PUBLIC RECORD

Dates: 08/03/2021 - 18/03/2021
25/05/2021 – 26/05/2021

Medical Practitioner's name:	Dr Anandagopal SRINIVASAN
GMC reference number:	7518313
Primary medical qualification:	MB BChir 2016 University of Cambridge

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

Summary of outcome

Erasure

Immediate order imposed

Tribunal:

Medical Tribunal Member (Chair)	Mr Nicholas Flanagan
Medical Tribunal Member:	Dr Jeffrey Phillips
Medical Tribunal Member:	Dr Maria Dyban,

Tribunal Clerk:	Ms Chloe Ainsworth (8/03/2021 – 12/03/2021) Mr Stuart Peachy (15/03/2021 – 18/03/2021) Ms Lauren Duffy (25/05/2021 – 26/05/2021)

Attendance and Representation:

Medical Practitioner:	Present and represented (08/03/2021 – 18/03/2021)

	Not present and not represented (25/05/2021 – 26/05/2021)
Medical Practitioner's Representative:	Mr Anthony Haycroft, Counsel, instructed by RLB (08/03/2021 – 18/03/2021)
GMC Representative:	Ms Sarah Barlow, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 18/03/2021

Background

1. Dr Srinivasan qualified as a doctor from the University of Cambridge in 2016. At the time of his examination of Patient A, which took place on 24 October 2014, Dr Srinivasan was a medical student. At the time of Dr Srinivasan's examination of Patient B, which occurred on 6 October 2016, he was undertaking his foundation year one ('FY1') and his first clinical rotation in the Accident and Emergency department of the John Radcliffe Hospital, Oxford.

The Allegation and the Doctor's Response

2. The Allegation made against Dr Srinivasan is as follows:

    1. On or around the 24 October 2014, you undertook an examination of Patient A at Addenbrooke Hospital and you:

        a. failed to offer Patient A a chaperone;
        To be determined

        b. lifted Patient A's top, exposing her breasts without explanation and/or warning;
        To be determined

c. stared at Patient A's exposed breasts;
To be determined

d. pulled down Patient A's trousers;
To be determined

e. took a femoral pulse.
To be determined

2. Your actions at paragraphs:

a. 1b-e were not clinically indicated;
To be determined

b. 1a-e were sexually motivated.
To be determined

3. On 6 October 2016, at the Emergency Department at John Radcliffe Hospital you undertook an examination of Patient B and you:

a. failed to offer Patient B a chaperone;
To be determined

b. on one or more occasions placed your hand on Patient B's pubic region; To be determined

c. on one or more occasions inserted your fingers into Patient B's vagina during the examination;
To be determined

d. in the alternative to Paragraph 3c on one or more occasions you attempted to insert your fingers into Patient B's vagina during the examination.
To be determined

4. Your actions at paragraphs:

a. 3b-3c/3d were not clinically indicated;
To be determined

b. 3a-c/d were sexually motivated.
To be determined

Factual Witness Evidence

3. The Tribunal received evidence on behalf of the GMC from the following witnesses:

- Patient A, who appeared by Video Link;
- Patient B, who appeared by Video Link; and
- Ms C, who appeared by Video Link.

4. Dr Srinivasan provided his own witness statement, dated 15 January 2021, and also gave oral evidence at the hearing in person. In addition, the Tribunal received evidence from the following witnesses on Dr Srinivasan's behalf:

- Dr D, a friend of Dr Srinivasan's, by Video Link; and
- Mrs E, a friend of Dr Srinivasan's, by Video Link.

Expert Witness Evidence

5. The Tribunal also received evidence from four expert witnesses.

6. Dr F, Consultant in Emergency Medicine, was instructed by the GMC to provide an expert report. Dr F prepared a report, dated 19 January 2020, and a supplemental report, dated 2 September 2020. He also gave oral evidence by video link on the third day of the hearing.

7. Mr G, Consultant in Emergency Medicine, was instructed by Dr Srinivasan's legal representatives to provide an expert report. Mr G prepared a report, dated 15 February 2021. He also gave oral evidence by video link on the fourth day of the hearing.

8. Dr H, Consultant Chemical Pathologist and Forensic Toxicologist, was instructed by Dr Srinivasan's legal representatives to provide an expert report. Dr H prepared a report, dated 18 January 2021. He also gave oral evidence by video link on the fourth day of the hearing.

9. Dr K, Forensic Scientist, was instructed by Dr Srinivasan's legal representatives to provide an expert report for the criminal proceedings. He prepared a report, dated 10 April 2018, but was not required to give oral evidence.

Documentary Evidence

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

- Court transcript of Patient A, dated 6 November 2018;
- Patient A's medical records, dated October 2014;
- Court transcript of Patient B, dated 5 November 2018;

- Court transcript of Patient B, dated 20 May 2019;
- Ms C's supplemental police witness statement, dated 5 November 2018;
- Court transcript of Ms C, dated 5 November 2018;
- Oxford University Hospitals' Chaperone, Intimate Care and Examination Policy, dated February 2016; and
- Bundles of testimonials attesting to Dr Srinivasan's good character.

