

Dates: 19/09/2016 – 30/09/2016

Medical Practitioner's name: Dr Enyinnaya ANOSIKE

GMC reference number: 5205371

Primary medical qualification: MB BS 1998 University of Nigeria

Type of case
New - Misconduct

Outcome on impairment
Impaired

Summary of outcome

Suspension, 12 months.
Review hearing directed

Tribunal:

Lay Tribunal Member (Chair)	Mr Peter Scofield
Lay Tribunal Member:	Mr Robin Somerville
Medical Tribunal Member:	Dr Pavan Rao

Legal Assessor:	Mr Andrew Young 19-21 September; 24-30 September Miss Melanie Swinnerton 22-23 September
Tribunal Clerk:	Mr Ian Leslie

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Ms Claire Watson, Counsel, instructed by MDU
GMC Representative:	Mr Paul Williams, Counsel

Record of Determinations – Medical Practitioners Tribunal

Allegation and Findings of Fact

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

1. Between 26 June 2013 and 13 August 2014 you were employed as a locum specialist speciality doctor for the Manchester Mental Health Team and Social Care NHS Trust at the Rawnsley Building at Manchester Royal Infirmary.
Admitted and found proved as amended

Mrs A

2. In or around July 2014 you approached Mrs A in the Medical Records Room and you:
 - a. put your arms over her shoulders across her body;
Found proved
 - b. rested your head on her shoulder.
Found not proved
3. On 11 August 2014 you approached Mrs A in the Medical Records Room and you:
 - a. put your arms around her;
Admitted and found proved
 - b. tried to put your head on her shoulder;
Found not proved
 - c. moved your right hand from her left shoulder and touched her left breast.
Found proved
4. Your actions as described at paragraph 2a-b and 3a-c were sexually motivated.
Found proved in relation to Paragraph 2a
Found proved in relation to Paragraph 3a
Found proved in relation to Paragraph 3c

Mrs B

5. Between March 2014 and 13 August 2014 you approached Mrs B in her office from behind and you:
 - a. On more than one occasion:
 - (i) squeezed her shoulders; and
Admitted and found proved
 - (ii) put your face by Mrs B's face, almost cheek to cheek;
Found proved
 - (iii) put your arms across Mrs B, leaving your hands in her chest area;
Found not proved
 - b. put your arms across the front of Mrs B's body, so that:

Record of Determinations – Medical Practitioners Tribunal

- (i) your arms crossed and your hands rested underneath her breasts at the sides;
Found proved
 - (ii) your fingers touched Mrs B’s left breast.
Found proved
6. Between November 2013 and 13 August 2014 you approached Mrs B in the Post Room and you:
- a. put your hand around her back;
Admitted and found proved
 - b. rubbed her lower back.
Found not proved
7. Your actions as described at paragraphs 5a(i)-(iii), 5b(i)-(ii) and 6a-b were sexually motivated.
Found proved in relation to Paragraph 5ai
Found proved in relation to Paragraph 5aii
Found proved in relation to Paragraph 5bi
Found proved in relation to Paragraph 5bii
Found proved in relation to Paragraph 6a
8. On 13 August 2014 you approached Mrs B and said that complaints about your conduct had been received and you said to Mrs B ‘the thought had crossed my mind that it might be you’.
Found proved

Mrs C

9. Between 26 June 2013 and 13 August 2014 you approached Mrs C and, on more than one occasion, you:
- a. using both hands touched and squeezed Mrs C’s:
 - (i) shoulders;
Admitted and found proved
 - (ii) arms;
Admitted and found proved
 - b. bent down over Mrs C whilst she was sat at her desk and squeezed her arms;
Admitted and found proved
 - c. grabbed Mrs C’s shoulders and put your head against Mrs C’s head.
Found not proved
10. During week commencing 21 July 2014 you approached Mrs C in her office and stood behind her whilst you:
- a. placed your left arm on her upper left arm/ shoulder area;
Admitted and found proved

Record of Determinations – Medical Practitioners Tribunal

- b. leant down so that your chin was resting on her shoulder;
Found proved
 - c. touched her thigh with the palm of your right hand.
Found proved
11. On or around the 11 or 12 August 2014 you approached Mrs C in her office and stood behind her whilst you:
- a. bent over her;
Found proved
 - b. placed your left hand on her upper left arm;
Found proved
 - c. placed your right hand on her right thigh.
Found proved
12. Your actions as described at paragraphs 9a-c, 10a-c and 11a-c were sexually motivated.
Found proved in relation to Paragraph 9a
Found proved in relation to Paragraph 9b
Found proved in relation to Paragraph 10a
Found proved in relation to Paragraph 10b
Found proved in relation to Paragraph 10c
Found proved in relation to Paragraph 11a
Found proved in relation to Paragraph 11b
Found proved in relation to Paragraph 11c

Record of Determinations – Medical Practitioners Tribunal

Attendance of Press / Public

The hearing was all heard in public.

Determination on Facts - 28/09/2016

Application to amend the allegation under Rule 17(6)

1. At the start of the hearing, Mr Williams, on behalf of the GMC made an application under Rule 17(6) of the General Medical Council Fitness to Practise Rules 2004 (the Rules) to amend paragraph one of the allegation as follows:

Paragraph 1

Between 26 June 2013 and 13 August 2014 you were employed as a locum specialist speciality doctor for the Manchester Mental Health Team and Social Care NHS Trust at the Rawnsley Building at Manchester Royal Infirmary.

2. Ms Watson did not oppose the application and the Tribunal allowed the amendment.

Admissions

3. Ms Watson, Counsel, made a number of admissions on your behalf and the Tribunal announced the following paragraphs as having been admitted and found proved: paragraphs 1, 3a, 5ai, 6a, 9a in its entirety, 9b and 10a.

Application under Rule 36

4. Mr Williams made an application under Rule 36 for Mrs B to give evidence with the use of a witness screen as she is making allegations of a sexual nature against you. Ms Watson did not oppose the application.

5. The Tribunal granted the application, as that measure was desirable to enable it to receive evidence from a vulnerable witness.

