered the facts admitted and found proved at Paragraphs 1 are incapable of amounting to sexual harassment, sexually motivated behaviour or an abuse of a senior position as they relate to the status of Mr Benaragama as a doctor and Ms A as a XXX. The Tribunal asked for submissions on whether an amendment to paragraph 7 of the allegation in accordance with Rule 17(6) of the Rules was appropriate. After seeking instructions, Ms Jones confirmed that the amendment was not opposed. Mr Gillespie, on behalf of Dr Benaragama also agreed that the amendment was appropriate. The Tribunal therefore amended paragraph 7 of the allegation, in accordance with the proposed amendments set out below.

### The Allegation and the Doctor's Response

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

1. At all material times:
  - a. you were a Consultant Surgeon employed by the Royal Free London NHS Foundation Trust; **Admitted and found proved**
  - b. Ms A was a XXX colleague. **Admitted and found proved**
2. On 25 September 2023 you:
  - a. touched Ms A's thigh with your hand; **To be determined**
  - b. asked Ms A if she had a boyfriend or words to that effect; **To be determined**
  - c. said to Ms A 'you should date Mr B' or words to that effect; **To be determined**

- d. told Ms A multiple times that she 'needed to have fun' and 'do things outside her work' or words to that effect. **To be determined**
- 3. On 26 September 2023 you asked Ms A how old she was. **To be determined**
- 4. On 28 September 2023 you asked Ms A again if she had a boyfriend or words to that effect. **To be determined**
- 5. On 3 October 2023 you took Ms A to a room you used when on-call ('On-call Room') and you:
  - a. asked Ms A:
    - i. to go into the room when she waited outside; **Admitted and found proved**
    - ii. to sit on a chair once she entered the room whilst you sat across from her on the bed; **Admitted and found proved**
    - iii. if she wanted to hang her coat on the door; **Admitted and found proved**
    - iv. 'so what are you looking for' or words to that effect; **To be determined**
  - b. ~~laid back on the bed with your legs opened wide, and you did the following;~~ **Amended under Rule 17(6)**
    - i. laid back on the bed with your legs opened wide,~~and you;~~ **Amended under Rule 17(6)**  
**To be determined**
    - ii. smirked at Ms A; **To be determined**
    - iii. asked Ms A what her hobbies were; **To be determined**
    - iv. asked Ms A whether she went to clubs and bars; **To be determined**
    - v. said to Ms A 'when you're on call with me on Thursday, it might be a little late, you can always stay here' or words to that effect; and/or **Admitted and found proved**

- vi. said to Ms A that she could stay overnight with you in the On-call Room; **To be determined**
  - c. told Ms A that you could look up conferences abroad and you could travel together in the future; **To be determined**
  - d. told Ms A that she reminded you of Dr C who worked in ICU and whom you had taken to XXX for a presentation; **To be determined**
  - e. asked Ms A how old she was and said upon her response ‘ohhh you’re very young aren’t you’ or words to that effect. **To be determined**
6. On 3 October 2023 after you left the On-call Room you:
- a. offered to walk Ms A out of the building; **Admitted and found proved**
  - b. told Ms A that you would take her for tea on Thursday; **To be determined**
  - c. gave Ms A a side-hug before she left the hospital. **To be determined**
7. Your actions as set out at paragraphs ¶ 2-6:
- Amended under Rule 17(6)**
- a. constituted sexual harassment as defined in Section 26 (2) of the Equality Act 2010, in that you engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms A; **To be determined**
  - b. were sexually motivated; **To be determined**
  - c. were an abuse of your more senior position. **To be determined**

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

### The Admitted Facts

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

Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

### **The Facts to be Determined**

11. In light of Dr Benaragama's response to the Allegation made against him the Tribunal is required to determine the remaining disputed paragraphs as set out above.

### **Witness Evidence**

12. The Tribunal received written and oral evidence on behalf of the GMC from the following witnesses:

- Ms A, XXX complainant, in person. Together with witness statement 6 May 2024.
- Ms D, XXX and Ms A's friend, in person. Together with witness statement 16 December 2024.
- Ms G, XXX at UCL, by video link. Together with witness statement dated 16 December 2024.
- Dr H, XXX at UCL, by video link. Together with witness statement dated 14 December 2024.
- Dr I, Consultant Paediatrician at the Trust and case investigator, by video link. Together with witness statement dated 11 December 2024.

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

- Mr E, XXX, witness statement dated 17 December 2024.
- Mr J, Employee Relations Investigator, witness statement dated 7 January 2025.
- Ms K, Senior Employee Relations Adviser at the Trust, witness statement dated 15 January 2025 and supplemental witness statement 13 February 2025.

14. Dr Benaragama provided his own witness statement dated 25 March 2025 and also gave oral evidence at the hearing.

15. In addition, the Tribunal received written and oral evidence from the following witnesses on Dr Benaragama's behalf:

- Dr L, Senior Clinical Fellow at the Trust, by videolink. Together with witness statements dated 16 February 2024 and 5 April 2025.
- Dr M, Consultant Interventional Radiologist, in person. Together with witness statement dated 24 March 2025.
- Mr B, Procurement Coordinator at UCLH, in person. Together with witness statement dated 19 March 2025.
- Miss N, Senior Clinical Fellow at the Trust, in person. Together with witness statement dated 24 March 2025.
- Ms O, Vascular Surgery Registrar and PhD student at UCL, by videolink. Together with witness statement dated 20 March 2025.
- Mr P, Senior Clinical Fellow at St Thomas' Hospital, in person. Together with witness statement dated 24 March 2025.
- Professor Q, Consultant Vascular Surgeon, in person. Together with witness statement dated 2 May 2025.

### Documentary Evidence

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

- Ms A's initial written account of events, dated 3 October 2023.
- Various versions of the Trust's minutes from the Trust investigation interview of Ms A, dated 13 November 2023.
- Transcript of WhatsApp messages between: Ms A and Ms D, dated 3 to 7 October 2023; Ms A and Dr Benaragama dated 3 to 10 October 2023.
- CCTV footage, dated 3 October 2023.
- The Trust's investigation report, dated 22 November 2023.
- Photographs of various rooms and sketch layouts.

17. In the course of the hearing, Dr Benaragama provided a number of testimonial bundles. These together contained character testimonial statements from 57 colleagues and former medical students attesting to Dr Benaragama's clinical practice and good character.

### The Tribunal's Approach

18. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Benaragama does not need to prove anything. The standard of proof is that applicable to civil proceedings,

namely the balance of probabilities, i.e., whether it is more likely than not that the events occurred.

Credibility

19. The Tribunal must form its own judgment when assessing credibility of witnesses. The Tribunal should not assess a witness's credibility exclusively on demeanour. In the case of *Byrne v GMC 2021 EWHC 2237 (Admin)* Mr Justice Morris gave guidance in cases which involve conflicting accounts and he said, the credibility of witnesses must take account of the unreliability of memory and should be considered and tested by reference to objective facts, where possible, factual findings should be based on objective facts as shown by contemporaneous documents: However, in cases where the complainant provides one account, and there is a flat denial from the other person concerned, and little or no independent evidence, it is commonplace for there to be inconsistency and confusion in some of the detail.

20. It is open to Tribunals not to rule out the whole of a witness's evidence based on credibility, credibility can be divisible.

21. Untruths or inconsistencies in themselves do not necessarily mean that the entirety of the evidence of a witness should be rejected. However the Tribunal must explain why having rejected significant parts of the evidence of a witness it is nevertheless able to accept other parts of their evidence. The Tribunal should also bear in mind that memory can be fallible and a truthful witness can be mistaken.

Inferences/Speculation

22. The Tribunal was reminded that it was entitled to draw inferences based upon the evidence, but it must not speculate.

Hearsay

23. The Tribunal is entitled to consider hearsay evidence as evidence of the fact stated, but in doing so the Tribunal should exercise care as to the degree of weight which they attach to it.

Equality Act

24. It is also alleged that Dr Benaragama's conduct towards Ms A constituted sexual harassment. Sexual harassment is defined under s26(2) of the Equality Act 2010, and the wording of that definition has in effect been set out in paragraph 7a of the Allegation.

*s.26(2) [A person] harasses [another] if they engage in unwanted conduct of a sexual nature, and the conduct has the purpose or effect of*

- (i) *violating [the other person's] dignity, or*
- (ii) *creating an intimidating, hostile, degrading, humiliating or offensive environment for the [other person]*

25. In deciding whether Dr Benaragama's conduct should be regarded as having the effect of violating Ms A's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her, s.26(4) of the Equality Act 2010 requires the Tribunal to take into account the following factors:

- a) the perception of Mr A;
- b) the other circumstances of the case;
- c) whether it is reasonable for the conduct to have that effect.

26. The issue of whether conduct is "sexual" in nature is an objective one, based on the facts and therefore a matter for the judgement of the Tribunal. It is not necessary for the GMC to prove that there was an intention to sexually harass Ms A.

#### Sexually Motivated

27. It is alleged that Dr Benaragama's conduct in respect of Ms A constituted sexual misconduct. In *Basson v GMC [2018] EWHC 505 (Admin)*, the High Court defined acting with sexual motivation as conduct done either in pursuit of sexual gratification or in pursuit of a future sexual relationship.

28. In *Haris v GMC [2020] EWHC 2518 (Admin)*, Foster J suggested, that it may be more straightforward to allege that conduct is 'sexual', in an aim to reduce the challenge of inferring or deducing the state of mind of the accused professional. However, in this case the allegation is that the conduct was "sexually motivated" and therefore Dr Benaragama's state of mind is relevant.

29. The Tribunal must take a broad view of the behaviour by putting all of the circumstances into the balance and coming to a conclusion on the balance of probabilities as to whether there is the alleged sexual motivation. Factors which may assist include the character and nature of

the conduct and whether it is overtly sexual. In deciding whether conduct is sexually motivated the Tribunal should also consider whether there is an innocent explanation for the conduct and evaluate the plausibility of that explanation.

Abuse of position

30. There is no specific test to be applied in relation to abuse of position. The words should be given their ordinary meaning, and the Tribunal should consider whether any of the factual particulars it finds proved would amount to such an abuse.

