

PUBLIC RECORD

Dates: 13/11/2023 - 23/11/2023

Medical Practitioner's name: Dr Adam SAWYER

GMC reference number: 4646381

Primary medical qualification: MB BS 1999 University of London

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 Claire Lindley
Lay Tribunal Member:	Mr Mark O'Brien
Medical Tribunal Member:	Dr Louise (Helen) Crabtree

Tribunal Clerk:	Miss Keely Crabtree
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Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Ms Fiona Horlick, KC, instructed by Mr James Rowley, Hempsons
GMC Representative:	Ms Chloe Hudson, 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 - 23/11/2023

Background

1. Dr Sawyer qualified in 1999 with a Bachelor of Medicine, and Bachelor of Surgery (MBBS) from Guys and St Thomas' Hospital, University of London. He became a Member of the Royal College of Surgeons (MRCS) in England and Edinburgh in 2004. Dr Sawyer then began to specialise in plastic and reconstructive surgery. Within his NHS practice, he developed an interest in cleft lip and palate surgery and obtained a substantive consultant post in 2017 at the Spires cleft lip and palate service based in Oxford and Salisbury. In addition to his NHS practice, Dr Sawyer also holds private practising privileges at a number of private hospitals, including from 2018 at The Harbour Hospital in Poole, Dorset ('the Hospital').
2. Dr Sawyer was reported to the General Medical Council (GMC) in December 2021, relating to his behaviour during a procedure that took place on 20 April 2021, whilst working at the Hospital. Dr Sawyer performed a bilateral implant removal, capsulectomy and mastopexy ('the procedure') on Patient A. It is alleged that, during this procedure, and while Patient A was under general anaesthetic, Dr Sawyer placed his hands on Patient A's breasts, and with his head close between her breasts, turned his head vigorously from side to side. It is also alleged that he made a number of inappropriate comments, and that his behaviour and comments were sexually motivated.

The Outcome of Applications made during the Facts Stage

3. The Tribunal noted that Patient A, Mr B, and Ms C had been anonymised on the Allegation. It was unclear whether their anonymity had been previously agreed by a case manager, so this was considered and granted. The Tribunal noted that Patient A was anaesthetised and undergoing surgery, and Mr B and Ms C were working at the Hospital and that it was alleged that comments of a sexually motivated nature were made toward them and in their presence. The Tribunal was made aware of the witness names and agreed that they could be referred to as Mr B and Ms C during the hearing and determination.

4. The Tribunal noted that the GMC had made an application before the hearing for Ms C to give her evidence remotely, which had been granted.

5. The Tribunal granted Dr Sawyer's application, made pursuant to Rule 34(13) and (14) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to hear witness evidence by video link. Ms Horlick, KC on behalf of Dr Sawyer, submitted that the witness, Ms G, was unable to attend the hearing in person as she was on holiday in XXX. Ms Hudson, Counsel for the GMC, did not object to the application. The Tribunal considered that it was in the interests of fairness and justice for Ms G to give her evidence via video link.

6. The Tribunal granted Dr Sawyer's application, made pursuant to Rule 34(13) and (14) of the Rules, to hear witness evidence by video link. Ms Horlick submitted that the witness, Dr E, was unable to attend the hearing in person due to personal and travel reasons. Ms Hudson did not object to the application. The Tribunal considered that it was in the interests of fairness and justice for Dr E to give his evidence via video link.

7. The Tribunal granted Dr Sawyer's application, made pursuant to Rule 34(13) and (14) of the Rules, to hear witness evidence by video link. Ms Horlick submitted that the witness, Dr H, was unable to attend the hearing in person due to work commitments and travel reasons. Ms Hudson did not object to the application. The Tribunal considered that it was in the interests of fairness and justice for Dr H to give his evidence via Video Link.

The Allegation and the Doctor's Response

8. The Allegation made against Dr Sawyer is as follows:

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

1. On 20 April 2021, whilst working at Harbour Hospital you performed the procedure as identified at Schedule 1 ('the Procedure') on Patient A. During the Procedure you:
 - a. placed your hands on Patient A's breasts and with your head positioned close between Patient A's breasts, turned your head vigorously from side to side; **To be determined**
 - b. described Patient A as 'pretty' or words to that effect; **To be determined**
 - c. suggested that Mr B visit Patient A in their room after the Procedure; **To be determined**
 - d. asked Ms C to assist you by holding and/or manipulating Patient A's breasts, at which time you said words to the effect of:
 - i. 'I bet you like doing that'; **To be determined**
 - ii. 'you're doing a great job, it's like you're doing this all the time'. **Admitted and found proved**
2. Your actions as set out at paragraph 1 were:
 - a. carried out whilst Patient A was anaesthetised; **Admitted and found proved**
 - b. sexually motivated. **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

9. At the outset of these proceedings, through Ms Horlick, Dr Sawyer made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e), the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved. It

noted however, that paragraph 1(d)(ii) was admitted on the basis that the words were used in an appropriate clinical context.

Witness Evidence

10. The Tribunal received oral evidence on behalf of the GMC from the following witnesses who were or had been based at the Hospital:

- Ms C, Theatre Practitioner and Surgical first assistant/scrub nurse;
- Mr B, Theatre practitioner;
- Miss D, Instrument Coordinator.

11. Dr Sawyer provided a witness statement dated 6 October 2023, and also gave oral evidence at the hearing.

12. The Tribunal received evidence from the following witnesses on Dr Sawyer's behalf who were or had been based at the Hospital:

- Dr E, Consultant Anaesthetist;
- Ms F, Clinical Services Manager (Theatre);
- Ms G, Director of Clinical Services.

13. In addition, the Tribunal heard from Dr H, Clinical Services Manager, BMI Healthcare, who was based at Winterbourne Hospital.

14. All the witnesses above had made witness statements that were considered by the Tribunal.

Expert Witness Evidence

15. The Tribunal received an expert report dated 25 November 2022 prepared by Mr I, Consultant Plastic Surgeon, expert witness for the GMC. The Tribunal also heard oral evidence from Mr I.

16. The Tribunal also received an expert report dated 19 September 2023 prepared by Mr J, Consultant Reconstructive & Aesthetic Plastic Surgeon, expert witness on behalf of Dr Sawyer. The Tribunal also heard oral evidence from Mr J.