Application for admission of evidence (excerpts of transcripts from earlier hearing)

6. In the course of her cross-examination of Mrs B, Ms Watson referred to her oral evidence in a previous hearing, and asserted that her evidence to this Tribunal was, in some respects, inconsistent. Mr Williams then made an application to admit relevant extracts from the transcript of that earlier hearing, so that both the context and the full answers Mrs B had given would be clear to the Tribunal.

Record of Determinations – Medical Practitioners Tribunal

7. Ms Watson opposed the application, and submitted to the Tribunal that the admission of parts of the transcript would cause more confusion than clarification, and that there was a risk of unfairness should the application succeed.

8. The Tribunal considered that not only would the witness be assisted by seeing the transcript of the relevant parts of her earlier evidence, but also that it would, itself, be assisted in determining whether or not there had been any inconsistency. It concluded that admission of relevant transcript material would be fair to all parties, and that it represented the best available evidence on the particular point in question. The Tribunal therefore allowed the GMC application.

9. At that point Mr Williams, Ms Watson and the Legal Assessor withdrew to agree which parts of the transcript should be admitted for this limited purpose.

Application under Rule 34(13)

10. Ms Watson made an application, under Rule 34(13), for Dr D to give oral evidence to the Tribunal by telephone link. She did so on the basis that Dr D is a GP working in West Kent and would struggle to attend a hearing in Manchester due to work and family commitments. Mr Williams did not oppose the application.

11. The Tribunal bore in mind the practical issues raised and considered that there would be no unfairness in allowing the witness to be heard by telephone. It therefore allowed the application.

Witness evidence

12. In reaching its determination on the facts, the Tribunal has taken into account signed witness statements from the following individuals:

- Mrs A
- Mrs B
- Mrs C
- Dr E, Consultant Psychiatrist, MRI;
- Ms F, Domestic, MRI;
- Ms G, Administrative Coordinator, Manchester Healthcare and Social Care Trust;
- Dr D, General Practitioner;
- You

13. The above individuals, with the exception of Dr E, also gave oral evidence to the Tribunal either in person or, in the case of Dr D, by telephone.

Credibility and reliability of the witnesses

Record of Determinations – Medical Practitioners Tribunal

GMC Witnesses (Mrs A, Mrs B, Mrs C, & Ms F)

14. The Tribunal considered that all of the GMC witnesses were credible and generally reliable. It noted that, where relevant, the witnesses made concessions or accepted where they were unable to remember a course of events. It considered that this went towards their credibility. It noted that there were minor variations in the recollections of the three main GMC witnesses, but it considered that there was no intention of being evasive, malicious or deceptive on the part of these witnesses.

15. Ms Watson later submitted that Mrs C was “hostile and rigid” towards you in oral evidence, that she had “demonised” you, and that this affected her credibility as a witness. The Tribunal, however, considered that she was, simply, a confident witness, who was uncompromising in her robust rejections of assertions made to her during cross examination.

Ms G

16. The Tribunal considered that Ms G was a credible and reliable witness.

Dr D

17. Whilst the Tribunal accepted that Dr D was an honest witness who attempted to assist the Tribunal with reference to cultural issues, it noted that, as a witness of fact, he gave, essentially, evidence of opinion. He accepted that he was not an expert on Nigerian culture and spoke only from his personal experience. For that reason the Tribunal was unable to place great weight on his testimony.

You

18. The Tribunal considered that you were a fluent and articulate witness and were straightforward in answering some of the questions put to you. However, when challenged over accounts which were asserted to have been inherently unlikely or unhelpful to your case the Tribunal found you to be evasive and inconsistent. The Tribunal considered that this affected your credibility as a witness.

Background to the case

19. The alleged incidents occurred in 2014 whilst you were working as a Locum Speciality Doctor in General Adult Community Psychiatry at Manchester Royal Infirmary (MRI), Manchester Mental Health and Social Care Trust (the Trust). It is alleged that you made a series of inappropriate physical contacts with three different female colleagues, and that your actions were sexually motivated.

Record of Determinations – Medical Practitioners Tribunal

20. After reports of your alleged behaviour were made to the Trust, a local disciplinary investigation followed, witnesses were interviewed and statements were taken. The matter was also referred to the GMC.

The Tribunal's approach

21. Before determining the particulars of the disputed facts set out in the allegation, the Tribunal first considered a number of matters raised during submissions made by both Counsel.

The Trust Investigation

22. Ms Watson submitted to the Tribunal that the evidence provided by the relevant witnesses to the local disciplinary investigation, which had been forwarded to them to check, amend, or to supplement, was more limited in its content than the evidence subsequently provided to the GMC. She asserted that the earlier evidence was most proximate to the alleged incidents, and that the witnesses memories might be expected to have faded since that time. Nonetheless, she said that the earlier evidence had been "supplemented" and "over-stated". The Tribunal considered that the Trust investigation was not as forensic or rigorous as the GMC investigation, and that there would be a qualitative difference between the two. However, the Tribunal was mindful of the need to test all the evidence with great care to identify any inconsistencies which might not be explained by that qualitative difference.

Contamination

23. Ms Watson also submitted that there had been "collaboration" between the witnesses, which had "plainly contaminated their evidence". The Tribunal noted that the witnesses themselves accepted that they had, variously, spoken to each other, and also considered the possibility of further conversations within the workplace. The Tribunal did not find there to be any indication of deliberate collusion on the part of the witnesses, but, again, was mindful of the need to consider any unconscious contamination of their evidence.

Culture

24. The Tribunal heard evidence from you and from Dr D to the effect that Nigerians, typically, were outgoing, friendly and tactile, to the extent that the giving of hugs might be expected amongst family and friends. That evidence was supported by an extract from a book entitled "Culture and Customs of Nigeria".

25. Mr Williams submitted that this evidence was a gross generalisation which amounted to stereotype, and was of limited value.