Good character

31. The Tribunal has heard that Dr Benaragama is of good character, in that he has had no previous involvement with professional disciplinary proceedings. Further there has been evidence placed before the Tribunal of Dr Benaragama's good character and the witnesses have commented on Dr Benaragama's conduct more generally and their view of him. Good character is not a defence to the charges before the Tribunal, but it is relevant to the consideration of the case in two ways. First, his good character is a positive feature which the Tribunal should take into account when considering whether to accept what he told us. Second, the fact that Mr Benaragama has not been the subject of professional criticism in the past, may make it less likely that he acted as is now alleged. The Tribunal is reminded about the consideration of the probability of an event occurring as alleged and this is a matter to weigh into that balancing exercise. However, the Tribunal is not expected to make a judgement about Mr Benaragama's previous good character in isolation from the evidence it has heard in this hearing. The decisions whether Mr Benaragama's previous good character assists, and, if so, what weight should be given to it are for the Tribunal alone to make.

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

32. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts. However, where there were subparagraphs based on one incident, the Tribunal found it necessary to consider the whole incident in context.

33. The Tribunal provides some further general context before looking at each allegation and made findings in relation to this general context and where there are material differences between Ms A and Dr Benaragama about events where it is relevant to credibility.

25 September 2023

34. The allegations at paragraph 2 are alleged to have occurred in the hybrid theatre control room ('control room'). The control room is a small, narrow administrative office space with two doors. One main entrance door which comes from the corridor and on the opposite side a big window with another door next to it which leads directly into the theatre room. There are several computer workstations with chairs along two of the walls and it is usually a busy space with staff coming and going and, staff having tea/coffee or eating their lunch. There are also shelves and lockers next to the main entrance door.

35. It was accepted that XXX would meet in the control room with the clinical team XXX. Records indicate that the surgery XXX started at 11:29 and finished at 15:18. After this surgery had finished, Dr Benaragama was then preparing for his next case which started at 15:45. It was agreed evidence that Ms A had remained and was in the control room while XXX had left, either during or after the previous operation and were not staying for the next operation. It was also agreed that there were some staff present in the control room at the time and some went in and out of the room.

36. The alleged conduct at paragraph 2 of the allegation occurred between 15:18 and 15:45 during a break between surgeries. The Tribunal heard evidence from Dr Benaragama, Ms A, Dr M, Mr B and Miss N who were all in the room at some point during the relevant period. There were also two other members of staff in the room who the Tribunal received no written or oral evidence from: Dr R and Dr S.

#### Paragraph 2a

37. It is alleged that on 25 September 2023 Dr Benaragama touched Ms A's thigh with his hand.

38. The Tribunal bore in mind that Ms A had referenced this incident in the very last line of her earliest written account of events, dated 3 October 2023. She stated, "*he put his hand on my leg a few times in a joking manner at UCLH.*" The Tribunal noted that Ms A stated that this account was written on her phone when she was shaken and upset and "throwing up" and reading through it was upsetting for her. However, the Tribunal noted that this account was not provided to the University for a few days and Ms A told the Tribunal that she had 'tweaked' the notes. The Tribunal considered that the allegation appeared to be written as an afterthought and was not written in the context of the events that happened during the first week.

39. In her GMC witness statement, Ms A stated that: *"Then, as he [Dr Benaragama] was getting to know me and asking me about how he could support me with research opportunities, he touched my leg. The area he touched was above my knee, on my thigh. It did not necessarily last long. It was mid-laugh and he touched me for a second or a little more than a second. It wasn't a stroke but it was physical contact that I found inappropriate and very weird due to the circumstances we were in."* Ms A accepted that at the time, she did not consider the touch on her thigh to be a sexual touch, but it made her feel uncomfortable. She stated that it was only in the context of the later events that she thought it was strange. She also stated in her oral evidence that she recorded that this happened a couple of times and this must have been correct, although she only now remembered one specific incident of touching.

40. Around this time at the end of September 2023, Ms D stated in her witness statement that she and Ms A had met up in person and Ms A had told her of the experience she had with Dr Benaragama up until that point, which included inappropriate jokes and comments. However, Ms D's statement did not include any references to Dr Benaragama touching Ms A on the thigh. When asked about this in cross examination Ms D could not recall Ms A mentioning that Dr Benaragama had touched her on the thigh. The Tribunal considered that it was striking that Ms A was talking to Ms D about inappropriate comments but did not mention the thigh touch to Ms D at the time.

41. Dr Benaragama denied this allegation. His evidence was that they were sat at opposite sides of the control room with several people sitting using the computers in between him and Ms A. His evidence was that at no point in the room was he sat next to Ms A, therefore he could not have touched her thigh intentionally or accidentally. When Dr Benaragama was asked about this allegation as part of the Trust investigation he stated, *"Absolutely not. I was not even sitting next to her."*

42. The Tribunal heard evidence from multiple witnesses who were in the theatre control room at the time regarding the alleged conduct at paragraph 2, including their accounts of the seating positions of everyone present.

43. It was Ms A's evidence that she was sat nearer towards the main entrance door and Dr Benaragama was beside her to her left. Whereas Dr Benaragama's evidence was that he was stood next to the lockers by the main entrance door and Ms A was sat nearer the window next to the theatre room door using her laptop. They were therefore at opposite sides of the control room with several people sitting in between him and Ms A. He stated that he was at no point in the room sat next to Ms A, therefore he could not have touched her thigh intentionally or accidentally.

44. The Tribunal also had regard to the evidence of Dr M and Mr B who were also in the room. Those witnesses were both agreed in their evidence that Ms A was sat in the chair nearest the window in the room and not near the door. Dr M stated that he was in and out of the room, but he had in fact at one stage been stood nearer to the main entrance door in order to participate in a clinical discussion. Mr B and Dr M also recalled that Dr Benaragama was sitting or standing next to the lockers near the main entrance door. The Tribunal considered that it was significant that Ms A's memory of the seating positions does not accord with anyone else's recollection. All other accounts were consistent with each other that Dr Benaragama and Ms A were not sat next to each other. It also considered that if Ms A was sat near the door, she would have been in everyone's way and in the centre of the clinical discussion therefore it made more sense and was more likely that she was on the other side of the room next to the window.

45. The Tribunal also took into account Dr M, Mr B and Miss N's evidence that they did not see Dr Benaragama touch Ms A's thigh. Each witness was asked in GMC cross-examination whether it was possible the touching did occur, but they did not see it given the fact that it was a busy environment. Each witness conceded that whilst it was possible it was unlikely given the crowded space and the fact that they did not see Dr Benaragama sitting in close proximity to Ms A. The Tribunal considered it unlikely that Dr Benaragama would act in such a way to touch [Ms A's] thigh in a crowded space in a clinical setting. If Dr Benaragama had touched her thigh he would have had to get up and walk to where she was seated, and it would be more likely that other staff members would have noticed. The Tribunal was of the view that if Dr Benaragama had touched Ms A, that the other members in the room would have noticed.

46. The Tribunal also bore in mind the short time frame within this incident is alleged to have occurred, between 15:18 and 15:45. It considered that there would have been a short window of opportunity for Dr Benaragama to have touched Ms A on her thigh. The Tribunal received evidence that Dr Benaragama was actively preparing for his next operation which was due to start at 15:45 which in the Tribunal's view spoke to the implausibility of this allegation occurring.

47. The Tribunal reminded itself that the burden of proof was on the GMC to prove that Dr Benaragama touched Ms A's thigh with his hand. It took into account that whereas Dr Benaragama had offered alternative explanations for the other allegations made by Ms A, he had flatly denied that he had touched her thigh. The Tribunal took into account Dr Benaragama's good character when considering the question of his credibility and the reliability of his account. It also reminded itself of the character witnesses on behalf of Dr

Benaragama were all in agreement that while Dr Benaragama was friendly and enthusiastic, he was not a tactile person. The Tribunal considered it unlikely that Dr Benaragama would behave out of character in a crowded room with his colleagues.

48. Although Ms A was consistent in her account that this event occurred there were some difficulties with the reliability of her evidence in relation to this allegation. Her recollection of the seating positions was inconsistent with the other witnesses. Her recollection that the touching happened “a few times” which was added to the end of her first written account but not mentioned to Ms D appeared to be implausible to the Tribunal. Further, her explanation in her oral evidence that the touching may have happened on more than one occasion, but she is now only able to recall one occasion suggested to the Tribunal that her recollection could not be relied upon.

49. Taking the evidence in the round, along with the consistent witness evidence of the seating positions, and the inherent unlikelihood that Dr Benaragama would touch the leg of [Ms A] he had only met that morning in a room full of his colleagues during the short period he was between operations. The Tribunal determined it was more likely that Dr Benaragama had not acted as alleged.

50. Therefore, on the balance of probabilities, the Tribunal found paragraph 2a not proved.

#### Paragraph 2b

51. It is alleged that on 25 September 2023 Dr Benaragama asked Ms A if she had a boyfriend or words to that effect.

52. In Ms A’s earliest written account of events, dated 3 October 2023, she stated there was a conversation with some people in the room and that one of the other doctors involved (Dr S) said that she had a date that afternoon. Ms A stated that following this, Dr Benaragama asked her if she was single, and Ms A had replied yes. In her next account of the matter, at the Trust investigation interview, dated 13 November 2023, she told them that Dr Benaragama had asked if she had a boyfriend and she replied no. In her witness statement, Ms A stated that she was doing work on the computer in the control room and she had her back turned to people as she was busy working. She stated that other people were in the room talking and joking amongst themselves and Mr B brought her into the conversation by asking her if she had a boyfriend.

53. Ms D in her witness statement also recalled that Ms A had said that Dr Benaragama had talked about her relationship status: “*At the end of September 2023, [Ms] A spoke to me in-person about her experience during a vascular surgery rotation at the Royal Free Hospital.... [Ms] A also told me that, during the rotation, Mr Benaragama had talked about her relationship status on multiple occasions...*”

54. Dr Benaragama denied this allegation and he accepted that this question would have been inappropriate to ask of [Ms A]. The Tribunal was provided with Dr Benaragama’s handwritten notes of his recollection of events made shortly after he was informed of the complaint which was on 11 October 2023. He wrote “*open friendly discussion about career, med, school, life, social activities, etc.*” In the handwritten notes, he had also written “[Dr S] started conversation about the “date” she went or was going to go. [Ms A] was sitting near the window and listening. I got her involves/asked her to join us in this friendly social conversation. Did not want to exclude or ignore her.”