Submissions

11. The following is a summary of submissions made by both Counsel.

Submissions on behalf of the GMC

12. Ms Barlow, on behalf of the GMC, submitted that there were striking similarities in the appearance between Patients A and B and in the descriptions of the allegations they made. Ms Barlow conceded that there was no evidence that a chaperone was obligatory on either occasion, but that it would have been best practice for one to be present. Ms Barlow urged the Tribunal to take account of the lapse in time since the events took place and the language barriers, in considering the importance of any inconsistencies in the evidence provided by the witnesses.

Submissions on behalf of Dr Srinivasan

13. On behalf of Dr Srinivasan, Mr Haycroft prepared detailed written submissions and a chart detailing inconsistencies between the accounts provided by Patient B and Ms C. In oral submissions, Mr Haycroft invited the Tribunal to consider the evidence presented by the GMC very carefully, stating that the GMC evidence was of such poor quality that it could not be considered cogent and should be rejected. Mr Haycroft stated that the only similarity between the patients was that they were young women and that this had limited relevance to the issues under consideration. He highlighted the inconsistencies in the account of Patient A, raised concerns regarding her lucidity, as well as expressing doubt on the likelihood of events occurring as described. Mr Haycroft also submitted that it was likely that Patient B and Ms C had talked about the events in question, that Patient B was unwell and Ms C tired on the day. Lastly, he urged the Tribunal to accept the account provided by Dr Srinivasan, consider the inherently unlikely nature of the events taking place and he referred the Tribunal to Dr Srinivasan's good character.

The Tribunal's Approach

14. At this stage the Tribunal is required to determine whether the facts alleged, or any of them, have been proved.

15. The Tribunal must give separate consideration to the evidence in relation to each individual Allegation. Therefore, it does not follow from the fact that the Tribunal finds one

Allegation proved, or not proved, as the case may be, that the Tribunal will reach the same conclusion in relation to any of the other allegations.

16. In considering the Allegation, the Tribunal must be satisfied that each of the elements of the Allegation have been made out before finding the particular allegation proved.

Burden and Standard of Proof

17. The GMC bring the Allegation and the burden of proving the allegations is on the GMC; there is no burden on the doctor to disprove the allegations. The fact that the doctor has chosen to give and call evidence on his own behalf does not mean that he has taken any burden upon himself.

18. The Standard of Proof is the 'Balance of Probabilities' – in plain language – whether is it more likely than not that the facts occurred as alleged.

Assessment of the Evidence

19. Where there are serious allegations or where serious consequences would flow from a factual finding, the Tribunal is required to undertake a heightened examination of the evidence before reaching its conclusion; *Casey v GMC [2011] NIQB 95*.

20. The Tribunal further accepted the relevance of the authority of *Lawrence v GMC* [2015] *EWHC 586 (Admin)* to his case, which stated that in serious offences, there is a need for cogent evidence. Whilst this does not alter the standard of proof required, a close and detailed analysis, as well as an examination of the inherent improbability of events, is required in assessing the evidence.

21. The Tribunal was aware that the events in this case had been litigated in the Crown Court, resulting in Dr Srinivasan being found not guilty. The Tribunal adopted the guidance from *El Karout v NMC [2019] EWHC 28 (admin.),* which described the differing standards of proof, but stated that an acquittal in the Crown Court was not entirely irrelevant, as the Tribunal is required to proceed with caution in differing from a jury's conclusion on the same or similar allegations.

Good Character

22. The Tribunal has heard that Dr Srinivasan is a young doctor at the early stages of his medical career. It has also heard character evidence and testimonials attesting to his good character as a doctor. The Tribunal was in no doubt that Dr Srinivasan is an academically gifted doctor.

23. The Tribunal considered Dr Srinivasan's positive good character evidence as important and relevant to its considerations in two respects. Although it is not a defence to the allegations, Dr Srinivasan's good character counts in his favour when assessing the

credibility of his evidence and whether it should be accepted. Secondly, his good character and the testimonies provided is relevant in his favour, as it may mean it is less likely that he has acted in the way alleged.

The Tribunal's Analysis of the Evidence and Findings

Findings

24. The Tribunal made the following findings of Fact:

Paragraphs 1 and 2 of the Allegation

25. The Tribunal had regard to all of the evidence before it, documentary and oral, including Patient A and Dr Srinivasan's individual recollections of events. The Tribunal gave careful attention to the accounts that were provided and to evidence in establishing the witness's credibility. In particular, the Tribunal had close regard to whether there were consistencies and inconsistencies in the accounts provided in order to reach its determination on factual matters.

26. Patient A was admitted to the Hospital due to severe abdominal pain. Patient A was 18-years-old at the time. On 24 October 2014, Patient A was examined by Dr Srinivasan on a Gynaecology ward – 6-and-a-half years prior to this Tribunal Hearing. It is alleged that, during this examination, Dr Srinivasan failed to offer a chaperone; lifted Patient A's top, exposing her breasts without explanation and/or warning; stared at Patient A's exposed breasts; pulled down Patient A's trousers and took a femoral pulse. It is alleged that these actions were not clinically indicated and that they were sexually motivated. A complaint was made very shortly after the alleged incident and the police were subsequently informed. Patient A provided an initial account, but did not initially provide a witness statement or an achieving better evidence account on video. Dr Srinivasan was interviewed by the Police regarding the events on the 6 January 2015. Later in 2015, Patient A and Dr Srinivasan were informed that no criminal charges would be brought. The case was investigated further following the allegations made by Patient B.