Record of Determinations – Medical Practitioners Tribunal

26. The Tribunal concluded that whilst there was some relevance to cultural issues, the essential question was to what extent, if at all, your alleged touching of the females in question could be explained by the uncontested evidence that you yourself were seen as warm, friendly and tactile in your interactions, without reference to any behaviour which might be expected of a “typical” Nigerian.

Paragraph 3A

27. Mr Williams submitted that your oral evidence in respect of Paragraph 3a of the allegation, which had earlier been admitted and found proved, demonstrated a “striking inconsistency”, and that you had shown yourself to have “deviated from the script”. The Tribunal noted that there was an element of inconsistency, but did not draw any adverse inference as a consequence.

Good character

28. The Tribunal noted and accepted the advice of the Legal Assessor that you are a man of good character. This means that your good character supports your credibility as a witness and also makes it less likely than might otherwise be the case that you have done what is alleged against you.

The Tribunal’s findings

29. The Tribunal has considered the paragraphs of the allegation separately and made the following findings of fact:

Paragraph 1

Between 26 June 2013 and 13 August 2014 you were employed as a locum specialist speciality doctor for the Manchester Mental Health Team and Social Care NHS Trust at the Rawnsley Building at Manchester Royal Infirmary.

Admitted and found proved

Mrs A

Paragraph 2

In or around July 2014 you approached Mrs A in the Medical Records Room and you:

a. put your arms over her shoulders across her body;

Found proved

30. The Tribunal took into account the witness statement of Mrs A:

“He was behind me, presumably facing me head on from behind because his arms came across from behind, over my shoulders and crossed in front of me.”

Record of Determinations – Medical Practitioners Tribunal

31. The Tribunal found that, in this respect, Mrs A made no concessions in her oral evidence. It noted that she used varying language on a number of occasions in her oral evidence (“around my shoulders” “across my shoulders, over me”) but it determined that this did not amount to any inconsistency as the meaning did not change.

32. The Tribunal also bore in mind Mrs A’s earlier statement to the Trust: “he draped both his arms around my shoulders”.

33. The Tribunal took into account that at the outset of the proceedings Ms Watson accepted on your behalf that you put your arms over Mrs A’s shoulders. In your oral evidence you said that putting your arms across her body did not happen and added that “it goes beyond a hug, is more intrusive and that is not in keeping with my interaction with her”.

34. The Tribunal found that all of the evidence provided by Mrs A has been consistent and on this point it preferred her evidence to yours. The Tribunal therefore found Paragraph 2a to be proved.

b. rested your head on her shoulder.

Found not proved

35. The Tribunal took into account the witness statement of Mrs A:

“I remember Dr Anosike coming behind me and putting his arms around my shoulders and resting his head on my shoulder”.

36. The Tribunal considered, however, that during her oral evidence Mrs A could not be clear about what you did with your head and especially noted her comment during re-examination that: “I don’t remember his head laying on my shoulders. I remember it moving towards my shoulder”.

37. The Tribunal therefore found Paragraph 2b not to be proved.

Paragraph 3

On 11 August 2014 you approached Mrs A in the Medical Records Room and you:

a. put your arms around her;

Admitted and found proved

b. tried to put your head on her shoulder;

Found not proved

38. The Tribunal took into account the witness statement of Mrs A:

Record of Determinations – Medical Practitioners Tribunal

“His body was on my right and his arms went round me with his right arm in front of me and his left arm behind me. He tried to put his head on my shoulder and I immediately pulled away moving my body to the left”.

39. The Tribunal noted that when Mrs A was asked in cross examination if it was deliberate that you tried to place your head on her shoulder, Mrs A stated “no, it was a hug”. It was then put to Mrs A that you were not putting your head on her shoulder intentionally but that it was “part and parcel” of the hug, and she accepted that suggestion.

40. The Tribunal therefore found Paragraph 2b not to be proved.

c. moved your right hand from her left shoulder and touched her left breast.
Found proved

41. The Tribunal took into account the witness statement of Mrs A:

“I do not know if Dr Anosike realised that I was uncomfortable as I moved away, but he then took his arms away. As he did so his right hand moved from my left shoulder and it seemed as though he was going to take it away, but then it moved down and underneath my left breast, moving from the left to the right across/underneath my breast before he moved it away completely. His hand did not graze or touch my stomach or my right breast, it was immediately lifted from left breast It was fumbled. I did not think that it was an accident because his hand did not go naturally across the top of my breast, it seemed deliberate... I have been asked by the Legal Adviser at the GMC what I would say if Dr Anosike were to say that he had not touched my breast. I would say that he is lying because I know that it was deliberate. Part of me would love to say that it was an accident, but it was deliberate. If I had thought for one minute that it had been an accident I would not have felt the way that I did about it.”

42. When cross-examined, Mrs A remained consistent in her account of the incident. Ms Watson put it to Mrs A that she had later told Ms F that you had “brushed” her breast, but she stated “no, I said you’ll never guess what’s happened to me – he’s just touched me”.

43. The Tribunal noted Mrs A’s statement to the Trust dated 12 August 2014 in which she said “he put his arms around my shoulders and as he pulled away his right hand came under my arm and underneath my left breast touching it as he pulled away”. It also had regard to Mrs A’s amendments to the notes of her meeting with the Trust on 27 August 2014, and noted that she changed the note taker’s wording from “brushed against” to “cupped under”.

Record of Determinations – Medical Practitioners Tribunal

44. In your oral evidence you denied the allegation that you had touched Mrs A's breast, stating "that didn't happen".

45. The Tribunal considered that Mrs A provided a consistent account in oral evidence, her GMC statement and her statement to the Trust. The Tribunal preferred Mrs A's evidence to yours. The Tribunal therefore concluded that Paragraph 3c is found proved.

Paragraph 4

Your actions as described at paragraph 2a-b and 3a-c were sexually motivated.

Found proved in relation to Paragraph 2a

Found proved in relation to Paragraph 3a

Found proved in relation to Paragraph 3c

46. Having reached its decision on the contested primary facts in relation to Mrs A, the Tribunal then went on to consider the contested primary facts in relation to Mrs B and Mrs C, before considering the allegation of sexual motivation in respect of any of these witnesses. The Tribunal's reasoning will therefore be set out at a later stage of this determination.