55. In the Trust interview, dated 22 November 2023, in response to the question if he had asked Ms A if she was single, Dr Benaragama stated “*I can’t remember. Had general conversation about social activities, where she’s from, about the family, where do you live etc? I remember asking if she lives in accommodation UCL – the usual conversation – [XXX]. I do remember her telling she has broken with her boyfriend but can’t remember whether I specifically asked her if she was single. Any conversation was with other staff present. They would have heard the conversation – all involved – not just me.*”

56. In Dr Benaragama’s witness statement, he stated he “*does not recall the conversation with Ms A terribly well and there was nothing that stood out about it. However, I am clear that I certainly did not ask her if she had a boyfriend*”. He accepted that there was a general conversation about life and that he had asked Ms A where she lived. He had offered an alternative explanation; it was his evidence that Ms A had brought up her boyfriend of her own volition as part of a discussion about her background and living arrangements. His evidence was that he found out about her relationship status in the context of this life conversation.

57. The Tribunal considered it was significant that Dr Benaragama’s response in respect of this allegation to the Trust investigation was as follows, “*I can’t remember. Had general conversation about social activities....I do remember telling she [XXX] but can’t remember whether I specifically asked her if she was single.*”

58. The Tribunal bore in mind that it had not heard evidence from the doctor (Dr S) whom Ms A recalled telling colleagues that she had a date. Although it did hear evidence from other

witnesses who were present in the room during this time. It was their evidence that they did not hear or remember Dr Benaragama asking if Ms A if she had a boyfriend on 25 September 2023. It also bore in mind the factual and character witnesses on behalf of Dr Benaragama were of the opinion that a question such as “*do you have a boyfriend?*” would be uncharacteristic of Dr Benaragama to say.

59. Given the accepted evidence, the Tribunal was satisfied that there was clearly a conversation had amongst colleagues about general life. It was also satisfied that the nature of conversations about life could include conversations about social activities, dating and someone’s relationship status. It was also clear from Dr Benaragama’s early responses that he remembered Ms A telling him she had “XXX”. The Tribunal considered that it was more likely that Ms A had volunteered that information in response to a question from Dr Benaragama about her relationship status. Taking that evidence, as well as the evidence from Ms D, it was plausible that Ms A was asked by Dr Benaragama if she had a boyfriend or was single as part of normal general conversation. Therefore, it determined that on the balance of probabilities, it was more likely than not that Dr Benaragama had asked Ms A if she had a boyfriend, or words to that effect.

60. Therefore, on the balance of probabilities, the Tribunal found paragraph 2b of the Allegation proved.

Paragraph 7 of the allegation in respect of paragraph 2b

61. Having found paragraph 2b of the allegation proved, the Tribunal next had to determine whether Dr Benaragama’s conduct in asking Ms A if she had a boyfriend, or words to that effect, constituted sexual harassment, was sexually motivated and was an abuse of this senior position.

62. The Tribunal reminded itself that a finding of sexual motivation requires a finding that Dr Benaragama’s conduct was either for sexual gratification or in pursuit of a sexual relationship.

63. The Tribunal was mindful that a question such as “*are you single?*” can have different connotations compared to “*do you have a boyfriend?*” and it was mindful that in certain contexts, these questions about relationship status can be sexually motivated.

64. The Tribunal considered Dr Benaragama’s evidence on this occasion. He stated that “[He] had noticed that Ms A appeared to be listening to the conversation going on around her, but she was not contributing to it. I always make a point of ensuring that no one in my team

*feels excluded regardless of their role or seniority. I did not want Ms A to feel excluded, or that we were ignoring her. I therefore invited her to join in so that she felt welcome. From what I can recall, I asked her about why she had stayed on when [XXX] had left, and a bit about her studies, her age and XXX.”*

65. The Tribunal also reminded itself of the context that the question “*do you have a boyfriend*” was asked. It was accepted by Ms A that there was an ongoing conversation between Dr Benaragama and other colleagues in the room about life including going on dates, and that Dr Benaragama had attempted to include Ms A in the conversation. Furthermore, given that this question was asked in front of other colleagues in the room, the Tribunal considered it was more likely to have been asked in a friendly way as part of normal, general conversation to include her, rather than being overtly sexual or said as part of an enquiry to pursue a sexual relationship. In coming to this conclusion, it bore in mind the numerous positive testimonials from past medical students and current colleagues that attested to Dr Benaragama’s good character including reports of his generally friendly and inclusive nature.

66. The Tribunal also had regard to Ms A’s account of why she had mentioned this to Ms D. Ms A explained that she was unsure whether this was “normal” and was unsure whether there was something untoward about this enquiry. This would support the conclusion that it was a genuinely friendly enquiry rather than an obvious sexual approach. The Tribunal also had regard to the agreed fact that this was said in the company of a number of others and that none of those who were in the room at the time suggested that anything inappropriate was overheard by them.

67. The Tribunal noted that the evidence given by all of the witnesses, including Dr Benaragama suggested that asking [Ms A] if they had a boyfriend would be “inappropriate”. However, the Tribunal considered that this was not equivalent to it amounting to sexual harassment or an abuse of position given the context of a discussion about social matters. The Tribunal was not satisfied that this question asked in isolation, and in the context of a conversation initiated by Dr S about dating and relationships generally constituted sexual harassment, was sexually motivated or was an abuse of his senior position.

68. Accordingly, the Tribunal found 7a, b and c in respect of paragraph 2b of the Allegation not proved.

#### Paragraph 2c

69. It is alleged that on 25 September 2023 Dr Benaragama said to Ms A ‘you should date Mr B’ or words to that effect.

70. In her earliest written account of events dated 3 October 2023, Ms A stated that after Dr Benaragama asked if she was single, he then said to her that she “*should date [Mr B]*”. She also stated that Mr B responded to Dr Benaragama’s comment saying, “*oh no no, you could do much better than me*”. Ms A’s oral evidence was that she was uncomfortable by this comment and so was Mr B, who looked shocked and uncomfortable, and his comment was intended to close the conversation down.

71. Dr Benaragama denied this allegation. In his witness statement, he stated that he did not suggest to Ms A that she should date Mr B and denied ever saying anything of this sort. It was his evidence that “*this was not, and is not, the type of comment I would ever make to anyone, let alone a work colleague [XXX]*”. Dr Benaragama also stated that he and Mr B do not have the type of relationship where they would joke with each other about such things. They would have polite conversations but in Dr Benaragama’s experience, Mr B does not participate in more personal conversations compared to other staff in the clinical team.

72. The Tribunal received written and oral evidence from Mr B who was in the control room at the time. It was his evidence that he remembered Ms A because they had a conversation about her laptop that he also had although Ms A did not recall this. It was Mr B’s evidence that he did not hear Dr Benaragama say to Ms A that she should date him. Mr B’s oral evidence was consistent in that he said it did not happen. Mr B denied hearing any conversations or comments regarding dating and he was neither shocked nor uncomfortable at any time. His evidence was that this would have been inappropriate and he would have recalled it.

73. Mr B was specifically asked as part of the Trust investigation on the 14 November 2023 if he was able to recall any conversations or if anything happened on the 25 September 2023 that could have made anyone feel uncomfortable. Mr B responded that he did not recall anything being out of the ordinary or anyone feeling uncomfortable.

74. The Tribunal concluded that if this had happened as alleged it would be implausible that Mr B would not remember a comment such as this said to and about oneself. There is no suggestion that Mr B has any motivation to lie about the events and he is effectively impartial. He is not a doctor and has no direct responsibility to Dr Benaragama. If, as suggested, by Ms A that Mr B looked shocked, and she perceived he was uncomfortable the Tribunal could identify no reason why he would not have said so when he was asked by the

Trust. It considered that the evidence suggested it was more likely that the comment was not said by Dr Benaragama at all.

75. Therefore, on the balance of probabilities, the Tribunal found paragraph 1a(ii) of the Allegation not proved.

Paragraph 2d

76. It is alleged that on 25 September 2023 Dr Benaragama told Ms A multiple times that she 'needed to have fun' and 'do things outside her work' or words to that effect.

77. The Tribunal took into account the Trust investigation interview, dated 12 November 2023 with Ms A, she stated that on 25 September 2023, Dr Benaragama "*frequently said I need to have fun and let my hair down such as do things outside my work*". Ms A refers to Dr Benaragama in her earliest written account dated 3 October 2023, stating that Dr Benaragama "*made comments about how I should go live my life, not only to focus on academics, have fun etc*". The Tribunal noted that Ms A had not included this allegation in her GMC witness statement.

78. Dr Benaragama denied this allegation. His evidence was that he spoke with Ms A about her career, XXX and social activity and he advised her it was important to have a work-life balance working in vascular surgery. In the Trust Investigation report, dated 22 November 2023, Dr Benaragama stated that "*[he] remembered this but the reason for this because she was clearly being to be at the hospital all the time (XXX). She was keen to be at the hospital even out of hours and this is why I was guiding her that there were other things. I do remember saying 'you are very young, enjoy life'. Work-life balance is important, otherwise you'll burnout.*"

79. The Tribunal reminded itself of its findings at paragraph 2b. It accepted both accounts that there was a general conversation about life which included conversations about her career plans and social activities. Dr Benaragama accepted that he gave advice on how to avoid burnout and asked about her social life. Given the evidence, the Tribunal was satisfied that comments described in paragraph 2d was plausible and that it likely came from the fact that Ms A stayed working in the control room while XXX left. Therefore, the Tribunal concluded that Dr Benaragama's comments were more likely to have been made in the context of pastoral care for Ms A rather than an abuse of his senior position.

80. The Tribunal reminded itself that the burden of proof was on the GMC to prove that Dr Benaragama told Ms A *multiple times* that she 'needed to have fun' and 'do things outside

her work'. However taking the evidence in the round, the Tribunal considered that there was little evidence to support that Dr Benaragama said these comments multiple times. The Tribunal considered that the GMC had failed to prove its case that Dr Benaragama acted as alleged. In any event, the Tribunal was not satisfied, even on the limited facts it has found, the comments made at paragraph 2d amounted to anything like sexual harassment or were said with any sexual motivation.

81. Therefore, on the balance of probabilities, the Tribunal found paragraph 2d of the Allegation not proved.

Paragraph 3

82. It is alleged that on 26 September 2023 Dr Benaragama asked Ms A how old she was.

83. Dr Benaragama denied this allegation. In the Trust investigation interview, dated 13 November 2023, Dr Benaragama stated that "*Yes, I might have asked how old she was but that is not an uncommon question. There was no intention to form any type of relationship with [Ms A].*" He accepted that he asked how old she was as part of their discussion about the stage she was at in her training however he stated that this conversation occurred the day previously on 25 September 2023 whilst in the control room.

84. In the same Trust investigation interview, dated 13 November 2023, Ms A stated that she was with another one of her colleagues and Dr Benaragama asked during that conversation how old they were. Ms A accepted that she was asked how old she was in the context of her studies.