Patient A's Evidence

27. The Tribunal first of all had regard to Patient A's evidence, which consisted of a transcript of a videotaped interview with the Police on 6 August 2017 (the first contemporaneous record of her account), a witness statement, dated 12 November 2019, and oral evidence given during the course of these proceedings. The Tribunal was not provided with Patient A's initial account that she gave to the Police shortly following the examination with Dr Srinivasan, but some inferences could be made from the questions put to Dr Srinivasan in his police interview. The Tribunal had sight of Patient A's clinical records, including nursing and medical notes.

28. Within her evidence, the Tribunal noted that Patient A could not recall the time of the day when she saw Dr Srinivasan. She stated that it was either 'early morning' or 'late at night' and she had assumed that the examination took place in the 'early morning'. She explained that she could not remember now and this was an inference as her mother was not present during the examination, but had otherwise been at her side. Considering the medical notes available, the Tribunal noted that Patient A had been in the hospital for a period of 5 days. There was clear evidence before the Tribunal which demonstrated that Patient A was unwell and the exact timing, as referenced in her evidence, was not a defining factor in making a decision as to whether Patient A's evidence was credible. The Tribunal considered it entirely conceivable, given the events and her length of stay in hospital, that she would not remember the exact time of day, but that she could remember the examination. Further, it noted that Patient A gave evidence that she sent a text of complaint against Dr Srinivasan to her mother on the same day, following the examination with him. Nursing notes recorded a complaint had been made by 18:40 the same day.

29. The Tribunal appreciated that not all the matters related to Patient A's lucidity and mental state would necessarily have been written down in Patient A's Medical Records. However, there is no documentation that Patient A had an altered mental state at any point. In Dr Srinivasan's own notes of his interaction with Patient A, he did not describe each and every finding he observed. Further, Dr Srinivasan in his witness statement, stated that Patient A did not have any Neurological symptoms.

30. Importantly, the Tribunal noted that there was no other evidence in any contemporaneous documents or otherwise that Patient A was displaying or suffering from any confusion or alteration in her level of consciousness, either caused by her illness or any medication she was taking. The Tribunal accepted the expert evidence that some of the medication prescribed to Patent A; codeine and cyclizine, had theoretical side effects that could have impacted on her, but Dr H considered these to be relatively uncommon and more likely to be seen in older patients. There was no evidence that the medication, illness, or a combination of the two had any impact on Patient A. The Tribunal therefore found it likely that there was no, or no significant, impact on Patient A's lucidity or perception of events and found there was no corresponding impact on her reliability, from a medical perspective, as a witness.

31. The Tribunal observed that Patient A had been consistent in her written and oral accounts that blood was taken from her by Dr Srinivasan, in what she was wearing at the time and in a gap of time between him taking blood and returning to examine her. She was also consistent in how Dr Srinivasan approached her and exposed her breasts, how he had performed the examination on her and how Dr Srinivasan had stared at her.

32. The main inconsistency identified by the Tribunal in Patient A's evidence related to the timing the events took place, but whilst other inconsistencies were noted, these were peripheral and minor in nature.

33. During her oral evidence, the Tribunal noted that Patient A accepted when she did not fully remember the events of the examination due to the passage of time, which the Tribunal considered understandable as it took place over 6 years prior to these proceedings. Further, Patient A did not try to exaggerate or embellish her account and readily made concessions, such as that she had not been very communicative to Dr Srinivasan, and when confronted with other evidence on specific points.

34. In all the circumstances, the Tribunal was of the view that the core complaint that Patient A made against Dr Srinivasan had remained clear and consistent, despite the lapse of time and number of occasions it had been provided. The Tribunal found Patient A to be a credible witness, and whilst there were inconsistencies in her recollection – over 6 years after the events – these did not impact on the central Allegation.

Dr Srinivasan's Evidence

35. The Tribunal also had regard to Dr Srinivasan's evidence, which consisted of an initial account drafted by him on the 24 October 2014 (the day of the examination), a transcript of Police Interview, dated 8 January 2015, a witness statement produced for these proceedings, dated 15 January 2021, and his oral evidence.

36. In his initial account, Dr Srinivasan stated:

> 'The patient was already awake and on the phone when I went back. I took the blood samples after consenting her and started taking a history as I was doing the bloods. I informed the patient I will return the blood samples and then asked her if she was OK with me coming back in few minutes to continue the history and then examine her. I checked with the SHO on the ward while packaging the bloods if this was OK. The SHO asked me to finish history and exam and then come present to her'.