Mrs B

Paragraph 5

Between March 2014 and 13 August 2014 you approached Mrs B in her office from behind and you:

a. On more than one occasion:

(i) squeezed her shoulders; and

Admitted and found proved

(ii) put your face by Mrs B's face, almost cheek to cheek;

Found proved

47. The Tribunal took into account the witness statement of Mrs B:

"Dr Anosike would come into my office and he would come and stand behind me whilst I was sat at my desk and would touch both of my shoulders at the same time. He would squeeze them and then he would put his face by my head, almost cheek to cheek."

48. In your oral evidence, when cross examined by Mr Williams, you said that this was not something you paid attention to, but, on reflection, you accepted that your cheek would necessarily have been close to Mrs B's cheek.

Record of Determinations – Medical Practitioners Tribunal

49. The Tribunal did not identify any material difference between Mrs B's account and your account. It therefore found Paragraph 5a(ii) proved.

(iii) put your arms across Mrs B, leaving your hands in her chest area;
Found not proved

50. The Tribunal took into account the witness statement of Mrs B:

"On other occasions he would stand behind me and put his arms across me, so that they crossed in front of my chest and he would leave his hands in my chest area, higher up around the collarbone/shoulder area. I would describe this as almost a hug and I would estimate that this happened perhaps five or six times".

51. During cross-examination, Mrs B was asked if your arms were "left hanging". She said that your hands were on her shoulders and that you kept them on her shoulders during conversation for longer than comfortable. Mrs B conceded that your hands were probably not in her chest area but more likely in the shoulder or collar bone area.

52. The Tribunal has therefore found Paragraph 5a(iii) not proved.

b. put your arms across the front of Mrs B's body, so that:
(i) your arms crossed and your hands rested underneath her breasts at the sides;

Found proved

53. In her statement, Mrs B said that "Dr Anosike came into the office and came around the back of my chair and put his arms across the front of my body, so that they crossed and he rested his hands underneath my breasts on my sides".

54. In cross examination, Ms Watson reminded Mrs B that she had not referred to you touching her breast in her first account to the Trust, and suggested that such a significant incident would be expected to form part of that first report. Mrs B conceded that "maybe it should have been". When Ms Watson suggested that it did not happen, however, Mrs B was firm that "it did happen".

55. The Tribunal noted the Trust interview with Mrs B on 17 September 2014 in which Mrs B was asked about any other "offensive" actions on your part. She replied "He would hug me from behind and touch breast [sic] in a hug as he put his arm around me. I found that offensive".

56. In your oral evidence you denied having touched Mrs B's breast, and said "there was absolutely no time when there would be contact with her breast ever".

Record of Determinations – Medical Practitioners Tribunal

57. The Tribunal concluded that Mrs B's evidence, taken as a whole, was consistent and persuasive, and preferred her evidence to yours.

58. The Tribunal also rejected the submission made by Ms Watson that not only was the alleged action inherently unlikely but also that it would have required you to have been "exceptionally supple" and to have had "exceptionally long arms". On the contrary, the Tribunal found the mechanics of the interaction, as described by Mrs B, to have been entirely possible and physically undemanding.

59. The Tribunal therefore found paragraph 5b(i) proved.

(ii) your fingers touched Mrs B's left breast.

Found proved

60. In her statement, Mrs B said that she noticed your hand "at the side of my left breast touching it slightly. I recall feeling his fingers on the edge of my breast, almost where the wire of a bra would be".

61. For the reasons set out above the Tribunal also found this part of the allegation, closely related to that contained within Paragraph 5b(i), to be proved.

Paragraph 6

Between November 2013 and 13 August 2014 you approached Mrs B in the Post Room and you:

a. put your hand around her back;

Admitted and found proved

b. rubbed her lower back.

Found not proved

62. In her statement Mrs B said that:

"Dr Anosike came in and put his hand on around my back and rubbed my back and said hello. It was my lower back, underneath my bra strap".

63. The Tribunal noted however that in her oral evidence, Mrs B conceded that she could not remember "if it was a rub".

64. The Tribunal therefore found Paragraph 6b not proved.

Paragraph 7

Your actions as described at paragraphs 5a(i)-(iii), 5b(i)-(ii) and 6a-b were sexually motivated.

Found proved in relation to Paragraph 5ai

Found proved in relation to Paragraph 5aii

Record of Determinations – Medical Practitioners Tribunal

Found proved in relation to Paragraph 5bi
Found proved in relation to Paragraph 5bii
Found proved in relation to Paragraph 6a

65. The Tribunal will, again, set out its reasoning for these findings at a later stage of the determination.

Paragraph 8

On 13 August 2014 you approached Mrs B and said that complaints about your conduct had been received and you said to Mrs B 'the thought had crossed my mind that it might be you'.

Found proved

66. The Tribunal took into account the witness statement of Mrs B:

"He asked me if I had a minute and I said 'yes' and I went into my office and sat down at my desk... He said that he had had some complaints made against him... he said 'the thought had crossed my mind that it might be you'".

67. The Tribunal also noted Mrs B's earlier evidence to the Trust on 17 September 2014 in which she said, "he questioned had it been me and I said no". In cross examination before this Tribunal Mrs B again insisted "he did say something like that".

68. The Tribunal noted that you denied making this comment, stating that you were merely looking for a friend and seeking some degree of reassurance. However, it considered that Mrs B had given consistent accounts and that she did not resile from those accounts in cross examination. Therefore the Tribunal preferred her evidence to yours.

69. The Tribunal therefore found Paragraph 8 to be proved.

Mrs C

Paragraph 9

Between 26 June 2013 and 13 August 2014 you approached Mrs C and, on more than one occasion, you:

a. using both hands touched and squeezed Mrs C's:

(i) shoulders;

Admitted and found proved

(ii) arms;

Admitted and found proved

Record of Determinations – Medical Practitioners Tribunal

b. bent down over Mrs C whilst she was sat at her desk and squeezed her arms;

Admitted and found proved

c. grabbed Mrs C's shoulders and put your head against Mrs C's head.