Documentary Evidence

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

- Witness accounts given to the Hospital by Mr B, Ms C and Miss D on 21 April 2023, and 28 April 2023.
- Record of the incident at the Hospital on RiskMan system (dated 23 April 2021);
- Email from Dr E dated 26 April 2021;
- Minutes of a meeting between Dr Sawyer and managers at the Hospital dated 29 April 2021;
- Extracts of Patient A's medical records;
- Dr Sawyer's Rule 7 response dated 17 February 2023.

18. The Tribunal also received, in support of Dr Sawyer, a number of testimonials from colleagues.

Legally Qualified Chair (LQC) Advice and Tribunal Approach

19. The Tribunal analysed all the evidence and heard the submissions made by counsel for both the GMC and Dr Sawyer. It considered each paragraph of the Allegation separately and independently.

20. The Tribunal noted and took into account the fact that Mr Sawyer is of good character, and that there were many testimonials written on his behalf in relation to his abilities as a surgeon and the appropriateness of his manner with both patients and staff.

21. The LQC provided legal advice to the Tribunal as set out below:

- In reaching its decision on facts, the Tribunal must bear in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Sawyer does not need to prove anything.
- Allegations involving sexual motivation in the regulatory context are particularly serious. For that reason, any Tribunal will wish to seek cogent evidence before it concludes that a case involving incidents of sexual motivation is made out.

- The case of *Byrne v GMC [2021] EWHC 2237 (Admin)* confirms however, that there is only one standard of proof in civil and regulatory cases and that remains that of the balance of probabilities, i.e., whether it is more likely than not that the events occurred as alleged.
- The probability of the relevant conduct is a matter which can be taken into account when weighing up and deciding whether the event or conduct occurred; this goes to the quality of evidence.
- The Tribunal has heard from a number of live witnesses in this case. The credibility and reliability of any witness is a matter to be considered. It is possible to have an honest witness who is not reliable, by reason of for example, honest mistake, or the fading and fluidity of memory. Credibility and reliability must both be considered taking all the evidence into account, including the Doctor's account and the evidence he has given in this matter.
- The Tribunal should not assess a witness's credibility exclusively on his or her demeanour when giving evidence (*Dutta v GMC [2020] EWHC 1974 (Admin)*). A confident witness may give unreliable evidence. A nervous and hesitant witness may give reliable evidence.
- The Tribunal should therefore navigate the oral evidence by looking at any other material or evidence that there might be for example contemporaneous documentary material such as medical records, or other witnesses. A tribunal should consider the witnesses' whole evidence, which includes earlier accounts, their consistency over time, and under cross-examination. Tribunals should note any gaps and discrepancies and give reasons for their evaluation and conclusions in relation to them. Actual corroboration of a witness account is not legally necessary.
- The Tribunal should note that a witness statement with a signed statement of truth is also to be treated as if it were given as oral evidence.
- The Tribunal must judge Dr Sawyer's evidence by precisely the same fair standards as applied to any other evidence in the case. If the Tribunal prefers the witness's version of events over that of Dr Sawyer, then it should make clear in its determination why Dr Sawyer's evidence has been rejected.

- The Tribunal has heard from two experts - Mr I and Mr J. Most of this case is based on what factual witnesses have said, but the experts have given some evidence that is outside the Tribunal's general knowledge. The Tribunal should consider whether the experts have sufficient expertise to express the opinions that they have. This is a matter of weight for the Tribunal to assess. Generally, a Tribunal does not have to accept expert opinion, but if it decides not to accept it, then it must set out our reasons why that is the case. This is established in the case of *Cohen v GMC (2008) EWHC 581 (admin)*.
- The Tribunal will have in mind that Dr Sawyer is a man of good character. This means that he has no criminal convictions or cautions, or adverse misconduct related regulatory findings. The Tribunal is reminded that this could mean that the doctor is:
 - (a) more likely to be telling the truth in his evidence, and
 - (b) less likely to have behaved in a way as set out in the Allegation.
- The Tribunal has also received testimonial evidence sent on behalf of Dr Sawyer. These can all be taken into account at this stage.
- However, good character of itself does not amount to a defence and its significance should not be over inflated. The primary focus should be on the evidence related to the wrongdoing.
- Unless otherwise directed in this advice, the Tribunal should give the words in the paragraphs their ordinary meaning.
- The term '*sexually motivated*' is defined in the case of *Basson v GMC [2018] EWHC 505* as:

'A sexual motive means that the conduct was done either in pursuit of sexual gratification, or in pursuit of a future sexual relationship'.

This means that the Tribunal must be satisfied, on the balance of probabilities, that Dr Sawyer intended his conduct as sexually motivated as per that definition. The circumstances of the acts and comments alleged, and Dr Sawyer's account should all be considered. The Tribunal must consider if there is a plausible alternative explanation for the conduct and comments, looking at the context in which they were

done or said. If a Tribunal were to find that any acts or comments made were inappropriate or ill-judged, it would not necessarily mean that they were sexually motivated. The definition described above must still be considered.

- When deciding on motivation, a key ingredient is Dr Sawyer's state of mind. The state of his mind is not something that can be proved by direct observation. It can be proved only by inference or deduction from the surrounding evidence. The Tribunal must be satisfied, on the balance of probabilities, that sexual motivation can be inferred from all the circumstances. The circumstances of the acts alleged, the witness perceptions, and Dr Sawyer's explanation should all be considered.

The Tribunal's Analysis of the Evidence and Findings

Paragraph 1(a)

22. The Tribunal considered whether, during the procedure, Dr Sawyer placed his hands on Patient A's breasts, and with his head positioned close between Patient A's breasts, turned his head vigorously from side to side.

23. By way of background, the Tribunal heard that all cosmetic surgery had stopped from March 2020 until April 2021 because of the COVID-19 pandemic. Two procedures were on Dr Sawyer's list at the hospital on 20 April 2021. The behaviour alleged took place during the second operation in the afternoon. In December 2021, Mr B's statement to the Hospital was sent anonymously to the GMC, which eventually resulted in the Allegation and subsequent Tribunal hearing.

24. According to the hospital notes, the procedure conducted on Patient A by Dr Sawyer was a bilateral implant removal, capsulectomy and mastopexy, which lasted approximately three hours. It was not disputed that this was a challenging operation and that it involved manipulation of the breasts. Because of previous implants, Patient A's breasts were asymmetrical and one of the purposes of the procedure was to rectify this.

25. During the procedure, a number of other persons were present; Ms C, Mr B, and Dr E. Miss D was also present toward the end of the procedure.