37. Within his witness statement, Dr Srinivasan provided the Tribunal with a detailed recollection of the index event, from when he first saw Patient A. He stated that he was asked by Dr L to take blood chemistry from two patients, one of those patients was Patient A. He stated that a nurse confirmed that he should wake Patient A up and take her blood as it was urgent. He stated:

> 'After consenting the patient, I took the blood samples, and whilst doing so I also took a preliminary history. I explained that I would then leave for a short while in order to submit the blood samples before returning to complete the history. She was content with this.
>
> Whilst submitting the bloods, I mentioned to Dr L that I wanted to assess and present an educationally interesting case and we therefore agreed that I would complete [Patient A] history and then examine her, before presenting the case to Dr L. I had left my stethoscope in my bag on another floor of the hospital and so I then went to retrieve it.

> I returned to [Patient A] after about 20 minutes and asked if I could complete taking her history and the examine her for educational purposes, and that this would include both a general examination and an abdominal examination. She consented to this […]'

38. The Tribunal also had regard to Dr Srinivasan's oral evidence. He stated that Dr L told him before lunch to take Patient A's blood. He stated that he took a preliminary history from Patient A whilst taking her bloods. When Dr Srinivasan was asked the question whether it was definitely Dr L who suggested that he examined Patient A he stated, 'I do not recall'. He told the Tribunal that if he had been asked to he would have done so as he wanted to see as many patients as possible and Patient A was an 'interesting patient'.

39. The Tribunal noted there were some differences between Dr Srinivasan's' initial account and that provided to the Tribunal. In his later witness statement and oral evidence, Dr Srinivasan told the Tribunal that he took Patient A's blood and it was Dr L who said that Patient A was an interesting case who he should examine. When specifically asked in questioning whether Dr Srinivasan suggested this or Dr L, Dr Srinivasan stated that 'it could have been me I do not recall' and 'if I had been asked to go and see [Patient A] I would have as she was an interesting patient'. The Tribunal considered that this nuance was important, as it was either an inconsistency in Dr Srinivasan's recollection, or more significantly, an attempt to undermine the suggestion that Dr Srinivasan was the person who informed Dr L that he already had consent from Patient A and wished to examine her.

40. The Tribunal also noted it was Dr Srinivasan's evidence that he did not know about the allegation made against him at the time of the initial investigation, up to and including the point of his police interview. Whilst the Tribunal was provided with Dr Srinivasan's first account, it did not have Patient A's initial account or what information was provided to Dr Srinivasan either on or before 8 January 2015. The Tribunal was only provided with the record of taped interview, from which it was not possible to determine Patient A's account. However, Dr Srinivasan did provide an extensive and detailed account of his interaction with Patient A in his police interview, providing greater detail than that contained within his initial account. The Tribunal considered that both accounts were provided in a manner which appeared to be defensive of an allegation he claimed to be unaware of. Dr Srinivasan did not make any concessions on the point, despite being taken carefully through the accounts and detail he provided.

41. The Tribunal did not find Dr Srinivasan's evidence on what he knew in advance of the interview persuasive; he stated he had no idea why he was being interviewed or that the Allegation was of a sexual nature. The Tribunal took account of the lapse in time, but found it inherently unlikely that Dr Srinivasan did not know or realise the allegation was one of sexual impropriety. This was despite Dr Srinivasan being required to provide a written account on the day by the hospital and attending the police station for a police interview with a solicitor. This must have been an event with significance for a medical student. It was also clear to the Tribunal from the account Dr Srinivasan provided in the police interview that he was likely to have known the nature of the allegation.

42. The Tribunal took into account that Dr Srinivasan was a medical student at the time. All the evidence indicated that he was academically bright and likely to perform a thorough and systematic examination on a patient. The Tribunal noted Dr Srinivasan, in his evidence stated he informed Patient A he was going to check her femoral pulse whilst actually performing a hernia examination, which would have been an appropriate clinical examination for a patient with abdominal pain. Notably, this part of the examination was not recorded in either his initial account or in his police interview. Considering the events – and the fact that Dr Srinivasan's initial account was undertaken on the day following a specific request – the Tribunal found this omission concerning.

43. Furthermore, within his initial account, Dr Srinivasan did not record that Patient A was unable to sit forward in order to have her back examined. However, in his most recent account before the Tribunal, he now remembered this.

44. As further evidence of the evolution of Dr Srinivasan's evidence, with regards to the chest/respiratory examination, he stated in his initial account:

> 'Listened to the heart and lungs through her clothes'

45. But when this is compared to his later witness statement, Dr Srinivasan stated:

> 'I performed a stethoscopic examination of [Patient A]'s heart and lungs by applying the diaphragm of the stethoscope under the sleeveless top, so as to avoid her having to lift the top or expose her chest/breasts. Proper stethoscopic examination of the heart and lungs requires the stethoscope diaphragm to be applied directly to the skin. It cannot be done properly through clothing, consequently like many doctors, rather than requiring avoidable exposure, if the patient's clothing is loose enough, I apply the stethoscope diaphragm by sliding it under the clothing, if the relevant area is not already exposed. Neither I nor the patient pulled the top up or down for that part of the examination.

46. The Tribunal considered that whilst Dr Srinivasan may just have been adding detail, these were important factors and the inconsistencies identified were central to the issues in the case. The Tribunal determined these changes in Dr Srinivasan's accounts undermined his credibility.