Found not proved

70. In her statement Mrs C said "he would come into my office and stand behind me at my desk and he would grab and squeeze my shoulders". However, in cross examination, whilst Mrs C was adamant that there had been contact between your head and hers, she did not maintain that you had "grabbed her" in order to do so.

71. The Tribunal therefore finds Paragraph 9c not proved.

Paragraph 10

During week commencing 21 July 2014 you approached Mrs C in her office and stood behind her whilst you:

a. placed your left arm on her upper left arm/ shoulder area;

Admitted and found proved

b. leant down so that your chin was resting on her shoulder;

Found proved

72. The Tribunal has borne in mind the witness statement of Mrs C:

"I have no idea why, but Dr Anosike came over to me and stood behind me with his left arm on my left upper arm/shoulder area. He leant down into me so that his chin was resting on my shoulder".

73. The Tribunal noted that Mrs C did not resile from this account under cross examination and described the whole of this interaction as "a very controlled movement on his behalf, slow, uncomfortable for me".

74. The Tribunal also noted the meeting between the Trust and Mrs C on 29 August 2014 in which she is recorded as having said "he came and put his hands on shoulders, with his head on shoulder...".

75. In cross examination you told Mr Williams that in respect of leaning down "this could have happened, because she is sitting", but in respect of your chin resting on her shoulder, "that didn't happen".

76. The Tribunal determined that Mrs C was a reliable witness who gave a consistent account, and it preferred her evidence to yours.

Record of Determinations – Medical Practitioners Tribunal

77. The Tribunal therefore found paragraph 10b to be proved.

c. touched her thigh with the palm of your right hand.

Found proved

78. The Tribunal has borne in mind the witness statement of Mrs C:

“Dr Anosike's right hand then touched the top of my leg/ thigh area. His palm and his fingers connected with my thigh. In order to touch my thigh his hand must have gone underneath the arm of my chair, or just at the front of the arm”.

79. Under rigorous cross examination, Mrs C did not resile from her account. When asked if it was only her perception that you touched her thigh she replied “I know he touched my thigh”. When asked if it could have been an accident she said “absolutely not. It was a deliberate act”.

80. In your oral evidence you said “that didn’t happen. It didn’t happen that I made contact with her thigh”.

81. The Tribunal preferred the evidence of Mrs C to your evidence and therefore found paragraph 10c proved.

Paragraph 11

On or around the 11 or 12 August 2014 you approached Mrs C in her office and stood behind her whilst you:

a. bent over her;

Found proved

82. The Tribunal has borne in mind the witness statement on Mrs C:

“On the second occasion Dr Anosike was stood behind me and then approached me and bent over me...”.

83. The Tribunal took into account your concession in relation to Paragraph 10b in which, when asked about leaning down, you stated that “it could have happened as she was sitting”. In so far as it was the same movement in Paragraph 10b as in 11a, the Tribunal concluded that Paragraph 11a is proved.

b. placed your left hand on her upper left arm;

Found proved

84. The Tribunal has borne in mind the witness statement of Mrs C:

“...with his left hand on my left upper arm...”.

Record of Determinations – Medical Practitioners Tribunal

85. This aspect of Mrs C’s evidence did not appear to have been seriously contested and therefore the Tribunal found that Paragraph 11b was proved.

c. placed your right hand on her right thigh.

Found proved

86. The Tribunal has borne in mind the witness statement of Mrs C:

“...and then slowly placed his right hand on my right thigh, to which I moved my body to the left to shrug him off, but not aggressively just enough so that he would know that I didn't like it”.

87. Mrs C was repeatedly questioned about whether this happened and she strenuously maintained that it did.

88. On the balance of probabilities, the Tribunal found that Paragraph 11c could be found proved.

Paragraph 12

Your actions as described at paragraphs 9a-c, 10a-c and 11a-c were sexually motivated.

Found proved in relation to Paragraph 9a

Found proved in relation to Paragraph 9b

Found proved in relation to Paragraph 10a

Found proved in relation to Paragraph 10b

Found proved in relation to Paragraph 10c

Found proved in relation to Paragraph 11a

Found proved in relation to Paragraph 11b

Found proved in relation to Paragraph 11c

89. In relation to the allegation of sexual motivation in respect of all three of the witnesses, Mrs A, Mrs B and Mrs C, the Tribunal accepted the advice of the Legal Assessor that it could only rely on the cross admissibility of that evidence if it was satisfied that its probative value outweighed its prejudicial effect.

90. One relevant factor would be if the facts found proved, together with the surrounding circumstances, were strikingly similar in relation to each of the different witnesses.

91. In this case, the Tribunal is satisfied that the pre-conditions for cross admissibility of similar fact evidence are satisfied.

92. Notable features of the facts found proved against you are that all the complainants were female, they were, or might be perceived to have been, in a

Record of Determinations – Medical Practitioners Tribunal

subordinate position, that they were alone at the time of the incidents, and that each of the physical contacts were in the guise of a friendly greeting.

93. Albeit that Ms G gave evidence that you had used “hugs” in greeting towards her, and that she thought this to be entirely innocent on your part, the Tribunal concluded that this evidence merely establishes that your behaviour towards Mrs A, Mrs B and Mrs C went beyond what would be considered acceptable in the workplace.

94. The Tribunal is satisfied, on all the evidence, that your touching of Mrs A’s breast, Mrs B’s breast and your touching of Mrs C’s thigh on two occasions was deliberate and not accidental. It follows, there being no other credible explanation, that these actions were sexually motivated.

95. The Tribunal then went on to consider the submissions made by Mr Williams on behalf of the GMC that these physical contacts were the culmination of an escalating course of conduct, all of which were sexually motivated. On the balance of probabilities, the Tribunal considered that the earlier interactions, which might otherwise have been considered to have been innocuous, were, in fact, part and parcel of that escalating course of conduct. To that extent, the Tribunal was satisfied that all of the relevant incidents of touching were sexually motivated.