26. The Tribunal carefully analysed the evidence that each witness gave. It was aware for example, that Miss D had no clinical role in the theatre room during the procedure, and that she had no clinical expertise. She entered the theatre towards the end of the operation. In

her oral evidence, it was clear that she thought that the procedure was a breast augmentation.

27. The Tribunal heard a number of matters that related to Mr B's credibility and reliability as a witness:

- Ms G told the Tribunal that there were two instances where Mr B's version of events was very different to other staff. For example, there had been a previous investigation where it had been alleged that Mr B had visited a patient to ascertain where a missing theatre instrument might be. He had claimed that he had been told to do that when it had not been the case. She had been worried that he was not honest, and that he did not therefore put patients first. As a consequence of this, she had contacted the Chief Nursing Officer at the hospital to report her concerns.
- Mr B's line manager, Ms F, also recounted the issue about the missing instrument, and said in oral evidence that he was not trustworthy. Mr H, who had previously supervised Mr B at a different hospital had a similar view.
- Mr B in his oral evidence, when cross examined, said that he had sent the statement that he made to the Hospital to 'Person X', who then sent it to the GMC. This was in contrast to what he had previously informed Ms G. In her statement, she set out that during a number of meetings he had said that he had not disclosed his statement to anyone, and that he was anxious and concerned because of the gossip around the Hospital. This had resulted in a data breach investigation taking place, which was put on hold pending the outcome of the GMC investigation.
- Mr B accepted that he had a reputation for dishonesty.
- The Tribunal noted that Mr B thought that the procedure was a breast augmentation, and that during his evidence when asked detailed questions he had kept repeating that he could not recall that detail due to the event having taken place 3 years ago.
- It is likely that Mr B was also mistaken about how often he had been in theatre with Dr Sawyer.

28. The Tribunal therefore treated Mr B's account with caution but did not dismiss his evidence in its entirety. It considered all the other evidence relating to the paragraph (and

throughout the case) and considered the consistencies and inconsistencies between the witnesses.

29. The Tribunal considered the dynamics within theatre on the 20 April 2021. Mr B stated that on the occasions that he had worked with Dr Sawyer before, his demeanour had been “*very quiet*”. In similar vein, Miss D said that he was previously “*quite shy*”. In contrast, on this occasion, Miss D described Dr Sawyer as “*loud and boisterous*” when she went into theatre, and she said that he was “*jolly and smiling*” Ms C said that Dr Sawyer was “*smiling*”, “*jokey*”, and that there was a “*jokey atmosphere*”.

30. Dr Sawyer explained that between October 2016 to early 2017, he had previously shadowed a cosmetic surgeon at the Hospital, in order to learn cosmetic surgical techniques. He said that on 20 April 2021 he was anxious. He said he was still fairly new, had operated infrequently and not recently, didn’t know the hospital staff well, and wanted a good outcome for the patient. He explained that he is ordinarily shy, and socially awkward sometimes. He said he “*puts on an act*” to disguise shyness, tries to make people laugh and create a jovial atmosphere. He agreed that he might overcompensate and there is therefore room for misunderstanding.

31. The Tribunal then went on to consider the allegations as set out in paragraph 1(a) specifically. It firstly considered the evidence of the scrub nurse, Ms C. She was situated directly opposite Dr Sawyer, at the other side of the patient. She had recently returned from maternity leave, and had previously worked with Dr Sawyer, but not for some period of time. In her statement to the Hospital on 21 April 2021, she stated:

“He was making inappropriate comments about the patient's breast like: "what a nice pair they are now", making the gesture of rubbing his face between the patient's breasts.”

32. On 28 April 2021, Ms C provided further detail when asked to answer some set questions on a template provided by the Hospital. She described on the template that Dr Sawyer “*acted out motorboating ½ foot face away from pt whilst hands on breast...*” and that she asked him to “*stop it*” and “*behave*” when he was doing this.

33. In her witness statement to the GMC dated 25 March 2022, Ms C stated:

“I remember seeing him make the "motorboating" movement whilst holding the patient's breasts. I was on the left of the patient and he was on the right. I was the same distance from the patient as he was, as close as he was. I had an unobstructed view, I was very close to the patient. There wasn't any physical contact made between Dr Sawyer and the patient, this wouldn't have been possible because it's a sterile environment. He didn't really lean forwards, he just shook his head in a motorboating miming movement whilst his hands were still touching the patient's breasts at the time”.

34. In her oral evidence, Ms C stated that Dr Sawyer had not gone close to the patient with his head. He just shook his head, moving it from left to right and that this movement had only been for a very short time. She said that she had not used the term ‘motorboating’ in her statement to the Hospital as at that point she had not known what that term meant, and that her manager had explained it to her during the meeting. She also confirmed that it was not a word that Dr Sawyer had used during the course of the procedure. Ms C stated that Dr Sawyer did not do the gesture i.e. the ‘motorboating’, just the mimicking of it. She said she had used the word ‘*rubbing*’ in her statement because of the way ‘motorboating’ had been described to her by her manager i.e., *“like rubbing your face between the patient's breast”*.

35. The Tribunal heard that, shortly after the incident, Dr Sawyer had offered to meet individually with all those who were in theatre and had expressed concerns about his behaviour. Ms C confirmed that she took up his offer to meet. In the meeting, Dr Sawyer had explained to her that there were clinical reasons for moving his head from side to side during the procedure. Ms C said that she was happy with Dr Sawyer’s explanation and was then satisfied that it had been for clinical reasons. She said that this meeting had ‘cleared the air’. Ms C stated that she had concluded that Dr Sawyer had not meant to do anything inappropriate.

36. The Tribunal had regard to Mr B’s written and oral evidence. In his statement to the Hospital on 21 April 2021, Mr B stated:

“On multiple times he [Dr Sawyer] kept wobbling the patients breasts and at one time grabbing both of them and telling me in front of everyone about “motorboating” then putting his face close to them and wobbling his face between them. At this point my reaction was looking at [Ms C] whom was scrubbed and my laughing in discomfort as I did not know where to look or what to say as to what I had just witnessed.”

37. On 28 April 2021, Mr B provided further detail when asked to answer some set questions on the template provided by the Hospital. He described on the template that Dr Sawyer, was – *“in his own words, “motorboating” + action at same time”* and he explained the gesture as *“Motorboating close, hands were on breast + head was so close as can be without touching.”*

38. In his witness statement for the GMC, dated 25 May 2022, Mr B stated:

“Dr Sawyer put his hands on the patient’s breasts, put his head between them and began shaking his head vigorously. Because the patient was sterile and draped, Dr Sawyer could not put his face on the patient’s skin, but his face was as close as it could be without touching.”