47. In all the circumstances, and balancing all the evidence before it, the Tribunal therefore preferred the recollection of Patient A of the events surrounding the examination. The Tribunal found Patient A to be a credible witness who tried her best to assist these proceedings. Whilst the Tribunal accepted that there were inconsistencies within her evidence, these were minor and her account on the core allegation remained consistent. In contrast, Dr Srinivasan had provided the Tribunal with inconsistent evidence as to the manner of his examination and repeatedly avoided directly answering questions on

important issues. On that basis, the Tribunal was satisfied that there was clear and cogent evidence of the events happening as described by Patient A.

48. Having made its finding on the witness evidence, consistencies and inconsistencies, the Tribunal next went onto consider each Sub-paragraph of Paragraphs 1 and 2 of the Allegation:

Paragraph 1(a) of the Allegation

49. The Tribunal noted Dr Srinivasan's oral evidence that he did not believe that he needed to offer a chaperone as he was not intending to conduct an intimate examination of Patient A. Dr Srinivasan explained that an intimate examination would include examinations of the breasts, genitalia or rectum. He explained that this was the chaperone policy of the hospital and that he was following this policy during his examination of Patient A.

50. The Tribunal carefully assessed the expert evidence from Dr F, on behalf of the GMC and Mr G on behalf of Dr Srinivasan. There was a significant difference between the experts contained within the witness statements, but in oral evidence to the Tribunal, they both accepted that a chaperone was not required to be offered or provided for the proposed non-intimate examination. The abdominal examination of Patient A should not have involved any intimate areas, and whilst it may have been best practice for a clinician to offer a chaperone, there was no evidence before the Tribunal that one was required or necessary. In his supplemental report, dated 2 September 2020, Dr F explains that as Patient A was 18 and not a minor at the time, she would have been expected to be able to ask for a chaperone herself. This was then consistent with Mr G's opinion. It has always been accepted by Dr Srinivasan that a chaperone was not offered or provided to Patient A; the basis of the denial was that one was not required and that it cannot therefore amount to a failure. From the evidence available and the agreement of the experts, it follows that there was no failure to provide a chaperone to Patient A.

51. Therefore, the Tribunal accepted the above expert evidence that a chaperone, in this instance, was not mandatory and therefore, found it was more likely than not that Dr Srinivasan had not failed to offer Patient A a chaperone.

52. The Tribunal found Paragraph 1(a) of the Allegation not proved.

Paragraphs 1(b) and (c) of the Allegation

53. At the Police interview on 6 August 2017, Patient A stated in answer to questioning regarding the examination that:

> '[…] [Dr Srinivasan] then lifted up my top so my boobs were exposed, and [Dr Srinivasan] was just staring at me, like, staring at my boobs. And then, I can't remember how long he did that for but [Dr Srinivasan] was just staring at me the whole time'

54. Patient A repeated this account before the Tribunal. Dr Srinivasan denied that Patient A's breasts were exposed, but accepted he may have been staring at her face whilst conducting the abdominal examination. For the reasons provided above, the Tribunal prefers Patient A's evidence and her recollection of events. The Tribunal has therefore found, on the balance of probabilities, that Dr Srinivasan:

- lifted Patient A's top, exposing her breasts without explanation and/or warning; and
- stared at Patient A's exposed breasts.

55. Therefore, the Tribunal found Paragraphs 1(b) and (c) of the Allegation proved.

Paragraph 1(d) and (e) of the Allegation

56. In her police interview, Patient A stated:

> 'And then, he said he wants to examine my stomach […] when he went to do that, he said "can you pull your trousers down a bit more" I was wearing tracksuit bottoms […] Um, so I did. So I pulled them down […] and he then said "Oh no, can you pull them down a bit lower?" so I did. And, at that point, half of my vagina, well, not my vagina, like my pubic region, I guess, was exposed. And then, and then I remember that he did take my trackies and he tried to pull them down a bit lower […] And then, but he didn't pull them down fully. Um, and then he was feeling my stomach. And then he said I need to feel for a pulse in your groin […] he said "oh, I might have to do an internal" […] And, yeah, he just left really, he didn't, I can't remember what was spoken about or why he said he was going or whatever he said he was gunna come back […]'

57. In her witness statement, Patient A stated:

> '[…] Dr Srinivasan pulled my trousers down to examine my stomach. I had pulled my trousers as Dr Srinivsan said he was going to examine me and they were on my hips. Dr Srinivsaan then told me trousers needed to be lower. He then proceeded to pull my trousers down further, quite forcefully, to expose the top half of my pubic region. I can't recall if he used both hands to do this but I was multiple small movements. He didn't say anything about pulling my trousers down further before he did it'.

58. During her oral evidence, Patient A stated that Dr Srinivasan pulled her 'trackies' down himself. The Tribunal noted that Patient A had been clear and precise in this recollection.

59. The Tribunal noted that Dr Srinivasan did not document that he removed Patient A's trousers in his initial statement. However, in the transcript of police interview, Dr Srinivasan stated that Patient A's trousers were 'already down to her hips'. In his witness statement, Dr

Srinivasan stated that Patient A had loose fitting trousers on, but he could not remember the precise positioning. Dr Srinivasan, in his witness statement and oral evidence to the Tribunal accepted that he would have palpated the inguinal/femoral regions bilaterally and described feeling for a femoral pulse.