Determination on Impairment - 29/09/2016

1. Having announced its findings on the facts, the Tribunal has now considered whether, on the basis of the facts found proved, your fitness to practise is impaired by reason of misconduct. The Tribunal has taken into account all the evidence before it and the submissions made on your behalf and on behalf of the General Medical Council (GMC).

Further Documentary Evidence

2. For its consideration at this stage, Ms Watson provided the Tribunal with the following documents:

- your curriculum vitae;
- your reflections;
- your 2016 revalidation certificate and appraisal;
- certificates of continuing professional development (CPD);
- colleague feedback and patient feedback; and
- testimonial letters.

Submissions

Record of Determinations – Medical Practitioners Tribunal

3. Mr Williams, on behalf of the GMC, stated that the allegations in essence involved deliberate and improper touching of female colleagues with a sexual motivation. This was a repeated course of conduct which, on any view, was deplorable; and the facts found proved represent behaviour far below the standards of any self-respecting doctor. He said that the conduct was shocking and upsetting for the victims and would be considered shocking and upsetting by members of the profession and the public. He said that your behaviour undermines trust in the medical profession and damages the reputation of the profession. For all of these reasons, Mr Williams submitted that the facts found proved amount to misconduct.

4. Mr Williams then invited the Tribunal to consider insight, remediation and risk of repetition. He submitted that you, in essence, have given lip service to the question of insight; that you say you respect the determination but still maintain your case that there was a misunderstanding and that touching was not deliberate or sexually motivated. He stated that, until you accept this crucial part of the case against you, any amount of insight will be very limited; and any process of remediation or rehabilitation will be equally limited. That being the case, Mr Williams submitted that there must remain a risk of repetition. He invited the Tribunal to conclude that your answers were self-centred, and that your acknowledgement of the effects of your actions on your victims was very limited. For all of those reasons Mr Williams submitted that your fitness to practise is currently impaired.

5. Ms Watson, on your behalf, submitted that you do not resist a finding of misconduct in this case.

6. Ms Watson stated that, when considering impairment, it is well established that the Tribunal must consider current fitness to practise and must take into account the totality of the evidence provided. She referred the Tribunal to the “wealth of documents” provided at this stage which speak to your good character and show that you have an unblemished record, save for the incidents which led to this hearing. She submitted that you have offered a heartfelt, sincere and unreserved apology, and that these incidents should be viewed by the Tribunal as completely out of character.

7. In respect of remediation, Ms Watson submitted that whether or not you accepted that your actions had been sexually motivated you no longer touched or hugged anyone in the workplace, and that this change in your behaviour was the central feature of remediation. She added that you had not sought to deflect responsibility for your actions onto anybody else, nor have you sought to excuse your actions.

8. Ms Watson submitted that the Tribunal could be satisfied that you are a fundamentally good doctor, that your past misconduct has been remedied by your own inward reflection and with professional assistance, and that there would never be any repetition.

Record of Determinations – Medical Practitioners Tribunal

9. Accordingly, looking forward, Ms Watson invited the Tribunal to find that your fitness to practise is not impaired.

Tribunal's Decision

10. Whilst the Tribunal has borne in mind the submissions made, it has exercised its own judgement in determining whether your fitness to practise is impaired. Throughout its deliberations, the Tribunal has kept in mind its duty to act in the public interest. The public interest comprises:

- i. Protection, promotion and maintenance of the health, safety and wellbeing of the public;
- ii. The promotion and maintenance of public confidence in the medical profession; and
- iii. The promotion and maintenance of proper professional standards and conduct within that profession.

11. As advised by the Legal Assessor, the Tribunal approached the question of impairment in two stages.

Misconduct

12. The Tribunal accepted the definition of misconduct provided by the Legal Assessor which was given by Lord Clyde in the case of *Roylance v. GMC* [2000] 1 AC 311, where he stated:

'Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standard ordinarily required to be followed by a medical practitioner in the particular circumstances.'

13. The Tribunal also took into account the relevant principles set out by Elias LJ in *R (on the application of Remedy UK Limited) v. GMC* [2010] EWHC 1245 (Admin):

'(1) Misconduct is of two principal kinds. First, it may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur outwith the course of professional practice itself, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession.

(2) Misconduct falling within the first limb need not arise in the context of a doctor exercising his clinical practice, but it must be in the exercise of a doctor's

Record of Determinations – Medical Practitioners Tribunal

medical calling. There is no single or simple test for defining when that condition is satisfied.

(3) Conduct falls into the second limb if it is dishonourable or disgraceful or attracts some kind of opprobrium; that fact may be sufficient to bring the profession of medicine into disrepute. It matters not whether such conduct is directly related to the exercise of professional skills.

14. The Tribunal has borne in mind the guidance found in Good Medical Practice and in particular has noted the following paragraphs:

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

37. You must be aware of how your behaviour may influence others within and outside the team.”

15. Albeit that a finding of misconduct was not resisted by Ms Watson on your behalf, the Tribunal nonetheless exercised its own judgement in reaching its conclusion. Taking into account its findings on fact, it bore in mind that your acts were deliberate, sexually motivated and repeated with three different colleagues on different occasions in an escalating manner. The Tribunal considered that your actions amounted to conduct which would be regarded as deplorable, both by medical practitioners and by the public.

16. Accordingly, the Tribunal found that your actions did amount to serious misconduct

Impairment

17. Having concluded that the facts found proved amount to misconduct, the Tribunal considered whether your fitness to practise is currently impaired. In so doing, it considered whether or not you have demonstrated insight; whether or not the misconduct is capable of being remedied and, if so, whether there has been remediation and whether there is a likelihood of the misconduct being repeated.