Although I do not recall Dr Sawyer specifically using the term ‘motorboating’, that would be the correct word to describe what he was doing.”

39. In his oral evidence, Mr B said that the Dr Sawyer was about 2cms away from the patient’s breasts when he did the gesture, and that the vigorous movement lasted for approximately 30 seconds.

40. The Tribunal had regard to Miss D’s written and oral evidence. It was not clear whether she was in theatre at the time the ‘motorboating’ incident took place. She variously described Dr Sawyer being *“jolly and happy”* and holding and squeezing the patient’s breasts. She asserted that, in her opinion, there was no clinical reason for what Dr Sawyer was doing.

41. The Tribunal had regard to Dr Sawyer’s written and oral evidence. In addition, Dr Sawyer also provided to the Tribunal photographs of a patient who had asymmetrical breasts that were similar to those of Patient A. He also brought two mock implants to demonstrate elements of the procedure and explained how challenging and complex it was.

42. In his witness statement to the GMC dated 6 October 2023, Dr Sawyer stated:

“The ultimate goals of the surgery were to remove the implants and scar tissue (capsule) and create breast symmetry. During these types of my procedures, it is normal practice to manipulate the breasts, use ruler/swabs and sit the patients up to close to 90 degrees to check for symmetry (breast volume & nipple heights). These manoeuvres are performed as asymmetries are not always apparent when lying

supine (flat) position as breasts tend to drop to the sides of patients making assessment of nipple heights and breast volume difficult. Manipulation of the breasts is required to achieve optimal symmetrisation and for this at times the surgeons head must be placed centrally over the patient. If a surgeon only looked from the side where they stood during the operation, then it is very difficult to assess this symmetry.”

43. During his demonstration, Dr Sawyer explained to the Tribunal that there were clinical reasons for a surgeon during this type of procedure to manipulate and squeeze the patient’s breasts while moving their head from side to side. He said that in this particular procedure he was constantly checking the symmetry and volume of the breasts and would have done lots of checks. He said that he may have had to move his head “5,6, or 7 times” and that this was a standard and recognised way of doing it.

44. Dr Sawyer stated that he had never heard the word ‘motorboating’ before and had to look it up before attending the meeting to discuss the complaints.

45. The Tribunal had regard to Dr E’s written and oral evidence. The Tribunal noted that, in an email dated 26 April 2021, Dr E stated: “As for any comments he may have made I was concentrating in the anaesthesia and was not aware of any issues.”

46. In his letter of support of Dr Sawyer dated 6 January 2022, Dr E stated:

“In my 25 years’ experience as a cosmetic surgery anaesthetist the procedure was completed as I would expect...”

...At no time did Mr Sawyer’s face come into contact with the breasts, although he was obviously looking closely at the profile of the breasts. No unprofessional comments were made. I have worked with many breast surgeons, and this is entirely normal conduct for this procedure.”

47. In his witness statement to the GMC dated 9 October 2023, Dr E stated:

“I should emphasise that at this stage of the procedure I am standing at the patient’s head only a short distance from the surgeon and have a clear line of sight. Had there been anything at all unusual or untoward about Mr. Sawyer’s actions, then I would have noted this. There was nothing in any way untoward that I observed about Mr. Sawyer’s visual assessment, which in my experience was entirely standard. I would

also add that as Mr. Sawyer examined the breasts his gaze would move between the breasts to gauge the extent of asymmetry between the breasts, as one breast was bigger than the other. This movement was certainly not vigorous or of a sexual nature.”

48. Dr E was cross examined about the fact that his accounts became more detailed over time. He asserted that this was because when he wrote the email, he did not know what he was being asked to comment upon. He said that he had thought that whatever the complaint was, it was “*pathetic*” and “*ridiculous*.”

49. In his oral evidence, Dr E said that the patient was young and healthy and therefore he was not anticipating any problems with the anaesthetic. He was therefore watching the procedure for complications of bleeding and perforation of chest cavity. Dr E stated that Dr Sawyer at no point had his head 2cm away from the patients’ breasts and confirmed that his view was not obscured by the drapes at any time. Dr E said that the procedure had been complicated and difficult and that Dr Sawyer had only looked from one breast to another, and that this was done for clinical reasons.

50. In his oral evidence, the expert witness, Mr I, stated that this type of procedure was technically challenging. He said that there was a need to continually evaluate and manipulate the breasts throughout. Mr I accepted that a surgeon moving their head one side to the other and checking the volume of the breasts by ‘cupping’ was a well-recognised technique.

51. The Tribunal had regard to Mr J’s expert report, on behalf of Dr Sawyer, which stated:

“When closing the skin incisions, the surgeon must also be mindful of the need to produce a symmetrical result, both in terms of breast shape and volume, and nipple shape, size and position. The surgeon must, therefore, constantly compare the breasts throughout the procedure. The size of the breasts can be checked by inspection, from the side of the operating table and from the end of the table. Some surgeons may also find it helpful to assess breast volume by cupping their hands around each breast in turn. It is also important to check the tension on the breast skin envelope to ensure that the tissues within the breast, upon which the nipple relies for its blood supply, are not compressed.”

52. The Tribunal considered all the evidence. The Tribunal noted that Mr B stated in his first two accounts of the events that Dr Sawyer had used the term ‘motorboating.’ However,

in his witness statement to the GMC, Mr B stated that he could not recall if the term was used. No other witness heard the term used, and both Ms C and Dr Sawyer said that they had not heard the term before the meetings took place after the event. The Tribunal concluded that there was insufficient evidence to find that the term ‘motorboating’ was used by Dr Sawyer during the procedure.

53. The Tribunal noted that only Mr B described that Dr Sawyer was very close to the patient when this gesture was carried out. Ms C and Dr E said that he was not close. It was not clear whether Miss D had witnessed this specific incident or not. The Tribunal also noted that neither Ms C nor Dr E described a vigorous movement, as stated by Mr B. In summary, the witness accounts were inconsistent, and the Tribunal considered that if this gesture had been carried out as described by Mr B it would have stood out to others. The Tribunal concluded, on the balance of probabilities, that there was insufficient evidence to find that Dr Sawyer was close to the breasts and moving in the vigorous manner described.

54. The Tribunal considered that the evidence of both experts indicated that moving the head from side to side and wobbling and manipulating the breasts during a procedure of this sort to check symmetry and volume of Patient A’s breasts was standard and recognised procedure. It also noted that Miss D and Mr B had thought that this procedure was for breast augmentation, and they may not have been aware of what was clinically necessary.