60. Whilst there were minor differences in the accounts of Patient A and Dr Srinivasan on the events, it was agreed that Patient A's trousers were lowered and an examination conducted of the region of her femoral pulse. Having regard to all the circumstances and the previous analysis of the evidence, the Tribunal preferred Patient A's recollection of events and therefore found, on the balance of probabilities, that Dr Srinivasan pulled down Patient A's trousers.

61. Therefore, the Tribunal found Paragraph 1(d) and (e) of the Allegation proved.

Paragraph 2(a) of the Allegation – Clinical Indication

62. The Tribunal took into account all the evidence before it and the reasoning noted above. There was no evidence which suggested that Dr Srinivasan lifting Patient A's top, exposing her breasts without explanation and/or warning and staring at Patient A's exposed breasts, would ever be appropriate in a clinical setting. Patients and the public expect doctors to respect a patient's boundaries and treat them with dignity during the course of clinical examinations, as well as to warn them of any intimate examination.

63. Furthermore, it was accepted on behalf of Dr Srinivasan that there was no clinical indication to expose and stare at Patient A's breasts.

64. The Tribunal noted the expert evidence that taking a femoral pulse during an abdominal examination may be appropriate and, particularly with patients who are in a hospital bed and may have been in hospital for some time, there are occasions where the removal of Patient A's trousers would likely have been clinically indicated to conduct a thorough investigation. Therefore, the Tribunal considered that there was sufficient evidence to conclude on the balance of probabilities that the actions in Paragraph 1(d) and (e) of the Allegation were clinically indicated.

65. Therefore, the Tribunal found Paragraph 2(a) of the Allegation:

- Proved in relation to Paragraphs 1(b) and (c) of the Allegation; and
- Not proved in relation to Paragraphs 1(a), (d) and (e) of the Allegation.

Paragraph 2(b) of the Allegation – Sexual Motivation

66. The Tribunal adopted the definition of the phrase 'sexually motivated' from the High Court in the case of *Basson v GMC [2018] EWHC 505 (Admin)*. The guidance indicated that *'a sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship'*. To decide on the balance of probabilities whether

conduct was sexually motivated, the Tribunal was therefore required to consider Dr Srinivasan's state of mind at the time, which was something to be proved through inference or deduction from surrounding evidence, rather than through direct observation. The Tribunal acknowledged the need for proper scrutiny of all the evidence in order to determine whether a sexual motivation could be inferred, including weighing up the extent to which the evidence of the doctor's positive good character might be relevant to the issue of sexual motivation.

67. The Tribunal reminded itself that it found Patient A's evidence throughout these proceedings as persuasive and credible. It has found that Dr Srinivasan lifted Patient A's top up, without explanation and/or warning exposing her breasts and staring at it. The Tribunal was of the view that there was no clinical indication on why Dr Srinivasan would have exposed and stared at Patient A's exposed breasts, other than for his own sexual gratification. The Tribunal carefully considered Dr Srinivasan's good character, but was satisfied from the surrounding evidence and his behaviour on the day, that his actions were more likely than not to be sexually motivated.

68. The Tribunal had careful regard to its finding that Dr Srinivasan, in removing Patient A's trousers in order to take her femoral pulse, was acting in a way that may have been clinically indicated. The Tribunal was mindful of Patient A's evidence that none of her intimate regions were touched by Dr Srinivasan, but she did have a clear recollection of one side of her being touched, between her vagina and leg. In determining the issue, the Tribunal accepted that this was more likely than not Dr Srinivasan checking Patient A's femoral pulse or for a hernia. Whilst the Tribunal was mindful that Dr Srinivasan's actions could have been sexually motivated, because there was a clinical reason for removing Patient A's trousers and checking her femoral pulse, the Tribunal was not satisfied on the balance of probabilities that his conduct was sexually motivated.

69. Therefore, the Tribunal found Paragraph 2(b) of the Allegation:

- Proved in relation to Paragraphs 1(b) and (c) of the Allegation; and
- Not proved in relation to Paragraphs 1(d) and (e) of the Allegation.

Paragraphs 3 and 4 of the Allegation

70. The Tribunal had regard to the evidence before it as to Patient B and Dr Srinivasan's individual recollection of events of the Allegation. It gave careful attention to all of the evidence provided in support of the Allegation and that adduced on behalf of Dr Srinivasan, including that presented in the criminal proceedings. The Tribunal took care in establishing the respective credibility for the witnesses where there was conflict, examining the consistencies and inconsistencies in the accounts, in order to reach its determination on the factual matters.

71. Patient B had been feeling sick and vomiting for a couple of weeks. On 6 October 2016, she began vomiting blood and attended John Radcliffe Hospital, Oxford, where she was

examined by Dr Srinivasan. Patient B had recently moved to the UK from Romania and her command of English was poor, so she had a friend, Ms C, to attend the appointment with her to act as an informal interpreter. It is alleged that during this examination, Dr Srinivasan failed to offer Patient B a chaperone; that on one or more occasions he placed his hand on Patient B's pubic region; and that on one or more occasions Dr Srinivasan either inserted his fingers into Patient B's vagina or attempted to insert his fingers into Patient B's vagina during the examination. It is alleged that these actions were not clinically indicated and that they were sexually motivated.