85. While the Tribunal accepted that there was a conversation about Ms A's age on the 25 September 2023, there was little evidence to support the allegation that it was also said on the 26 September 2023. The Tribunal noted that Ms A had not included this allegation in her earliest written account, or her GMC witness statement. It considered the totality of her evidence very vague on this point.

86. The Tribunal considered whether it would be appropriate to amend the allegation under Rule 17(6). However, given that a question about her age as part of a general discussion, the Tribunal considered that Dr Benaragama's explanation was wholly acceptable and appropriate.

87. The Tribunal considered that the GMC had failed to prove its case that Dr Benaragama acted as alleged. In any event, the Tribunal was not satisfied, even on the

limited facts it has found, this could not amount to sexual harassment, or was sexually motivated, or was an abuse of his senior position.

88. Therefore, on the balance of probabilities, the Tribunal found paragraph 3 of the Allegation not proved.

Paragraph 4

89. It is alleged that on 28 September 2023 Dr Benaragama asked Ms A again if she had a boyfriend or words to that effect.

90. The allegation at paragraph 4 is alleged to have occurred in the coffee room at the Queens Square hospital. It was accepted that Ms A was there to shadow Dr Benaragama as well as Ms O in surgery however the surgery was cancelled. It was accepted that after the surgery was cancelled, Dr Benaragama, Ms A and Ms O went to in the coffee room.

91. Dr Benaragama denied this allegation. His evidence was that there was no conversations or questions towards Ms A about having a boyfriend on 28 September 2023, however he accepted there was a conversation about Ms A's relationship status on 25 September 2023. In his earliest account of events in his handwritten notes, Dr Benaragama wrote "*Stayed with me and reg [Ms O]...normal conversation about [patients], career plans, with me and [Ms O]...*"

92. The context of this conversation was that Ms A was packing up and going for lunch and was meeting up with a friend. In the Trust interview, dated 11 November 2023, Ms A stated that Dr Benaragama asked her what she was doing after she left Queen's Square, "*I told him I was meeting my friend and then for the second time he asked me if I had a boyfriend. I told him [XXX] then I left.*" In her earliest written account, dated 3 October 2023, Ms A stated that Dr Benaragama "*once again asked if I had a boyfriend, and I said [XXX]*". The Tribunal noted that there is no mention of such a question on 28 September 2023 in her GMC statement.

93. Ms O stated that she did not hear Dr Benaragama ask Ms A if she had a boyfriend. However, she conceded that she was not in the room all the time and she did not hear all of Dr Benaragama's and Ms A's conversation. Ms O did state that she recalled Ms A packing up and leaving but she did not hear any inappropriate conversation.

94. The Tribunal bore in mind that both Dr Benaragama and Ms O stated that 28 September 2023 was stressful, and they were busy. It is accepted that whilst in the coffee

room, Dr Benaragama was also doing a multi-disciplinary meeting at the same time and Ms O was conducting a telephone clinic.

95. There was limited evidence on this matter, and it effectively rested on Ms A's account of events. The Tribunal considered that Ms A had told Ms D that Dr Benaragama had asked about her relationship status on multiple occasions. The Tribunal also considered that Ms A had also said that Dr Benaragama had touched her leg on "multiple occasions" when she was later only able to recall one occasion. The Tribunal noted that Ms A's memory of events was not always reliable. The Tribunal considered when evaluating her evidence on this allegation that she accepted in her oral evidence that she had gone back and reviewed every interaction with Dr Benaragama in the context of him having a sexual motivation. The Tribunal considered it was unlikely that Dr Benaragama would need to ask Ms A about her relationship status again, having heard the information a few days previously and that it was unlikely that his interaction with her that day was anything other than professional otherwise Ms O would have noticed. In the context of the other information that the Tribunal had about Dr Benaragama's character the Tribunal was of the view that it had insufficient evidence to find this allegation proved. The Tribunal concluded it was more likely that Ms A was mistaken as to whether Dr Benaragama had asked her again if she had a boyfriend on 28 September 2024

96. Therefore, on the balance of probabilities, the Tribunal found paragraph 4 of the Allegation not proved.

#### Paragraph 5 (stem)

97. The allegations at paragraph 5 are alleged to have occurred in an on-call room in Anne Bryans House, which is an on-call room accommodation building in another part of the hospital. It takes about 10 minutes to get there from the ninth-floor vascular surgery department office. It was accepted that it would have been difficult for Ms A to find on her own as it was out of the hospital and in another building.

98. It is accepted that Ms A was invited to the Royal Free XXX, and she attended at around 18:00. XXX. Dr Benaragama messaged Ms A at 19:45 XXX and called her with no response at 20:14. It is accepted that she came back at some point after 20:15. Mr Benaragama and Mr P were present, XXX. It was accepted that Dr Benaragama had ordered a CT scan for a patient who was at UCLH and was waiting for the results of that scan as there was uncertainty whether the patient would be transferred, and he would be operating that evening.

99. Mr P told the Tribunal that it was agreed that he would go to UCLH to review the patient and then discuss with Dr Benaragama whether the operation would go ahead. Mr P stated that before he left he heard Dr Benaragama ask Ms A where she lived and how she would get home. Mr P stated that he recalled that Mr Benaragama offered to let Ms A use his on-call room as he would not be using it. Mr P stated that he did not consider this was unusual as Mr Benaragama had previously offered it to him and he had heard him offer it to another colleague.

100. Ms A's evidence was that when Dr Benaragama mentioned the on-call room there was nobody else present. She was very clear that there was nobody there and it was said to her in a way that suggested that it was something she needed to see and was not mentioned in the context of her staying after the surgery and being unable to go home. Ms A's perception of that conversation was that it was to manipulate her into going to the on-call room.

101. The Tribunal considered that Ms A's recollection was unreliable in relation to this aspect. The Tribunal considered that the evidence of Mr P was unequivocal, and he recalled the events as it was his last day at the Royal Free. The Tribunal could identify no reason why he would be mistaken or have any reason to lie about this conversation.

102. The significance of this conversation in the presence of Mr P is that it supports Dr Benaragama's account of events that he was simply trying to be helpful to Ms A and ensure that she had somewhere to rest if the operation proceeded that evening. The Tribunal accepted that the conversation took place in front of Mr P and that Dr Benaragama was being open and transparent when he offered to show her where it was. The Tribunal considered that if Dr Benaragama had any sexual motivation towards Ms A, he would have been unlikely to have mentioned taking her to the on-call room in the presence of Mr P.

103. Ms A and Mr Benaragama left the hospital to go to Anne Bryans House at around 21:08pm. The Tribunal received CCTV footage that showed Dr Benaragama and Ms A walking to the on-call room, leaving the hospital at 21:08 and walking up what they both agreed was a dimly lit and narrow alleyway.

104. Dr Benaragama accepted that on 3 October 2023, he took Ms A to the on-call room. He accepted that he asked Ms A: to go into the room when she waited outside; to sit on a chair whilst he sat on the bed; and if she wanted to hang her coat on the door.

Paragraph 5a(iv)

105. It is alleged that Dr Benaragama asked Ms A ‘so what are you looking for’ or words to that effect.

106. In her earliest written account, dated 3 October 2023, Ms A stated that when they were both in the on-call room, Dr Benaragama said to her “*so what are you looking for?*”. She stated that “*this sounded like a very open ended question which could mean many things. so I focused the answer on how I was looking for research opportunities, something we had discussed previously, and something where he told me he would be helping me out extensively.*” In the Trust investigation interview, Ms A also stated that Dr Benaragama “*asked me what I was looking for, I knew what he was referring to, but I asked him what he means. I talked about the research opportunities.*”

107. Dr Benaragama partially admitted this allegation. He accepted that he may have used this wording as a way of asking Ms A what she was looking for from her career. He stated that his only intention was to explore Ms A’s career path and professional interests. He disputed that this comment was anything other than about her career and it was not a personal question or conversation. He stated that career-based conversations with his junior colleagues and medical students are part of his role as a trainer. This is reflected in his witness statement XXX.

108. The Tribunal considered that Dr Benaragama’s and Ms A’s account of this comment was broadly consistent. Ms A stated that they had a 10/15-minute conversation about research and her career. There was accepted evidence they had spoken about Ms A’s career aspirations on previous occasions and had subsequent discussions regarding a number of relevant topics such as projects, writing abstracts and research.

109. These topics of conversation were consistent with the character evidence XXX who stated that they had been supported and mentored by Dr Benaragama in their career. This demonstrated to the Tribunal that Dr Benaragama was renowned for helping XXX in their professional development.

110. Ms A said she had found it difficult to interpret Dr Benaragama’s intentions at the time. She described feeling uncomfortable and interpreted the question as a double meaning. The Tribunal was of the view that this question and subsequent conversation was entirely appropriate given that Ms A had asked Dr Benaragama about getting extra experience and his willingness to help. The Tribunal received no evidence that Dr Benaragama cut the conversation about research short to talk about other things. Ms A accepted that following Dr Benaragama asking her what she was looking for, he did not say anything explicitly sexual.

111. Taking the accepted evidence, the Tribunal was satisfied that Dr Benaragama had said ‘what are you looking for’. However, the Tribunal concluded that in asking that, it was more likely that Dr Benaragama was merely aiming to find out about Ms A’s career goals in order to learn how to best support and advise her.

112. Therefore, on the balance of probabilities, the Tribunal found paragraph 5a(iv) proved.

113. What is alleged to have happened next is that at this point Dr Benaragama’s behaviour becomes overtly sexual leaving Ms A in no doubt about his intentions. Ms A’s evidence was that it was at this point that Dr Benaragama was “expecting a green light from me.” The Tribunal noted that there is no corroborating evidence from any other witness, and it is Ms A’s version of events which is denied by Mr Benaragama.

114. When assessing Ms A’s account of these events the Tribunal had regard to the credibility of her evidence in relation to other matters. The Tribunal considered that Ms A’s recollection about being introduced to Professor Q by Dr Benaragama on the evening of 3 October 2023 was incorrect. The Tribunal accepted the evidence of Professor Q that she was on annual leave that day and had not met Ms A. Professor Q’s diary was clear that she was not working but even if she had gone into work, it would have been to the Whittington Hospital and not the Royal Free. It was submitted by Counsel for the GMC that this was a side issue and a distraction.