55. The Tribunal noted that Dr Sawyer had tried to create a jovial atmosphere during this procedure, and that he may have been joking and smiling while checking the breasts, leading to some of the other people present feeling uncomfortable and awkward.

56. In light of the above, the Tribunal decided that there was insufficient evidence on the balance of probabilities to find that Dr Sawyer placed his hands on Patient A’s breasts and with his head positioned close between Patient A’s breasts turned his head vigorously from side to side. Accordingly, the Tribunal found paragraph 1(a) of the Allegation not proved.

Paragraph 1(b)

57. The Tribunal considered whether, during the procedure, Dr Sawyer described Patient A as ‘pretty’ or words to that effect.

58. The Tribunal firstly considered the evidence given by Mr B. He said that when the surgery got underway, he and Dr Sawyer had a conversation. He told Dr Sawyer that the

patient had travelled a long way to have the procedure done at the Hospital, and he said that Dr Sawyer began to talk about the patient's relationship status and that she was staying in the hospital for a few nights. In his first statement to the Hospital dated 21 April 2021, he said that Mr Sawyer then *"discussed how pretty the patient was"* and in his witness statement to the GMC dated 25 May 2022 he stated that *"Dr Sawyer also said that the patient was really pretty."*

59. In his oral evidence, Mr B recounted this conversation, and recalled that they had a conversation about the patient being single and that she was staying overnight in the hospital. It was during this conversation that Mr Sawyer had said to him that the patient was 'pretty'. Mr B said that he had no recollection of Mr Sawyer having a conversation about the patient having children.

60. Ms C did not mention the use of the word 'pretty' in her earlier accounts or witness statement to the GMC. She described a conversation about the patient having children, and Dr Sawyer apparently joking that she wanted to stay in the Hospital to be away from them. In response to this, Ms C had asked Dr Sawyer to *"stop it"* as she felt that it was a joke at the patient's expense. In the later meeting with her, Dr Sawyer informed Ms C that Patient A herself had said that was the reason for her wanting to stay in the Hospital and that he was just relaying what she had said to him. In her oral evidence, Ms C said that she would have been able to hear everything that Mr Sawyer had said during the procedure, due to where she was standing- i.e., directly opposite him. She told the Tribunal that she did not hear Mr Sawyer describe Patient A as 'pretty' to Mr B. In response to questions as to why Ms C would not have heard Mr Sawyer's a comment about the patient being 'pretty' made to him, Mr B said that it was possible that at that time Ms C could have been concentrating on swab counting.

61. Miss D did not give written or oral evidence that the word 'pretty' was used. However, the Tribunal was aware that she was not in theatre for the whole of the time.

62. The Tribunal considered Dr Sawyer's evidence in relation to the use of the term 'pretty'. It had regard to his formal reply to the GMC (Rule 7 reply) dated 17 February 2023. It stated:

"I have absolutely no recollection of using this word or anything to this effect, either now or at the time of the investigation by the Hospital in April 2021, although "pretty" is simply not something that I would say about a patient. As I mentioned to the

investigations team at the time, I believe that whatever I am believed to have said has been misconstrued.”

63. The Tribunal also had regard to Mr Sawyer’s witness statement dated 6 October 2023, as follows:

“I have absolutely no recollection of using this word or anything to this effect, either now or at the time of the investigation by the Hospital in April 2021. As I mentioned to the local investigations team at the time in April 2021, I believe that whatever I am believed to have said has been in some way misunderstood. I would only comment about a patient’s appearance in the context of the aesthetic procedure I was undertaking and would certainly not wish to convey anything disrespectful or inappropriate about the patient or her appearance.”

64. Mr Sawyer also reiterated to the Tribunal in his oral evidence that ‘pretty’ was not a word that he would use and not something that he would say about a patient.

65. The Tribunal noted Dr E’s witness statement dated 9 October 2023, which stated:

“I do not recall any such comments having been made, and if anything inappropriate had been said, then I would both have noticed this and would have acted upon it. As anaesthetist, the patient is under my care jointly with the surgeon, and I see respect for the patient and preserving patient dignity as part of my overall responsibilities to the patient, along with patient care and safety.”

66. The Tribunal noted that the only person who had heard the remark of the patient being ‘pretty’ was Mr B. His evidence was uncorroborated, and neither Ms C nor Dr E heard it, even though they were in theatre and in close proximity to Dr Sawyer. Bearing in mind that inconsistency, and the concerns about B’s credibility as set out above, the Tribunal was not satisfied on the balance of probabilities that the word was used.

67. Accordingly, the Tribunal concluded that on the balance of probabilities, there was insufficient evidence to find that the word ‘pretty’ was used and found paragraph 1(b) of the Allegation not proved.

Paragraph 1(c)

68. The Tribunal considered whether, during the procedure, Dr Sawyer suggested that Mr B visit Patient A in her room after the procedure.

69. Again, the Tribunal firstly considered the evidence given by Mr B. As described above, he had recounted a conversation that he and Dr Sawyer were having. He said that Dr Sawyer began to talk about the patient's relationship status and that she was staying in the hospital for a few nights. In his first statement to the Hospital dated 21 April 2021, he said that Mr Sawyer then *"discussed how pretty the patient was and how I should go to her room afterwards"* and in his witness statement to the GMC dated 25 May 2022 he stated that *"...I should go to her room and see her afterwards..."* The Tribunal also noted Mr B's further comments he made on 28 April 2021 in response to the questions on the template. He said that Dr Sawyer *"kept telling [Mr B] to go patient "should be going up to pt room" in a non professional manner."*

70. In his oral evidence, Mr B said that when there was a discussion about Patient A's relationship status, Dr Sawyer had told him that the patient was single. He adopted his witness statements and earlier accounts.

71. As set out above, Ms C recalled a conversation about the patient wanting to stay in hospital because of her two children. She said that she could hear what was being said in theatre. She did not hear a conversation about Dr Sawyer suggesting that Mr B go to the patient's room. In similar vein, Miss D did not mention this conversation, although she may not have been in theatre at the time.

72. The Tribunal considered Dr Sawyer's evidence in relation to the allegation that he suggested that Mr B go to the patient's room after the procedure. It had regard to his Rule 7 reply dated 17 February 2023 and witness statement dated 6 October 2023. He stated that he had no recollection of this being said and they were not words that he would use. Unless an emergency, he said there would be no reason for a theatre practitioner to visit a patient in her room.