18. The Tribunal concluded that the misconduct proved against you must be considered to be difficult to remediate, a conclusion that Ms Watson accepted on your behalf. It noted, however, not only your own evidence that you had changed your behaviour, but also the testimonial evidence from a number of people, both male and female, to the effect that, since the incidents which led to your appearance before this Tribunal, you have interacted appropriately with colleagues. The Tribunal noted, particularly, the testimonial provided by Dr H, Consultant Psychiatrist, who said “He is a very satisfactory medical colleague and in terms of his character, he appears to be a quiet and fairly reserved individual, there has certainly been no cause for concern either personally or professionally. Myself, administrative and

Record of Determinations – Medical Practitioners Tribunal

management colleagues here, and the entire MDT have had absolutely no concerns whatsoever about Dr Anosike". Dr H's description of you represents a significant change from the perception of the witnesses who have given evidence in this case.

19. The Tribunal accepted your evidence that you no longer touch or hug anyone in the work place, and also appreciated the steps you have taken by way of attendance on relevant courses to reflect on the reasons why you needed to modify your behaviour. To that extent, the Tribunal concluded that you have taken significant steps towards remediation, and that there is no significant risk of repetition.

20. In respect of any risk of repetition, the Tribunal also noted your acceptance that these events have been devastating, not only for you but also for your colleagues, your wife and your children. The Tribunal accepted the submission made on your behalf by Ms Watson that there has never been a time when you have not understood the greater difficulty caused to your former colleagues, Mrs A, Mrs B and Mrs C.

21. In your evidence at this stage of the hearing you said, "I am evolving all the time, I am reviewing all the time, I am committed to never doing this again, and that commitment will continue all my working life". The Tribunal accepted that you have begun to develop insight into your misconduct.

22. However, the Tribunal also noted that you continued to deny that any of your actions were sexually motivated. From that point of view your insight must be seen to be less than complete.

23. Notwithstanding the steps you have taken towards gaining insight and remediation, the Tribunal is mindful of its duty 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.

24. In this case, recognising the fact that the reputation of the medical profession is more important than the fortunes of any individual member of that profession, the Tribunal therefore concluded that the need to uphold public confidence in the medical profession would be undermined if a finding of impairment were not made in this case.

25. The Tribunal determined that your fitness to practise is currently impaired by reason of your misconduct.

Determination on Sanction - 30/09/2016

1. Having determined that your fitness to practise is impaired by reason of your misconduct, the Tribunal considered what action, if any, it should take with regard to

Record of Determinations – Medical Practitioners Tribunal

your registration. In so doing, the Tribunal has given careful consideration to all the evidence adduced, together with Ms Watson's submissions on your behalf and Mr Williams' submissions on behalf of the GMC.

Submissions

2. Mr Williams submitted on behalf of the GMC that the necessary, appropriate and proportionate sanction in this case is one of erasure. He stated that the facts found proved amounted to a very serious and fundamental departure from the standards expected of a doctor, as set out in GMP.
3. Mr Williams also submitted that whilst you may have begun to develop insight it was neither profound nor well demonstrated. He said that your continued denial of the sexual nature of your misconduct was the "block" which prevents your demonstration of the necessary insight.
4. Mr Williams drew the Tribunal's attention to relevant sections of the Sanctions Guidance 2016 (SG) in support of his submission that a sanction of erasure was the only means of upholding the public interest.
5. Ms Watson submitted that a sanction of suspension would be the proportionate outcome of your case. She referred to your good character prior to the incidents leading to this hearing, and said that these incidents stood alone in an 18 year medical career, and were out of character. She said that your misconduct could be viewed as an aberration, for which you have expressed shame and remorse.
6. Although you denied, and continue to deny sexual motivation, Ms Watson submitted that you had immediately accepted that your touching of your three female colleagues was inappropriate, and that you took immediate steps to address such inappropriate conduct. She said that there was objective evidence, over a period of more than two years, that you have not only changed, but that such change has become embedded.
7. Ms Watson submitted that you were demonstrably a caring and committed doctor, and that testimonials to that effect should carry "substantial weight". She also referred the Tribunal to relevant sections of the SG in support of her submission that suspension was the proportionate sanction, and that erasure was wholly disproportionate. Specifically, she submitted that a suspension of three months without review would be the appropriate sanction in this case.

The Tribunal's Approach

8. The decision as to the appropriate sanction, if any, is a matter for this Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken account of the SG and the statutory over-arching objective, which includes

Record of Determinations – Medical Practitioners Tribunal

protecting the health, safety and wellbeing of the public; maintaining public confidence in the profession; and promoting and maintaining proper professional standards and conduct for the members of the profession. The Tribunal recognised that the purpose of a sanction is not to be punitive, although it may have a punitive effect. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing your interests with the public interest. As advised by the Legal Assessor, it reminded itself that it should only impose the minimum sanction necessary to achieve the over-arching objective.

The Tribunal's Decision

9. In considering its decision as to the appropriate sanction, if any, in your case the Tribunal first had regard to the nature of your misconduct. The Tribunal has earlier noted your breach of paragraphs 36 and 37 of GMP:

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

37. You must be aware of how your behaviour may influence others within and outside the team.”

10. At Paragraph 5 of GMP it is set out that the use of the word “must” indicates an overriding duty or principle for any registered medical practitioner. The Tribunal has already concluded that the breach of these overriding principles would be regarded as deplorable both by medical practitioners and by the public.

11. The Tribunal went on to consider the mitigating features of your case which were as follows:

- Your fitness to practise has never previously been found to have been impaired;
- There has been no repetition of the misconduct;
- There is no significant risk of repetition;
- There has been some insight demonstrated by you since the incidents in question;
- You have apologised for your inappropriate touching and the distress caused thereby;
- You are seen by medical colleagues, other colleagues and patients as being a good doctor with good standing in your profession.

12. The Tribunal then went on to consider the aggravating features of your case which were as follows:

- The incidents involved sexual misconduct which was non-consensual;
- The sexual misconduct related to three different female colleagues all of whom were, or were perceived to have been, in a subordinate position;
- This was a course of conduct which escalated over a period of time;

Record of Determinations – Medical Practitioners Tribunal

- Your denial as to sexual motivation demonstrates an incomplete insight into your misconduct.