115. The Tribunal was concerned to note that this was not a mistaken recollection of a detail of an agreed event. This was an entirely false memory of an event which did not happen. This was described by Ms A in her evidence, and she recalled details such as what Dr Benaragama said when he introduced her and that she shook hands with Professor Q. Ms A’s recollection was confident, and she did not accept any possibility in cross examination that she might have been mistaken. There was no reason for Ms A to volunteer this information as it was not relevant to the charges. However, the Tribunal considered that it cast significant doubt on the reliability of Ms A’s recollection of that evening, particularly when weighed into the balance with the other evidence and the recollection of other witnesses.

116. A further example of this was Ms A’s evidence that Dr Benaragama had XXX on the 26 September which was the same day he asked her how old she was. Ms A was confident in her recollection that she had been “singled out” by Dr Benaragama XXX. Ms A stated that she recalled it very well and did not entertain any possibility that she was mistaken. XXX. The Tribunal was in no doubt that this event could not have happened in the way described by Ms A and that she was mistaken.

117. In these circumstances the Tribunal looked at Ms A's uncorroborated evidence with caution.

Paragraph 5b(i)

118. It is alleged that Dr Benaragama laid back on the bed with his legs opened wide.

119. The Tribunal examined the evidence in respect of this allegation. In her earliest written account, Ms A stated that "*he made his pillows more comfortable for himself, leaned back at a 90 degree angle and opened his legs further making sure his knees pointed sideways*". Ms A also stated in her Trust investigation interview that Dr Benaragama "*then he fluffed up the pillow. Furthermore, he laid down kind of one foot on the floor and literally opened his legs.*" In her witness statement, Ms A stated that "*He fluffed the pillows and lay back. The end of the bed faced the door. He was sitting sideways on the bed, facing the chair where I was sitting. He lay back and opened his legs significantly.*" It was Ms A's evidence that by Dr Benaragama sitting this way, it made her feel uncomfortable and she was too shaken to do anything. She stated that Dr Benaragama was sat "*not in a way in which he was making himself comfortable, but in an excessively sexual manner.*"

120. Dr Benaragama denied this allegation. He disputed that he lay back on the bed and opened his legs wide. His evidence was that he sat at the foot of the bed, as there was nowhere else to sit. He disputed sitting directly opposite Ms A.

121. In the Trust report, Dr Benaragama stated "*I did not touch the pillows or rearranged the bed. There was no need to do so. I did not change the way I was sitting. I was sitting on the edge of the bed as a seat because there was no other place to sit. I would never lay down on the bed in this way. I completely refute this. This is rude and I would not do this at all when I am in the middle of a conversation with someone. I did not invade into her personal space.*"

122. Given the evidence, the Tribunal accepted that Dr Benaragama was sat on the bed whilst Ms A was sat in a chair. However, both parties disagreed on positioning.

123. The Tribunal bore in mind Ms A's perception of events. The Tribunal accepted that whilst Ms A was walking towards Anne Bryans House she felt anxious. In her witness statement, she stated that "*it was quite dark and I felt uncomfortable...I had a gut feeling at this point but didn't have any physical evidence that he was doing anything wrong or out of line...I kept wondering if I was in danger or whether this was a normal situation...I was very much in my own head*". The Tribunal considered that this was evidence that Ms A clearly had a heightened sense of awareness that she could be in possible danger. Ms A describes being

in the room with Dr Benaragama in WhatsApp messages to Ms D as “so uncomfortable”. She also described in evidence as feeling vulnerable and preyed upon. She had to leave the hospital and walk down a dark alley to get to the on-call room building. She was in a room, which she did not know was a bedroom until she arrived, with a senior doctor she had only met a week ago. The Tribunal acknowledged that Ms A felt anxious and uncomfortable by this, and it accepted it was her perception of the circumstances. However, the Tribunal considered that Ms A’s account of events was flawed because of her perception. Her perception of events was that Dr Benaragama’s position on the bed was a deliberate sexualised motion to make his intentions clear.

124. The Tribunal took into account what it knew about Dr Benaragama’s good character when considering the plausibility that he had acted as alleged. In addition, it weighed into the balance the fact that Dr Benaragama had left the hospital in a brief window whilst Mr P was reviewing the Patient at UCLH and they were awaiting the scan to be transferred onto the system to review. It was entirely possible that Dr Benaragama would be required to operate on this patient and prepare for urgent complex surgery. In the Tribunal’s view it was unlikely that he had taken Ms A to the on-call room for improper motives in this context. The Tribunal considered that it was unlikely that a surgeon of Mr Benaragama’s standing would suddenly act in this way without any suggestion of improper or sexualised comment or behaviour in the previous interactions with Ms A. The Tribunal reminded itself of the substantial testimonial evidence that attested to Benaragama’s good character. Character references from colleagues and past medical students described Benaragama as treating everyone “fairly” with “respect”, and “professionalism”.

125. The Tribunal reminded itself that the burden of proof was on the GMC to prove that Dr Benaragama laid back in the bed with his legs opened wide. It considered that there was insufficient evidence to prove this allegation.

126. Therefore, on the balance of probabilities, the Tribunal found paragraph 5b(i) not proved.

#### Paragraph 5b(ii)

127. It is alleged that Dr Benaragama smirked at Ms A.

128. In her earliest account of the incident, dated 3 October 2023, Ms A stated that Dr Benaragama “had a smug look on his face and was smirking”. She repeated this in the Trust interview stating that “his facial expression disgusted me he was smirking”. In her witness statement, Ms A stated that “I can remember the smirking as he was looking at me and asking the questions. It was like he was powerful than me [sic].”

129. Dr Benaragama denied this allegation. His evidence was that he was smiling and there was no ill-intent. He also stated that he did not say anything of a sexual nature, and he did not invade or infringe on Ms A's personal space. In the Trust report, Dr Benaragama responded to the allegation that he appeared to be smug and smirking, stating "*Not at all. I am so passionate about teaching and training. I was talking about the projects. When someone shows me that they have an interest in learning. I have helped so many [XXX].*"

130. The Tribunal noted that no definition of 'smirking' was provided by parties, therefore it applied the term 'smirking' in a reasonable and common-sense way. Ms A was of the opinion that Dr Benaragama's facial expression implied to her that he was enjoying making her feel uncomfortable and he felt powerful that she was not in a position to do anything.

131. The Tribunal considered there was limited evidence to support this allegation. The Tribunal acknowledged that Ms A had felt uncomfortable during this time and she was concerned about Dr Benaragama's intentions. In the view of the Tribunal this had coloured her perception of Dr Benaragama's facial expression. It considered that it was more likely that she had interpreted the smile as more sinister than it actually was. Taking the evidence as a whole and Dr Benaragama's good character, the Tribunal considered that Ms A was mistaken in her perception. It considered the inferences which she had drawn were not supported by the evidence.

132. The Tribunal considered that the GMC had failed to prove its case that Dr Benaragama smirked at Ms A. The Tribunal considered that it was more likely Dr Benaragama was smiling because he was interested in their conversation. It did not accept that Dr Benaragama's intentions in smiling to be malevolent.

133. Therefore, on the balance of probabilities, the Tribunal found paragraph 5b(ii) not proved.

#### Paragraph 5b(iii)

134. It is alleged that Dr Benaragama asked Ms A what her hobbies were.

135. In her witness statement, Ms A evidence was that "*[Dr Benaragama] asked me what my hobbies were. This was the type of questions you would ask someone on a date... I said I used to play a lot of [XXX], and I thought I would bring my dad in to the question as talking about being close with my parents might make him uncomfortable enough to understand he was doing something wrong and completely inappropriate.*" Ms A repeated in her oral evidence that she recalled having a conversation about [XXX] with her dad as one of her hobbies.

136. Dr Benaragama denied this allegation. It was his evidence that the focus on their discussions was about careers and projects, as well as the patient whose scans they were waiting for. In the Trust investigation report, in response to the allegation about whether he asked Ms A what her hobbies are, Dr Benaragama stated “*perhaps. I can't remember but we did have general conversations*”.

137. The Tribunal accepted that there may have been a conversation about social matters which included hobbies.

138. Taking the evidence as a whole, the Tribunal concluded that it was more likely that Dr Benaragama has asked what Ms A's hobbies are.

139. Therefore, on the balance of probabilities, the Tribunal found paragraph 5b(iii) proved.

Paragraph 5b(iv)

140. It is alleged that Dr Benaragama asked Ms A whether she went to clubs and bars.

141. Ms A stated in the Trust investigation interview that “*he asked me if I go to bars and clubs. I told him just once in a blue moon.*” She does not mention Dr Benaragama asking her whether she went to clubs or bars in her earliest written account dated 3 October 2023 or her witness statement, dated 6 May 2024.

142. Dr Benaragama denied this allegation.

143. The Tribunal considered there was limited evidence to support this allegation. It bore in mind that the sole reference from Ms A that Dr Benaragama asked this question was at the Trust investigation interview, dated 13 November 2023, which was six weeks after the events alleged.

144. The Tribunal considered that the GMC had failed to prove its case that Dr Benaragama asked Ms A whether she went to clubs or bars.

145. Therefore, on the balance of probabilities, the Tribunal found paragraph 5b(iv) not proved.

Paragraph 5b(vi)

146. It is alleged that Dr Benaragama said to Ms A that she could stay overnight with him in the on-call room.

147. The Tribunal considered Ms A's earliest written account, she stated that Dr Benaragama said, "*when you're on call with me on thursday, it might be a little late, you can always stay here*" (*he mentioned something along those lines as we were walking there too, but I didnt understand what he meant cause I didn't know it was his accommodation*)". The Tribunal bore in mind that in her original notes, Ms A does not describe Dr Benaragama as having said staying overnight *with him*.

148. The Tribunal next considered Ms A's GMC witness statement dated 6 May 2024. Her evidence was that when Dr Benaragama had said they were going to look at the on-call room, she asked him whether she should take her bag with her or leave it in the office. He then told her to take her own bag and also took his own cabin bag. She had asked why he had the cabin bag and he said he was on-call so he had his extra clothes and toiletries with him. She understood this to mean that these were items he could use overnight. Ms A then stated whilst they were in the on-call room, Dr Benaragama offered her to stay overnight in the on-call room. She was uncomfortable being in the room alone with him and she said she used this opportunity to tell Dr Benaragama that she lived with XXX. Ms A then described Dr Benaragama saying, "*'you can tell [XXX] not to worry, you're in safe hands here'. I found this weird as he had suggested I could stay at the on-call room with him overnight. He had every intention of staying at that accommodation overnight because he took his cabin bag there and left it there as we were leaving*". Again, the Tribunal bore in mind that in her witness statement, Ms A does not describe Dr Benaragama as explicitly having said staying overnight *with him*, rather she has made that inference partly because he brought his overnight bag.