73. The Tribunal noted Dr E's witness statement dated 9 October 2023, which stated:

"I do not recall anything to this effect being said. A remark to this effect would have stood out to me, as no-one would ever suggest to an ODP (operating department practitioner) that they go and see a patient post operatively on the ward, as there is absolutely no indication for this. It would have been incongruous thing to say, and I am

quite sure that if this had been said, that I would have both heard it and acted upon it.”

74. The Tribunal noted that the only person who had apparently heard this aspect of the conversation was Mr B. As in relation to paragraph 1(b), his evidence was uncorroborated, and neither Ms C nor Dr E heard it, even though they were in theatre and in close proximity to Dr Sawyer. Mr B had recalled that Dr Sawyer had told him that the patient was single, yet it was not in dispute that the patient was married and had two children. Bearing in mind the inconsistencies of the evidence, and again the concerns about Mr B’s credibility as set out above, the Tribunal was not satisfied on the balance of probabilities that the conversation took place.

75. Accordingly, the Tribunal concluded that there was insufficient evidence on the balance of probabilities, to find that Dr Sawyer suggested that Mr B visit Patient A in her room after the procedure and found paragraph 1(c) of the Allegation not proved.

Paragraph 1(d)(i)

76. The Tribunal considered whether, during the procedure, Dr Sawyer said words to the effect of, *“I bet you like doing that”* to Ms C. The Tribunal noted that this comment was allegedly made when Ms C was holding Patient A’s breasts to assist Dr Sawyer during the procedure.

77. The Tribunal heard evidence from both experts, as well as Dr Sawyer and Ms C, about the necessity for a scrub nurse to hold a patient’s breasts during procedures of this nature. The Tribunal noted that, during aesthetic breast surgery, it is commonplace to ask a scrub nurse to hold and manipulate the breasts in a manner that assists the operating surgeon to perform the operation in an accurate and timely manner. It was accepted that Ms C was an excellent scrub nurse, who was skilled and experienced.

78. As the comment alleged was directed at Ms C, The Tribunal considered her evidence first. It noted her statement to the hospital dated 21 April 2021, which stated:

“Mr Sawyer asked me to help him by squeezing the breast so he can cut straight but then when I was helping out he continued making inappropriate comments like “I bet you like doing that”, “you’re doing a great job, is like you’re doing this all the time” then he was laughing.”

Later in that statement she said, *“I’ve discussed with my manager, and I think that Mr Sawyer’s language was dirty and disgusting, and I wouldn’t like to work with him again if he is going to behave the same.”*

79. In general terms, Ms C described an atmosphere that was ‘jokey’ and inappropriate. She said that she told him *“Stop it”* a number of times during the procedure. She said that when he made the comments, she felt awkward and uncomfortable, especially when the jokes were about the patient.

80. In her oral evidence, Ms C described the meeting she had attended with Dr Sawyer after the incident. Dr Sawyer explained that his comments had been his way of complimenting Ms C on her work. Ms C said that Dr Sawyer apologised and said that he thought she was an excellent scrub nurse, and that he hoped they could continue to work together in the future. He also apologised for the awkward situation, and that he had not meant to do anything inappropriate. Ms C told the Tribunal that she had thought that the comments at the time had been inappropriate because of the ‘jokey’ atmosphere during the procedure. However, she said that she accepted Dr Sawyer’s explanation and apology. She also confirmed that she had not been concerned about patient safety.

81. The Tribunal noticed that Mr B recalled this comment being made. Miss D had not but may not have been in theatre at the time. In his statement to the Hospital on 21 April 2021, Mr B stated:

“During the surgery [Ms C] was asked to apply pressure to the patient’s breasts so he could make incisions to remove skin and he told her that she would like doing this.”

82. The Tribunal also noted Mr B’s witness statement to the GMC dated 25 May 2022, which stated:

“At one point during the procedure [Ms C] was required to assist Dr Sawyer by applying pressure to the patient’s breasts to allow Dr Sawyer to make incisions and remove skin. Whilst [Ms C] was doing this, Dr Sawyer made a comment to her suggesting that she would enjoy doing this. I found this comment to be along the same lines as Dr Sawyer’s suggestion that I should go to the patient’s room after the surgery, inappropriate and sexualised.”

83. The Tribunal considered the Dr Sawyer’s account of this allegation. It noted his witness statement dated 6 October 2023. He stated as follows:

“I have no recollection of this and am not sure what this refers too. I suspect this is a miscommunication. Ms C is XXX and although her English is very good, I feel she sometimes misinterprets or misunderstands what is said. For example, you might ask for a certain surgical instrument, and I might have to repeat myself or point to what I need next. This is compounded by background noise from the air flow from above and talking under a surgical mask. I may tend to mumble more, especially when concentrating. I have worked with Ms C since the allegation and have noticed this again.”

84. The Tribunal had regard to Dr E’s witness statement dated 9 October 2023, as follows:

“I certainly do not recall anything being said to the effect of “I bet you like doing that” and am sure I would have picked up on this. However, although I do not recall any actual words said it is perfectly conceivable that Mr. Sawyer would have said something to Ms C as Scrub Nurse about her doing a good job of manipulating the breast, particularly in the context of a procedure of this nature. For a surgeon to comment to their Scrub Nurse while they are manipulating the breast and tissue would be quite normal and reflects standard communication within the theatre team.”

85. The Tribunal considered the evidence carefully. Both Ms C and Mr B had heard the comment. Dr E had not. The Tribunal decided that Dr Sawyer’s explanation was not plausible. There had been no previous suggestion that Ms C’s command of the English language was not good enough to understand, nor that noise in theatre was a factor. The Tribunal decided therefore that it was more likely than not that the comment was made.

86. Notwithstanding the fact that Ms C accepted Dr Sawyer’s explanation and apology after the fact, the Tribunal noted that at the time, she felt uncomfortable and awkward at the comments he was making, such that she did not wish to continue working with Dr Sawyer were they to continue.