72. Immediately following the incident, Patient B informed representatives of the hospital, who then contacted the police. A witness statement was taken from Patient B by the police, through an interpreter, on 7 October 2016. On 28 February 2018, Patient B provided a supplemental police witness statement.

73. The Tribunal had regard to the forensic evidence in this case. Patient A was subjected to a forensic examination on 6 October 2016 and various samples were provided by Dr Srinivasan. The results of the examinations were inclusive. The Tribunal noted the timing of the samples being taken, the fact that Patient B had been to the toilet between the incident and examination, she also changed her tampon. The Tribunal also noted that Dr Srinivasan stated he had washed his hands several times before samples were taken from him. The Tribunal therefore found the inconclusive result was of limited assistance in its consideration on Paragraphs 3 and 4 of the Allegation.

74. The Tribunal accepted that Patient B was ill at the time of the Allegation, she was new to the United Kingdom, having resided here for only around four to five months. Patient B was heavily reliant on her friend to communicate in English and, at the time of the Allegation, she was seeking medical assistance as she was anxious about her medical condition.

75. The Tribunal paid careful regard to the transcripts of Patient B's evidence during Dr Srinivasan's first and second criminal trials (dated 5 November 2018 and 20 May 2019 respectively). The Tribunal also considered Patient B's witness statement, made for the purposes of these proceedings, dated 13 November 2019, and her oral evidence.

76. Ms C was also present during the examination with Dr Srinivasan; the Tribunal took into account her initial witness statement, dated 6 October 2017, the evidence that she gave during Dr Srinivasan's first criminal trial on 6 November 2018, as well as her witness statement for the purposes of these proceedings, dated 13 October 2020, and her oral evidence.

77. The Tribunal also paid close attention to the chronology of events which were alleged to have occurred during the examination.

Patient B's Evidence

78. In her initial statement, made the day after the Allegation, Patient B stated that she first met Dr Srinivasan in a cubicle at the hospital where she was to be examined. She explained that Dr Srinivasan pulled Patient B's t-shirt up to below her breasts and began examining her abdomen. Ms C helped Patient B lower her trousers. Patient B stated that Dr Srinivasan pushed his hand down in her pubic region and he had put his hand under her trousers, placing his fingers inside her underwear. She stated that he was moving the fingers on his right hand around her clitoral area for 'around 10 minutes'. Patient B stated that the way she was lying on the examination bed meant that Ms C could see what Dr Srinivasan was doing the whole time.

79. Patient B then stated that a nurse came to take her blood, as Dr Srinivasan had already failed to take it twice. After the nurse left, Patient B then stated that Dr Srinivasan tried to examine her for a second time and he put his hand in her underwear again. She stated that she did not remember how long Dr Srinivasan touched her vagina and clitoris, but it was the same type of movement as the first examination. However, she stated that she felt Dr Srinivasan put one finger further down and he tried to put his finger inside her vagina. She stated that she felt her tampon being pushed further 'up inside me'. Patient B stated that she then realised that his whole hand was inside her underwear. Patient B stated that Ms C was embarrassed, and she moved to stand near a wall watching the examination in a mirror. She stated that at this point, Dr Srinivasan was shaking and she thought he was aroused. Following this, Patient B stated that she called after Ms C to get her attention and Dr Srinivasan 'got scared'. He then moved his hand away and said, 'you're ok now'.

80. The Tribunal was conscious of the lapse in time between the events at the hearing, and noted that that she had given evidence in the Crown Court twice, as well as before this Tribunal. The Tribunal noted several internal inconsistencies in the accounts provided by Patient B. Patient B's evidence was slightly unclear on when Dr Srinivasan was wearing gloves, describing them as being on at the start of the encounter but not during the physical examination. Her account varied on when the gloves were removed and whether the gloves were on at the time blood was being taken from her. Patient B was also mildly inconsistent in how far her trousers were down and what part of her underwear was visible.

81. A significant internal inconsistency was how long Patient B described first being touched for; this varied from the first statement she gave to the oral evidence before the Tribunal, describing 10 to 15 minutes and 5 to 10 minutes. When this was compared with other the GMC witness, Ms C, who described the first touch only lasting a few seconds. The Tribunal noted that Patient B described the incident as shocking and she was upset following her interaction with Dr Srinivasan, crying in the toilet. Patient B also gave her police statement in her first language, before it was translated into English. The Tribunal accepted that there were attempts made by Dr Srinivasan to take Patient B's blood, but that those attempts were unsuccessful. In this light, it considered that Patient B's perception of the events could have been warped due to the enormity of what had happened to her. Further, given Patient B's limited English language skills, the Tribunal was sympathetic given that she

had to recall events of two to three years earlier through an interpreter when she may have conflated events. The Tribunal was also mindful that witnesses' perceptions of time may vary, particularly when shocking or alarming events occur.