149. The Tribunal also received evidence of WhatsApp messages between Ms A and Ms D on 3 October 2023:

Ms A-      *the consultant brought me to his room where he stays when hes on call...  
And was like you can stay*

Ms D-      *Why is it uncomfortable?  
What do you mean his room  
Is there a bed in there?? Does he mean stay overnight?*

Dr A-      *Yes and yes  
accommodation basically  
Locked single toom*

150. Dr Benaragama denied this allegation. He accepted in paragraph 5b(iv) of the allegation in that he indicated to Ms A that she could use the on-room on Thursday night XXX and if she decides to stay until late night. His evidence was that he has in the past offered the

use of his allocated on-call room to his colleagues if they needed to use it in a situation where there were no allocated rooms for themselves. However, he refuted ever saying to Ms A that she could stay overnight with him.

151. The Tribunal took into account Mr P's evidence, he stated that "*I was not surprised to hear Mr Benaragama offer the on-call room to [Ms A], as it is normal for him to help others in this way. He also offered me his on-call room once, which I did not use as I live a short 15-minute drive away from the hospital. Another time, I heard him offer it to another registrar. It was therefore not an unusual conversation.*"

152. The Tribunal considered Ms A's evidence whilst she was in the on-call room with Dr Benaragama. It accepted that she had felt uncomfortable during this time, and she was concerned about his conduct. She had drawn inferences, from his words and behaviour, and her perception was that Dr Benaragama was making inappropriate and sexual advances on her. However, taking the evidence as a whole and Dr Benaragama's good character and Dr P's evidence, the Tribunal considered that Ms A was mistaken in her perception. The inferences which she had drawn, in many respects, were not supported by the evidence. She had formed a negative view of Dr Benaragama which had then coloured her interaction with him, and she was mistaken in hearing him say that she could stay overnight with him and this was likely to be a detail that was added later.

153. The Tribunal considered that the GMC had failed to prove its case that Dr Benaragama said to Ms A that she could stay overnight with him in the On-call Room. It was satisfied that it was more likely that Dr Benaragama had solely offered her the on-call room to use by herself if she wanted it.

154. The Tribunal noted that the GMC suggested that because Dr Benaragama took his overnight bag with him to the on-call room, this supported the suggestion that he was intending to stay there with Ms A. Dr Benaragama told the Tribunal that he was multi-tasking and dropping his bag off in case he needed to freshen up the following morning after operating all night as he would still be expected to work that day and he explained that the room was his to use until 11:00. The Tribunal considered that this was an entirely plausible explanation. The action of taking the bag to the on-call room was not, in the view of the Tribunal, evidence of any sexual motive on the part of Dr Benaragama, particularly when viewed in the context of the other evidence.

155. Therefore, on the balance of probabilities, the Tribunal found paragraph 5b(vi) not proved.

#### Paragraph 5c

156. It is alleged that Dr Benaragama told Ms A that he could look up conferences abroad and they could travel together in the future.

157. It was accepted that for the first 10/15 minutes after entering the on-call room, Dr Benaragama and Ms A spoke about research opportunities.

158. In the Trust investigation interview, Ms A stated that Dr Benaragama said once she wrote the abstract, the next step was about finding conferences at which she could present the paper. Ms A also said that he mentioned that he could look for conferences abroad and said that they could travel there together in the future. In the investigation meeting minutes, dated 24 January 2024, Ms A said that “[Dr Benaragama] spoke about an abstract and mentioned a conference which was abroad and I felt he was focusing on the fact of going abroad rather than the conference.” The Tribunal noted that Ms A did not make any references to Dr Benaragama telling her that they could travel together in her witness statement dated 6 May 2024.

159. Dr Benaragama partially admitted this allegation. He accepted that he discussed writing abstracts and could look up conferences for opportunities for her to present nationally and internationally. His evidence was that presentations and conference attendance are important part of career progression. He said that it is common for him and his colleagues to attend the same conferences, and that XXX have also attended these events as it is essential to demonstrate commitment to the speciality in order to enter surgical training. However, he disputed that he said that he and Ms A could travel together in the future. The Tribunal considered that Dr Benaragama was consistent in his evidence that he suggested she wrote an abstract and he then offered to look up conferences for Ms A to help her on her career path. It accepted Dr Benaragama’s evidence that he would ask about a XXX career plans, aspirations and goals before offering any research opportunities.

160. The Tribunal reminded itself of the substantial testimonial evidence that attested to Dr Benaragama’s good character. Character references from colleagues and past medical students described Dr Benaragama as a “dedicated”, “enthusiastic”, and “considerate” teacher and mentor to trainees. He has supported many medical students in their professional development.

161. Taking the evidence as a whole, the Tribunal considered that Dr Benaragama had recognised that Ms A was an enthusiastic XXX who had an interest in surgery. There was evidence of previous discussions about Ms A’s career plans and Dr Benaragama had discussed presentations and conferences which are an important part of career progression. In Ms A’s own evidence, she accepted that Dr Benaragama had offered to help her with her research and to discuss this when time allowed. The Tribunal considered this was another

example of Ms A's misinterpretation of events whilst under her perception that she was in danger.

162. Taking the evidence in the round, as a man of good character, the Tribunal determined it was more likely that Dr Benaragama's account was correct and less likely that he had acted as alleged. The Tribunal considered that it was more likely that Ms A was mistaken given her perception and she was concentrating on the travelling abroad together aspect of the conversation in search of confirmation that Dr Benaragama was acting inappropriately.

163. Therefore, on the balance of probabilities, the Tribunal found paragraph 5c not proved.

Paragraph 5d

164. It is alleged that Dr Benaragama told Ms A that she reminded him of Dr C who worked in ICU and whom he had taken to XXX for a presentation.

165. Dr Benaragama partially admitted this allegation. He accepted saying that Ms A reminded him of Dr C but denied saying he had taken Dr C to XXX for a presentation. In his witness statement, Dr Benaragama stated that "*I do recall remarking that Ms A reminded me of [XXX] ("Dr C") who is now an Anaesthetist and ITU Consultant. She is [XXX]...I had helped [XXX] ("Dr C") with abstracts, national and international presentations, audits and research. I have helped and mentored a lot of XXX over the years, XXX. I have helped junior doctors, including [XXX] ("Dr C") when she was at that stage, to attend surgical conferences. Some of the conferences I have attended with them and some without me. I had simply commented on [XXX] ("Dr C") as an example [XXX] I had helped in the past.*"

166. The Tribunal noted that there was no reference in either Ms A's earliest written account of events dated 3 October 2023 or her GMC witness statement dated 6 May 2024. Ms A's first account of this allegation is in the Trust investigation interview, she stated that "*He spoke about all the opportunities such as conferences abroad where we could travel together...When I first met [Dr Benaragama] he mentioned a female doctor who works in ICU, he said that I reminded him of that doctor, He said he took her to [XXX] for a presentation. That was mainly the conversation with regards to research.*" It was Ms A's evidence that Dr Benaragama expressed this comment in a way that said he had taken Dr C went to XXX with him and that she should do the same "*I felt he was focusing on the fact of going abroad rather than the conference.*"

167. Given the accepted evidence, the Tribunal was satisfied that Dr Benaragama told Ms A that she reminded her of Dr C and there was a conversation about a conference abroad. However, the GMC's case is that the intention of the comment was to convey to Ms A that Dr Benaragama had taken Dr C to XXX for something more than a professional relationship and in this context, he wanted to take Ms A to XXX for sexually motivated reasons.

168. The Tribunal bore in mind that it received a number of testimonials in support of Dr Benaragama, including two-character testimonial letters from Dr C, dated 8 February 2024 and 31 March 2025. In her testimonial, Dr C said:

*"...As a former mentee and witness to Benaragama's exemplary qualities, I would like to offer my perspective on his outstanding contributions to medical education and professional development...."*

*Throughout my tenure at University College London Hospital, Mr Benaragama served as not only a mentor but also a dedicated educator and role model. His passion for the field of vascular surgery was always evident, and his unwavering commitment to patient care and surgical excellence was evident in every interaction. As a teacher, he went above and beyond to ensure that students like myself received comprehensive instruction and hands on experience in the operating room and clinical settings.*

*One of Mr Benaragama's most commendable attributes is his innate ability to inspire and motivate others through his own love for the work and impeccable work ethic. He consistently encouraged students to pursue excellence in all aspects of their medical training and instilled in us a deep sense of responsibility towards our patients and colleagues. His approachable demeanour and willingness to share knowledge created an environment conducive to learning, fostering a culture of collaboration and growth within the medical community.*

*Over the years I have known him, I have had the privilege of observing Mr Benaragama interact with numerous students at various stages of their medical education, as well as trainees, and I can attest to his consistent demonstration of fairness, integrity, and collegiality. He treats each individual with respect and professionalism, offering guidance and support tailored to their specific needs and aspirations. His dedication to nurturing the next generation of healthcare professionals is truly commendable and has undoubtedly left a lasting impact on countless aspiring surgeons..."*

169. Taking the evidence as a whole, the Tribunal concluded that this comment was not made in the way alleged by the GMC. It was clearly made in the context of a discussion about research to support Ms A's career. Dr Benaragama had recognised that she was an enthusiastic XXX who had an interest in surgery. There was evidence of previous discussions

about Ms A's career plans, and Dr Benaragama had discussed presentations and conferences which are an important part of career progression. It also bore in mind the numerous character references that attested to Dr Benaragama helping many medical students in their professional development. By Ms A's own evidence, this conversation was in regard to the research that she wanted to do. The Tribunal considered that in having a discussion about presentations and research he was merely saying that Dr C has done several conferences that he had attended and that it was common for clinicians to attend the same conferences. The Tribunal considered it likely that Ms A had misinterpreted that Dr Benaragama had taken Dr C to XXX given that she had formed a negative perception of his conduct.

170. Therefore, on the balance of probabilities, the Tribunal found paragraph 5d of the allegation not proved.

Paragraph 5e

171. It is alleged that Dr Benaragama asked Ms A how old she was and said upon her response 'ohhh you're very young aren't you' or words to that effect.

172. In her earliest written account of events, dated 3 October 2023 Ms A stated that "*he also asked me how old I was both last week and at his room. I said [XXX] and at his room he said "ohhh, you're very young arent you"*". The Tribunal noted there was no further evidence from Ms A in her GMC witness statement dated 6 May 2024 or the Trust investigation interview dated 13 November 2023.