87. The Tribunal noted that Dr Sawyer had attended a meeting at the Hospital on 29 April 2021. In the minutes from the meeting, Dr Sawyer is warned that the behaviour should not happen again, and he replied, *“absolutely not, this will not be repeated.”* Although it is

unclear what behaviour is being discussed, Dr Sawyer was apologetic and made it clear that he did not want to cause upset; *“thankyou and sorry for any concern caused. It really was not intended to cause upset to anyone.”*

88. Having decided that the comment alleged was made, the Tribunal considered what the context of the comment was likely to be. Dr Sawyer said that any comments he made about Ms C holding Patient A’s breasts were said in order to compliment her skills and encourage her. The Tribunal heard from both experts that it is normal and correct that a surgeon support and encourages colleagues if they are doing a good job, which Ms C was. However, the Tribunal did not think that the comment *“I bet you like doing that”* could be construed as a compliment to a work colleague. In light of the jovial atmosphere, and the perceptions of Ms C and Mr B in relation to this comment, the Tribunal determined on the balance of probabilities that it was a sexual innuendo style joke. The Tribunal noted Mr I’s view that if said, this comment could be aimed at Ms C’s presumed sexual orientation. The Tribunal considered this possibility but decided that there was no evidence to infer that Dr Sawyer intended this comment to be construed in that manner.

89. In light of the above, the Tribunal concluded that Dr Sawyer had said *“I bet you like doing that”* (or words to that effect) and that when he said it, he meant it as a joke.

90. Accordingly, the Tribunal concluded that there was sufficient evidence on the balance of probabilities, that the words alleged (or words to that effect) were used and found paragraph 1(d)(i) proved.

Paragraph 1 (d)(ii)

91. The Tribunal considered whether, during the procedure, Dr Sawyer said words to the effect of *“you’re doing a great job, it’s like you’re doing this all the time”* to Ms C. The Tribunal noted again that these comments were made when Ms C was holding Patient A’s breasts.

92. The Tribunal was aware that Dr Sawyer had admitted this paragraph and that it had been found proved. Dr Sawyer agreed that the words alleged were used. However, he stated that he had made the comments in order to compliment Ms C in the way that she was assisting him in holding Patient’s A breasts. The Tribunal considered this paragraph at this stage because the admission had been made on the basis that the comments were appropriate.

93. The Tribunal noted that the evidence in relation to this paragraph was similar to the evidence set out above in relation to paragraph 1(d)(i).

94. Dr Sawyer, in his oral evidence told the Tribunal that Ms C was excellent and doing a good job during the procedure, and asserted that he meant to compliment her on her skills. He accepted that he may have been clumsy in the way he expressed this.

95. Mr I, in cross examination, agreed that, in isolation, the comments could be an acknowledgment of Ms C's skills and experience, and an attempt at enthusiasm. He accepted that they could have been a 'clumsy compliment.'

96. The Tribunal considered this allegation with the backdrop of the atmosphere in the theatre in mind, as described by Ms C, Mr B, and Miss D. It carefully considered the words used and noted that Ms C had accepted Dr Sawyer's subsequent explanation that he was trying to compliment her work when saying this phrase.

97. The Tribunal considered Dr Sawyer's state of mind when uttering these comments. The Tribunal noted the words used, the surrounding evidence, and the perception of those present. The Tribunal decided that the atmosphere in the theatre, coupled with Ms C's description of Dr Sawyer laughing when he said the words, resulted in her feeling awkward and uncomfortable. However, the Tribunal determined that there was insufficient evidence, to conclude that the words *"you're doing a great job, it's like you're doing this all the time"* were inappropriate.

Paragraph 2(a)

98. Dr Sawyer had admitted that Patient A was under general anaesthetic during the procedure, and this paragraph was found proved at the beginning of the hearing.

Paragraph 2(d)

99. The Tribunal considered whether, due to the behaviour outlined in paragraph 1, Dr Sawyer's behaviour was sexually motivated. The Tribunal did not consider the evidence in relation to paragraphs 1(a), (b), and (c) as it had found those allegations not proved.

100. Having found paragraphs 1(d)(i) and 1(d)(ii) proved, the Tribunal went on to consider if Dr Sawyer's comments alleged in those paragraphs were sexually motivated.

101. The Tribunal noted the definition of ‘sexual motivation’ in the case of *Basson v GMC* [2018] EWHC 505 (Admin). It also considered whether there was a plausible alternative explanation for Dr Sawyer’s actions.

102. The Tribunal noted the circumstances in which the comments were made, the perceptions of the witnesses, and Dr Sawyer’s account. It decided, on the balance of probabilities, that it could not infer that the phrases used as set out in paragraphs 1(d)(i) and 1(d)(ii) were said for the purpose of pursuing a sexual relationship, or for Dr Sawyer’s sexual gratification. The Tribunal considered that the likely explanation for the comments was that they were a joke (1(d)(i)), and a clumsy attempt at a compliment said in a joking manner, (1(d)(ii)).

103. Accordingly, the Tribunal concluded that there was insufficient evidence, on the balance of probabilities that Dr Sawyer’s comments, as set out in paragraph 1 (d)(ii) were sexually motivated and therefore the Tribunal found paragraph 2(b) of the Allegation not proved.

The Tribunal’s Overall Determination on the Facts

104. The Tribunal has determined the facts as follows:

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

1. On 20 April 2021, whilst working at Harbour Hospital you performed the procedure as identified at Schedule 1 (‘the Procedure’) on Patient A. During the Procedure you:
 - a. placed your hands on Patient A’s breasts and with your head positioned close between Patient A’s breasts, turned your head vigorously from side to side; **Not proved**
 - b. described Patient A as ‘pretty’ or words to that effect; **Not proved**
 - c. suggested that Mr B visit Patient A in their room after the Procedure; **Not proved**
 - d. asked Ms C to assist you by holding and/or manipulating Patient A’s breasts, at which time you said words to the effect of:

- i. 'I bet you like doing that'; **Determined and found proved**
 - ii. 'you're doing a great job, it's like you're doing this all the time'.
Admitted and found proved
2. Your actions as set out at paragraph 1 were:
- a. carried out whilst Patient A was anaesthetised; **Admitted and found proved**
 - b. sexually motivated. **Not proved**

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

Determination on Impairment - 23/11/2023

105. 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 Sawyer's fitness to practise is impaired by reason of misconduct.

The Evidence

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

Submissions

107. On behalf of the GMC, Ms Hudson submitted that the GMC does not make any positive submissions that Dr Sawyer is impaired.

108. Ms Hudson noted that the Tribunal has found a single incident of inappropriate comments made by Dr Sawyer in the workplace, in an otherwise exemplary career.

109. Ms Hudson stated that the comments made were clumsy, but noted that the Tribunal had found that they did not amount to behaviour that was sexually motivated.

5. Ms Hudson submitted that the comments made did not therefore constitute either a serious or persistent breach of Good Medical Practice (2013) ('GMP').