No action

13. The Tribunal first considered whether it would be appropriate to conclude your case by taking no action on your registration. A decision to take no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. The Tribunal determined that there were no exceptional circumstances in this case and that it would be neither sufficient, nor proportionate, nor in the public interest to conclude this case by taking no action.

Conditions

14. The Tribunal next considered whether it would be sufficient to impose conditions on your registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable. It took into account the circumstances and criteria for conditions outlined in the relevant paragraphs of the SG.

15. The Tribunal did not consider that conditions would be an appropriate, proportionate, workable or measurable sanction on the facts of this case. In any event, the Tribunal considered that conditions would not be sufficient to maintain the proper standards of the profession or public confidence in doctors.

Suspension

16. The Tribunal then went on to consider whether a period of suspension would be an appropriate and proportionate sanction to impose on your registration. In so doing, it noted paragraphs 85 and 86 of the SG:

“85 Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbecoming a registered doctor...

86 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession...”

17. The Tribunal also had regard to the factors identified at Paragraph 91 of the SG which may indicate that suspension is appropriate. It considered that the following factors were present in this case:

- a** A serious breach of *Good medical practice*, but where the doctor’s misconduct is not

Record of Determinations – Medical Practitioners Tribunal

fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.

...

...

...

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

f No evidence of repetition of similar behaviour since incident.

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

18. In all the circumstances, the Tribunal therefore determined that a period of suspension would be an appropriate and proportionate sanction in this case sending a clear message to you, the profession and the public that your misconduct constituted behaviour unbecoming of a registered doctor.

19. In reaching that determination the Tribunal particularly noted that a sanction of erasure was not the inevitable outcome of a case involving sexual misconduct.

20. In this context the Tribunal had regard to the case of *Giele v General Medical Council* [2005] EWHC 2143 (Admin) in which Collins J stated:

"I have said elsewhere that for a doctor to engage in an improper relationship is to court erasure. But I have also emphasised that erasure is not to be regarded as inevitable. Nor did I say that erasure would be the appropriate sanction in any but an exceptional case. The Panel would think in terms of erasure but would only erase if that was in the circumstances of the particular case 'the only means of protecting patients and/or maintaining public confidence in the medical profession'".

21. Whilst the Tribunal noted that each case must depend upon its own particular facts, it nonetheless considered the judgement of Collins J to provide helpful guidance in your case.

Record of Determinations – Medical Practitioners Tribunal

22. Furthermore the Tribunal had regard to Paragraph 101 of the SG which makes it clear that the sanction of erasure is one which is to be imposed where “this is the only means on protecting the public”. In your case, the Tribunal concluded that a sanction of erasure was not the only means of protecting the public.

23. In considering the appropriate period of suspension, the Tribunal determined that a period of 12 months was necessary to mark the seriousness of your actions and permit you sufficient time to reflect on the Tribunal’s findings.

24. Shortly before the end of the period of suspension, your case will be reviewed by another Medical Practitioners Tribunal. A letter will be sent to you about the arrangements for the review hearing. At the next hearing, the Tribunal reviewing your case will want to be assured that you have adequately reflected on and addressed your misconduct. It would likely be assisted by the following:

- A further piece of written reflection demonstrating your full appreciation of the circumstances and gravity of your misconduct
- evidence that you have maintained skills and knowledge
- up to date testimonials as to your character and conduct
- any other evidence you feel might assist the Tribunal.

25. The effect of the foregoing direction is that, unless you exercise your right of appeal, your registration will be suspended 28 days from the date on which written notice of this decision is deemed to have been served upon you. A note explaining your right of appeal will be provided.

Determination on Immediate Order - 30/09/2016

1. Having determined that your registration be suspended the Tribunal has now considered, in accordance with Section 38 of the Medical Act 1983 as amended, whether to impose an immediate order on your registration.

Submissions

2. Mr Williams referred the Tribunal to relevant paragraphs of the Sanctions Guidance 2016 (SG) and stated that the Tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for you to continue in unrestricted practice before the substantive order takes effect. He submitted that, given the nature of the determination on sanction, an immediate order is required in the public interest.

3. Ms Watson submitted that it is neither necessary for public protection nor otherwise in the public interest nor in your interests to impose an immediate order. She referred the Tribunal to the case of Davey v General Dental Council, Queen’s Bench Division [2015 WL 6757832] in which Deputy Master Bard pointed out that

Record of Determinations – Medical Practitioners Tribunal

the effect of an immediate order could be substantial in that as well as removing the 28 day period before which an order comes into effect, it also has the effect of meaning that, should an appeal be lodged, the time spent serving an immediate order does not count towards the relevant suspension. She quoted Deputy Master Bard's consideration that an order of this nature (whether immediate or interim) could have a "draconian effect potentially at the whim of the listing facilities of the court".

4. Ms Watson submitted that you have not been subject to an interim order and have practised safely for over two years since the incidents in question. She noted the Tribunal's findings that, since the incidents, you have acted appropriately amongst colleagues and have begun to develop insight into your misconduct; and that there is low risk of repetition.

5. Ms Watson submitted that the substantive order made by the Tribunal is sufficient to protect the public interest and any extension of this would be disproportionate and unfair.

The Tribunal's Decision

6. The Tribunal had regard to paragraph 166 of the SG which sets out the grounds on which an immediate order may be made. These are the necessity to protect members of the public, or where an immediate order is otherwise in the public interest, or where an immediate order is in the best interests of the doctor. In this case, the Tribunal is satisfied that the public interest is the only possible ground on which an immediate order might be made.

7. Your misconduct in this case was serious but the Tribunal is not persuaded that the public interest would be benefitted by the imposition of an immediate order.

8. Without attempting to resolve the uncertainty as to whether the appropriate test for making an immediate order on public interest grounds alone is one of necessity or desirability, the Tribunal is not satisfied that either test is met on the facts of this case.

9. That concludes this hearing.

**Record of Determinations –
Medical Practitioners Tribunal**

Confirmed

Date 30 September 2016

Mr Peter Scofield, Chair