173. Dr Benaragama denied this allegation. In the Trust Investigation report, dated 22 November 2023, Dr Benaragama stated that he remembers saying to Ms A that she should not only focus on academics and have fun. His evidence was that Ms A was working at the hospital all the time, XXX and she was keen to be at the hospital even out of hours. In having this conversation with Ms A, Dr Benaragama recalls saying "*you are very young, enjoy life*" in the context of advising her to have a work-life balance. However, his evidence was that he did not make this comment whilst in the on-call room.

174. The Tribunal considered that there was little evidence to support that Dr Benaragama's comment was made on 3 October 2023. It was satisfied that Dr Benaragama was more likely to have said this on a previous date in the context of advising Ms A to have a work-life balance and that Ms A's recollection had been that it was said in a sexualised way when analysing the interactions.

175. Therefore, on the balance of probabilities, the Tribunal found paragraph 5e of the Allegation not proved.

176. The Tribunal noted that there was a dispute about how the interaction in the on-call room came to an end. Ms A stated that she mentioned to Dr Benaragama that XXX would be waiting up for her and would not go to bed until she knew she was safe. Ms A told the Tribunal that it was at this point that Dr Benaragama became visibly shocked, took a step back and stated that they should return to the hospital to look at the scan which was now ready. Ms A stated that upon returning to the hospital Dr Benaragama did five minutes teaching on the scan and there was nobody else present. Following this, Dr Benaragama stated that Ms A could go home.

177. Dr Benaragama explained that the interaction ended when he received notification that the scan was ready to be viewed. He told the Tribunal that he returned to the hospital and had a discussion over the telephone with Mr P about the patient and the plan. The decision was made following a clinical discussion that the operation would not be going ahead.

178. Mr P told the Tribunal that he recalled the discussion with Dr Benaragama, and he documented the plan in the patient's notes before leaving UCLH.

179. The Tribunal considered that Dr Benaragama's version of events was more plausible and corroborated by Mr P. It was clear to the Tribunal that Dr Benaragama would have needed to speak to Mr P about his findings having examined the patient and he would also have needed to view the scan which could only take place in the hospital. The Tribunal considered that Ms A's account that there was no conversation with Mr P was unlikely to be correct and Ms A had not accurately recalled the events after she returned to the hospital.

#### Paragraph 6b

180. On 3 October 2023 after Dr Benaragama left the On-call room he told Ms A that he would take her for tea on Thursday.

181. In her earliest written account of events dated 3 October 2023, Ms A said that “[Dr Benaragama] asked me if I wanted tea before leaving. I said no. he said he would take me out for tea on Thursday.” Ms A, in her witness statement described that after leaving the on-call room, Dr Benaragama said to her ‘oh let me make you some tea before you leave’ and when she replied ‘no, I’m going to go’, he then told her when she came back to the hospital on Thursday for the on-call he would take me out for tea and coffee. She understood this as Dr Benaragama as taking her out.

182. Dr Benaragama denied this allegation. He did not dispute that he offered her a cup of tea before she left but he disputed that he told her that he would take her out for tea on

Thursday. Dr Benaragama's evidence was that he suggested Ms A go home because of the uncertainty about operating on a patient and he offered her tea before she left.

183. The Tribunal noted that Professor Q stated both in her testimonial letter and in her oral evidence that it was common for Dr Benaragama to offer staff cups of tea.

184. The Tribunal reminded itself that the burden of proof was on the GMC to prove that Dr Benaragama told Ms A that he would take her out for tea. However, it noted there was no evidence to support this finding other than the account of Ms A. It concluded that the inference drawn by Ms A, that Dr Benaragama was suggesting they go out for tea could not properly be drawn on the evidence.

185. The Tribunal was not satisfied that the evidence adduced was sufficiently reliable for it to find that Dr Benaragama told Ms A that he would take her for tea on Thursday. It was satisfied that it was unlikely that Dr Benaragama wanted to take her out for tea and more likely that he offered a cup of tea before leaving. This was consistent with Professor Q's evidence that Dr Benaragama would often offer colleagues cups of tea.

186. Therefore, on the balance of probabilities, the Tribunal found paragraph 6b of the Allegation not proved.

#### Paragraph 6c

187. On 3 October 2023 after he left the On-call room he gave Ms A a side-hug before she left the hospital.

188. Ms A's account of a 'side-hug' is in her initial account. Later, in her Trust investigation interview, dated 13 November 2023 Ms A said that after leaving the on-call room and she was about to leave to get in an Uber home, Dr Benaragama "*then gave me a hug and I left*". In her witness statement dated 6 May 2024, Ms A stated that Dr Benaragama offered to walk her down to her Uber which she declined and said she can walk herself out and "*he gave me a side hug*".

189. Dr Benaragama denied this allegation. His evidence was that no hug occurred, and he would never hug a colleague XXX.

190. The Tribunal considered that there was only Ms A's recollection supporting this allegation. CCTV footage does not show any instances of a hug occurring. It also considered that Ms A's recollection was unreliable in significant details. It reminded itself of the character witnesses on behalf of Dr Benaragama were all in agreement that while Dr Benaragama was friendly and enthusiastic, he was not a tactile person. The Tribunal

considered it unlikely that Dr Benaragama would behave out of character and hug [Ms A]. Taking all of the evidence into account the Tribunal was not satisfied that Dr Benaragama had acted as alleged and hugged Ms A.

191. Therefore, on the balance of probabilities, the Tribunal found paragraph 6c of the Allegation not proved.

Paragraph 7 in respect of paragraphs 5a(i), 5a(ii), 5a(iii), 5a(iii), 5a(iv), 5b(i), 5b(v), 6a

192. The Tribunal considered whether Dr Benaragama's actions as set out in the remaining paragraphs found proved constituted sexual harassment, were sexually motivated, were an abuse of his more senior position.

193. The Tribunal reminded itself of the allegations found proved:

5a(i) Dr Benaragama asked Ms A to go into the on-call room when she waited outside.

5a(ii) Dr Benaragama asked Ms A to sit on a chair once she entered the room whilst he sat across from her on the bed.

5a(iii) Dr Benaragama asked Ms A if she wanted to hang her coat on the door.

5a(iv) Dr Benaragama asked Ms A 'so what are you looking for' or words to that effect.

5b(i) Dr Benaragama asked Ms A what her hobbies were.

5b(v) Dr Benaragama said to Ms 'when you're on call with me on Thursday, it might be a little late, you can always stay here' or words to that effect.

6a Dr Benaragama offered to walk Ms A out of the building.

194. Dr Benaragama denied that any of his actions constituted sexual harassment, were sexually motivated or was an abuse of his senior position.

195. Dr Benaragama's evidence was that the on-call room building is difficult to find unless you know exactly where it is. His evidence was that he asked Ms A where she lived and how long it would take her to get home and if she had any difficulty getting home, he could offer her the on-call room. It was his evidence that Ms A wanted to see the on-call rooms and did not seem reluctant or uncomfortable to do so. Therefore, while they were waiting for the patient's CT scan that he had ordered, he would show her the on-call room in case she needed to stay.

196. The Tribunal was mindful of the situation that Ms A found herself in. It acknowledged that Ms A was feeling anxious as she left the hospital to walk down a dark alley. She was not expecting to leave the hospital, and she was unaware of where she was going with Dr

Benaragama. It acknowledged that Ms A was alone in the on-call room with a senior doctor she doesn't know, and she did not realise the on-call room was a bedroom until arriving. By her own admission she "*was very much in my own head*" from the walk over to the on-call room. At the point of arriving to the on-call room, the Tribunal considered that Ms A was in a heightened sense of awareness. Having only known each other for a week, Ms A did not know anything of Dr Benaragama's character or his intention. The Tribunal considered that it was not entirely unreasonable that Ms A was fearful for her safety given the situational context. In her witness statement, when she was in the on-call room Ms A described "*Not only was I having psychological reactions, but I was also feeling so nauseous (which is what happens when I'm excessively overwhelmed)*". The Tribunal considered that her perception of Dr Benaragama's conduct may have been influenced by this fear.

197. The Tribunal considered Ms A's written evidence in respect of the events on 25 September 2023. Ms A said in her witness statement that "*The leg touch happened first and then the boyfriend comment came afterwards, so I was questioning why it had happened and whether it was normal. There was a lot going through my mind. In the media, I have heard a lot about surgeons sometimes acting inappropriately and the culture normalising it. It was very difficult for me to understand, especially because I was [XXX].*" Ms A was cross-examined on this topic, in oral evidence she clarified that she was aware of a recent BBC news article about surgeons acting inappropriately with female XXX. The Tribunal considered it likely that Ms A had a preconceived idea that there is culture of inappropriateness within the hospital and to some extent, Ms A's perception of Dr Benaragama's conduct had also been influenced by this.

198. Taking the remaining proven allegations, the Tribunal considered that there are no words or behaviour that are explicitly sexual. Ms A fully accepted in evidence that nothing explicitly sexual was said by Dr Benaragama. Nonetheless, Ms A's perception of events was that Dr Benaragama was making inappropriate and sexual advances on her.

199. The Tribunal also took into consideration the WhatsApp messages between Dr Benaragama and Ms A. It considered there was no evidence of anything explicitly sexual or inappropriate within those messages and they all read as professional.

200. The Tribunal took into account Dr Benaragama's good character. He has no criminal convictions or previous disciplinary findings against him. The Tribunal was impressed by the number of positive testimonials submitted on behalf of Dr Benaragama which attested to his good character, generally friendly and enthusiastic nature. Testimonial letters were provided from a diverse range of 57 people from of all nationalities or backgrounds, including fellow clinicians and former medical students, both male and female. They were all aware of the

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proceedings and allegations faced by Dr Benaragama in this case and were unanimously in support of him.