110. Ms Hudson stated that the GMC would like to emphasise that comments of that nature can be misinterpreted. She said that it is important that all doctors treat colleagues fairly and with respect. Ms Hudson referred the Tribunal to GMP, in particular paragraphs 36 and 37.

111. Ms Hudson also submitted that if the Tribunal do not make a finding of impairment, she on behalf of the GMC, does not submit that there is any need for a Warning.

112. Ms Hudson stated that she would like to emphasise again, that behaviour and comments need to be taken seriously in the workplace and that although Dr Sawyer is unlikely to repeat this behaviour again, the GMC do take these matters very seriously and that is why this case was pursued.

113. On behalf of Dr Sawyer, Ms Horlick submitted that when looking at paragraph 2 of the Allegation, there was no characterisation of the Allegation other than sexual motivation, which the Tribunal has found not proved. The GMC had not alleged that the behaviour was inappropriate or a joke.

114. Ms Horlick said that she echoed much of what Ms Hudson has said. The comments were a clumsy joke in circumstances where joking between theatre staff is normal up and down the country. She stated that the expert, Mr I had said that sometimes those jokes can stray into gallow's humour. In other words, they can perhaps go beyond what other people might do.

115. Ms Horlick stated that although not an excuse, Dr Sawyer's comments were not meant to be taken seriously, nor were they comments on sexuality which the Tribunal has accepted. Ms Horlick submitted that it was completely out of character and done in those particular circumstances of that procedure on that day.

116. Ms Horlick submitted that Dr Sawyer recognised that it had made Ms C feel awkward, although the awkwardness is bound up in the other remarks as well. It is not easy to separate out the comments and know which made Ms C feel awkward or whether it was a combination of matters.

117. Ms Horlick submitted that Dr Sawyer had made a specific and heartfelt apology to Ms C shortly after the incident when he asked to have a meeting with her. Further, they continued to be colleagues and work together. Ms Horlick reminded the Tribunal that Ms C said in her evidence that there was a jovial atmosphere. Dr Sawyer was joking and was trying to fit in with the other members of the team in circumstances where he did not know them very well.

118. Ms Horlick stated that Dr Sawyer has been, as he said in his evidence, very careful going forward as to the sorts of remarks that he makes. Ms Horlick referred the Tribunal to the testimonial evidence about Dr Sawyer's behaviour and how very well liked he is by colleagues. Ms Horlick said that Dr Sawyer was 'mortified' at the time which is the word that he used in the interview with the Hospital. She said that he is mortified now and has taken this hearing very seriously.

119. Ms Horlick submitted, in terms of case law, that it is not just misconduct that has to be found, but it has to be serious professional misconduct. She submitted that a rather clumsy joke is not misconduct, let alone serious professional misconduct nor would it be conduct which would be regarded as deplorable by fellow practitioners.

120. Ms Horlick submitted that other cases had stated that misconduct had to be serious misconduct going to fitness to practice, or morally culpable and disgraceful behaviour.

121. Ms Horlick submitted that she echoed the submissions of the GMC, that this was a clumsy joke, which Dr Sawyer apologised for at the time. She submitted that it was not serious misconduct and did not affect Dr Sawyer's current fitness to practice.

The Relevant Legal Principles

122. The LQC gave the following advice:

- The Tribunal is reminded there is no burden or standard of proof to adopt at this stage and that decision as to impairment is a matter for the Tribunal's judgement alone.
- 'Misconduct' has no statutory definition. It is a matter for the judgement and experience of the tribunal.
- In *Roylance v GMC [No 2] [2000] 1 AC 311* it was said that 'misconduct' should be 'serious misconduct' before the Tribunal should consider fitness to practise.

- *Collins J in Nandi v GMC [2004] EWHC* said that misconduct is conduct which would be regarded as deplorable by fellow practitioners.
- The Tribunal should therefore consider whether the Doctor has departed from the standards sets out in, for example, GMC Guidance or GMP. This case relates to behaviour amongst a surgical team and therefore the Tribunal should consider the sections in GMP that relate to for example, the duties to work collaboratively with colleagues and showing respect for patients.
- The Tribunal should consider the views of the two experts that have submitted written opinions and gave evidence in Stage 1.

The Tribunal's Determination on Impairment

Misconduct

123. The Tribunal first considered whether Dr Sawyer's actions amounted to misconduct. It considered all the evidence it had heard at Stage 1. It noted in its Determination at Stage 1 that the comments made in paragraphs 1(d)(i) and 1(d)(ii) were a joke and a clumsy attempt at a compliment said in a joking manner.

124. The Tribunal noted the circumstances of the day. Dr Sawyer had created a jovial atmosphere in theatre, which in hindsight was ill judged. Dr Sawyer had described that he was anxious on the day, and that he was naturally shy and socially awkward.

125. The Tribunal accepted that the Allegation had not alleged impropriety. The allegation that the actions were sexually motivated had not been proved.

126. The Tribunal noted Ms C's discomfort. She said that Dr Sawyer's comments made her feel awkward and uncomfortable. She confirmed in evidence that Dr Sawyer had apologised to her, and that she had accepted his explanation. Ms C and Dr Sawyer worked together after the incident.

127. The Tribunal accepted that Dr Sawyer's behaviour was a 'one off' and it agreed that the behaviour was isolated and not persistent.

128. The Tribunal considered GMP, in particular Paragraphs 36 and 37 which read:

'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.'*

129. The Tribunal decided that, even though Dr Sawyer had breached the paragraphs set out above, the comments were a single incident and a misconstrued attempt at humour and as such were not a serious departure from GMP.

130. The Tribunal determined therefore that the comments that have been found proved did not constitute serious misconduct. As such, the Tribunal did not need to consider the question of impairment.

131. The Tribunal noted Dr Sawyer's excellent testimonials. They demonstrate that Dr Sawyer is a good surgeon and that there are no concerns about patient safety. The Tribunal accepted that his behaviour on 20 April 2021 was out of character and an isolated incident.

Warning

132. The Tribunal noted that the GMC had not requested that a Warning be considered. However, the Tribunal considered the Warnings Guidance of March 2021. The Tribunal agreed that the comments made by Dr Sawyer did not meet the threshold for a Warning as defined in paragraph 16 of the guidance because there had not been a significant departure from GMP.

133. Given the submissions made by both parties, and the Tribunal's findings in relation to misconduct, the Tribunal determined that a warning was not necessary.

SCHEDULE 1

Bilateral implant removal, capsulectomy and mastopexy.