201. Extracts of some of the testimonials are set out below:

Dr L, Senior Clinical Fellow, 16 February 2024 and 5 April 2025:

*"Dr Benaragama is incredibly kind, endlessly caring, and very approachable. He is one of the rare individuals who constantly encourages you to go beyond your limits to achieve your best. No one supported me in my exam preparations the way he did. Even while I was on maternity leave, he reached out to check on my progress..."*

*[XXX]. During that time, there wasn't a single day that passed without him texting to check if I was safe. Very few people from the department reached out with that level of concern, especially considering that I hadn't known him as long as others. This compassion is simply a reflection of the kind of caring and genuine person he is.*

*When I returned from [XXX], he provided me with emotional support and guidance, becoming someone I could rely on during difficult times. When I experienced what I felt was abusive behaviour from [XXX], the first person I thought to speak with was Mr Benaragama. Although this choice upset my supervisor—since I had known others longer—he helped me handle the situation, and I will always be grateful for that. As someone who has unfortunately experienced sexual harassment in my career in the past, I can say with absolute certainty that I have never once felt uncomfortable around Mr Benaragama. He has always maintained professional boundaries and has never behaved inappropriately toward me or anyone else in my presence. I have seen him teaching medical students in clinic settings, and he is an incredibly talented and engaging educator. He also mentors junior staff, helping them with their projects, and I have never heard anything but praise about him. He is genuinely loved by nearly everyone who works with him."*

Ms T, Vascular Lead Nurse, dated 3 April 2025:

*He has always been approachable, supportive, and willing to assist his colleagues, embodying the qualities of integrity, diligence, and compassion. He consistently upholds the core values of the medical profession in both clinical and non-clinical settings, demonstrating professionalism in his interactions with colleagues, patients, and friends.*

*Shanka is a proud and humble family man who, at times, can be naive, which may work to his disadvantage. However, based on my long-standing experience working with him, I firmly believe that the allegations against him do not reflect the character and conduct I have observed.*

Professor Q, Consultant vascular surgeon, dated 31 March 2025:

*"Dr Benagarama is a kind and hospitable person. He is eager to give up his chair for others to sit on and frequently offers people tea or coffee. He will go out of his way to be helpful, for instance in collecting something from another part of the hospital, directing a lost patient to a clinic, dealing with some generic administrative tasks, or covering a colleague at short notice...He is gregarious by nature but has been somewhat subdued in recent months"*

202. In her oral evidence, Professor Q also said that Dr Benaragama's nickname in the hospital is "Tigger" which reflected his happy and somewhat innocent personality.

203. The Tribunal considered that the testimonial letters were overwhelmingly positive, and it noted no comments on inappropriate behaviour. The Tribunal viewed these testimonials as evidence of Dr Benaragama's good character and accepted that, as a person of good character, he was less likely to have acted as alleged.

204. The Tribunal concluded that conversations between Dr Benaragama and Ms A did not go beyond polite, social inquiry. The Tribunal heard evidence that Ms A was an enthusiastic XXX who was engaged more than her peers. It considered that Dr Benaragama had been offering support and advice to Ms A, as well as providing some pastoral care. His actions in offering to walk her out of the building was appropriate given that she was not familiar with the hospital grounds.

205. The Tribunal accepted that Ms A had felt uncomfortable during her interactions she had had with Dr Benaragama on 3 October 2023. It accepted that Ms A was concerned about his conduct. She had drawn inferences, from his words and behaviour, and her perception was that Dr Benaragama was making inappropriate and sexual advances towards her. However, the Tribunal was of the view that it was likely after the events of 3 October 2023, Ms A had analysed every interaction she had with Dr Benaragama with a negative and more sinister lens, and she has now considered the events that occurred in this light. The Tribunal noted that Ms A admitted that she had done this. Taking the evidence in the round and Dr Benaragama's good character, the Tribunal concluded that Ms A was mistaken in her negative perception. The inferences which she had drawn, in many respects, were not supported by the evidence. She had formed a negative view of Dr Benaragama in the context of the environment, which had then coloured her interaction with him.

206. Whilst the Tribunal considered that none of Dr Benaragama's proven conduct was with any sexual intent, the Tribunal was of the view that taking [Ms A] to the on-call room alone at night was an unwise and naïve decision for both Ms A and him. The Tribunal considered that this was consistent with the character evidence that described Dr Benaragama as having a somewhat naïve and innocent personality. However, the Tribunal

considered that this conduct in and of itself does not equate to a finding of sexual harassment, sexual motivation or an abuse of his senior position.

207. The Tribunal concluded that Dr Benaragama's conduct on 3 October 2023 was in good faith, rather than an attempt at sexual gratification or the pursuit of a sexual relationship and therefore was not an abuse of his more senior position.

208. Accordingly, the Tribunal found 7a, b and c in respect of paragraphs 5a(i), 5a(ii), 5a(iii), 5a(iii), 5a(iv), 5b(i), 5b(v), 6a of the Allegation not proved.

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

209. The Tribunal has determined the facts as follows:

1. At all material times:
  - a. you were a Consultant Surgeon employed by the Royal Free London NHS Foundation Trust; **Admitted and found proved**
  - b. Ms A was a XXX colleague. **Admitted and found proved**
2. On 25 September 2023 you:
  - a. touched Ms A's thigh with your hand; **Not proved**
  - b. asked Ms A if she had a boyfriend or words to that effect; **Determined and found proved**
  - c. said to Ms A 'you should date Mr B' or words to that effect; **Not proved**
  - d. told Ms A multiple times that she 'needed to have fun' and 'do things outside her work' or words to that effect. **Not proved**
3. On 26 September 2023 you asked Ms A how old she was. **Not proved**
4. On 28 September 2023 you asked Ms A again if she had a boyfriend or words to that effect. **Not proved**
5. On 3 October 2023 you took Ms A to a room you used when on-call ('On-call Room') and you:
  - a. asked Ms A:

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- i. to go into the room when she waited outside; **Admitted and found proved**
  - ii. to sit on a chair once she entered the room whilst you sat across from her on the bed; **Admitted and found proved**
  - iii. if she wanted to hang her coat on the door; **Admitted and found proved**
  - iv. ‘so what are you looking for’ or words to that effect; **Determined and found proved**
  - b. ~~laid back on the bed with your legs opened wide, and you did the following;~~ **Amended under Rule 17(6)**
    - i. laid back on the bed with your legs opened wide,~~and you;~~ **Amended under Rule 17(6)**  
**Not proved**
    - ii. smirked at Ms A; **Not proved**
    - iii. asked Ms A what her hobbies were; **Determined and found proved**
    - iv. asked Ms A whether she went to clubs and bars; **Not proved**
    - v. said to Ms A ‘when you’re on call with me on Thursday, it might be a little late, you can always stay here’ or words to that effect; and/or **Admitted and found proved**
    - vi. said to Ms A that she could stay overnight with you in the On-call Room; **Not proved**
  - c. told Ms A that you could look up conferences abroad and you could travel together in the future; **Not proved**
  - d. told Ms A that she reminded you of Dr C who worked in ICU and whom you had taken to XXX for a presentation; **Not proved**
  - e. asked Ms A how old she was and said upon her response ‘ohhh you’re very young aren’t you’ or words to that effect. **Not proved**
6. On 3 October 2023 after you left the On-call Room you:

- a. offered to walk Ms A out of the building; **Admitted and found proved**
  - b. told Ms A that you would take her for tea on Thursday; **Not proved**
  - c. gave Ms A a side-hug before she left the hospital. **Not proved**
7. Your actions as set out at paragraphs 1-6:
- a. constituted sexual harassment as defined in Section 26 (2) of the Equality Act 2010, in that you engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms A; **Not proved**
  - b. were sexually motivated; **Not proved**
  - c. were an abuse of your more senior position. **Not proved**

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

#### Determination on Impairment - 15/05/2025

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

#### The Evidence

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

#### Submissions

##### On behalf of the GMC

212. Ms Jones, Counsel, stated that she has no positive submissions regarding misconduct.

##### On behalf of Dr Benaragama

213. In view of the position taken by the GMC, Mr Gillespie made no submissions.

**Tribunals decision**

214. The Tribunal concluded that the remaining facts as found proved were not capable of amounting to serious professional misconduct for the reasons outlined in its determination on facts. Accordingly, the Tribunal did not go on to consider if Dr Benaragama's fitness to practise was impaired.

215. That concludes this case.

ANNEX A – 28/04/2025

**Application to for Anonymity of a Witness - Rule 35(4)**

216. On behalf of the GMC, Ms Katie Jones, Counsel made an application under Rule 35(4) of the Fitness to Practise Rules (2004, as amended) ('the Rules') that Ms A, Ms D and Mr E be granted anonymity throughout proceedings.

**Submissions**

217. On behalf of the GMC, Ms Jones firstly made an application for the complainant to be anonymised to Ms A for the duration of the hearing. She pointed out that the complainant had already been granted a Special Measure at a case management hearing. It had been decided at that earlier hearing that the complainant should be treated as a 'vulnerable witness' under Rule 36(1)(e) of the Rules, because she was the alleged victim in a case of a sexual nature.

218. Ms Jones made further submissions that an application for anonymity should also be considered for Ms D and Mr E. She stated that naming these witnesses in public could cause the identity of Ms A to become known because of the potential for jigsaw identification and so they should be granted anonymity to prevent this from happening.

219. On behalf of Dr Benaragama, Mr Christopher Gillespie did not oppose the application for anonymity in relation to Ms A, Ms D and Mr E. However, he submitted that references to Dr Benaragama's name might involve jigsaw identification as well, given that certain XXX will be mentioned at a certain time and at a certain place. He submitted that if the Tribunal feels that there is any risk that [Ms A] could be identified at this stage by identifying Dr Benaragama, then he too should be anonymised.

220. With regards to Dr Benaragama being anonymised, Ms Jones submitted that it is disproportionate when you look at the facts of how long XXX and the complainant were working with the doctor. She submitted that it was a very short period of time, nearly two years ago and it was a 2-week placement in total and only a one week placement in the Vascular Surgical team. She submitted that there would not be a risk at all of the complainants being identified if the doctor's identity is known.

**The Tribunal's Decision**

221. The LQC reminded the Tribunal that hearings should ordinarily be held in public session to ensure that the process is open and transparent. She confirmed that the Tribunal could direct parts of the hearing be held in private if, due to the circumstances of the case, it determined that it was in the public interest to do so.

222. The Tribunal found that because Ms A has made allegations that Dr Benaragama acted towards her in a manner that was sexually motivated and amounts to sexual harassment, it was appropriate for her to be considered a vulnerable witness. The Tribunal therefore determined that Ms A should be anonymised throughout proceedings to protect her identity.

223. The Tribunal then considered if Ms D and Mr E should be anonymised. The Tribunal determined that there was a possibility of jigsaw identification of Ms A because of her friendship of Ms D and XXX. As such, the Tribunal determined to grant the GMC's application for anonymisation of this GMC witnesses to prevent the jigsaw identification of Mr A.

224. The Tribunal considered that Mr E should be anonymised on the basis that he is Ms A's XXX. It considered that jigsaw identification of Ms A was a real possibility and therefore his name should be anonymised.

225. With regards to the doctor being anonymised, the Tribunal agreed with the GMC's submissions that it is unlikely the complainants will be identified through Dr Benaragama's name being made public, given the context of the connection between Ms A and Dr Benaragama.