82. Patient B described the first incident being interrupted by the arrival of the nurse to complete the blood sample, before the nurse left and the examination continued. Regarding the second incident, Patient B was consistent in the manner of Dr Srinivasan touching her, moving his hand from her clitoral area to the entry of her vagina. She explained feeling his fingers near the entry of her vagina, but conceded that she could not be clear on how many fingers were used or whether the fingers were actually inserted into her vagina. Patient B was clear in her oral evidence, which was consistent with the other accounts, that she saw Dr Srinivasan shaking when he was touching her pubic region.

83. The Tribunal noted that, on neither the first nor second occasions did Patient B take any steps to stop or remove Dr Srinivasan's hand. However, it accepted that people may respond in a number of ways to surprising or shocking events. Furthermore, with a doctor conducting examinations on someone who is anxious about their health, a patient may not immediately respond in a particular or expected manner, given the shock of the events. The Tribunal therefore considered it was not obliged to make a finding as to why Patient B did not take Dr Srinivasan's hand away during the examination, save to note that she was likely to have been in some form of shock.

Ms C's Evidence

84. Patient B's evidence was supported – to a large extent – by that of Ms C. During this encounter, Ms C was acting as an interpreter for her friend, Patient B. Ms C's command of English was better than Ms B; she was able to converse with the hospital staff in 2016 and gave evidence in the Crown Court in English. In this hearing, Ms C requested the use of an interpreter explaining that she had become aware that she had not answered certain points correctly during the Crown Court trial. Ms C's oral evidence was noted to be largely consistent with her previous accounts. The Tribunal observed that she provided a clarification statement to the police on some issues during the Crown Court trial, but was also conscious that English was not her first language. Whilst the Tribunal noted some minor inconsistencies in the account provided by Ms C, the Tribunal did not consider these significant and they did not relate to the central issues in the case.

85. The significant difference between the accounts of Patient B and Ms C was the amount of time that Dr Srinivasan placed his hand inside Patient B's underwear on the first occasion. Patient B stated that it was for 5 – 15 minutes, whilst Ms C stated that it was a few seconds. On the second occasion, Ms C stated that Dr Srinivasan's hands were inside Patient B's underwear for 2 – 3 minutes. The Tribunal noted that in the other main areas – the fact that there were two incidents of Dr Srinivasan touching Patient B's pubic region, the lay out of the cubicle, the interruption by the nurse, the events on the second occasion and Dr Srinivasan shaking – both witnesses were consistent. The Tribunal found the duration of the first touching of the clitoral area difficult to resolve, but it was clearly more than inadvertent

and considering the effects that the touching must have had on Patient B, it did not undermine her evidence to the extent or impact her credibility. Both witnesses provided very similar accounts of the key issues in relation to the second incident and the surrounding events. Importantly, Ms C supported Patient A's evidence on Dr Srinivasan's fingers going into Patient B's underwear on the first occasion and his whole hand going inside on the second occasion.

86. The Tribunal noted that a complaint was made almost immediately and it had not identified any explanation as to why Patient B and Ms C would provide inaccurate evidence, or be mistaken in their separate, individual recollections.

Dr Srinivasan's Evidence

87. In his witness statement, Dr Srinivasan stated that he had a 'reasonably good recollection' of the consultation given that Patient B made her complaint shortly after. He stated that Patient B was able to walk into the cubicle unassisted, although she was 'plainly anxious' and her facial expression demonstrated 'worry and concern'. He stated that he struggled to obtain a sample of blood 'to the patient's obvious discomfort' unsuccessfully three times. He stated that he had to obtain the help of a nurse to extract the blood and his own confidence, at this point, had been undermined and he must have appeared 'flustered'. He stated that Patient B's abdominal examination took place in 'two halves' due to being interrupted by the nurse.

88. In his witness statement, in response to the Allegation, he stated:

> 'At no stage did I touch the patient's clitoris or put my finger into her vulva/vagina, either intentionally or accidentally. I cannot explain how she comes to believe I had done so. As explained above, my fingers will have crossed her knicker line and so may have been slightly under her knickers although I cannot recall this. Discussion was had at my criminal trial about the effect of her wearing a tampon as she was menstruating. As I told prosecution counsel under questioning, I have no knowledge or expertise as to what the effects of this may or could be. What I would say is that in my opinion, given the positioning of the patient, the fact that her legs were together, and her genitalia remained covered throughout, I think it would have been very difficult digitally to penetrate the patient. Furthermore, it was agreed evidence given in open court at my criminal trial that [Patient B]'s DNA was absent from my finger nail clippings taken the same day as the examination and also absent from low vaginal and high vulval swabs from [Patient B] also taken the same day'.

89. The Tribunal considered Dr Srinivasan's evidence that some part of his hand may have touched some part of Patient A's pubic bone. It also noted the expert evidence which stated that there was no reason for Dr Srinivasan to go below Patient B's pubic bone. The Tribunal noted that Dr Srinivasan could not be clear if his hands or fingers went inside Patient B's underwear, but he thought that this may have occurred. The Tribunal noted that the only mention of Patient B's underwear in the initial account provided by Dr Srinivasan on the day

of the incident was that the underwear was visible. The Tribunal was conscious that this was the second time, from the evidence before it, that Dr Srinivasan had been tasked to provide a detailed written account of events, following a concern being raised about his conduct. The Tribunal considered this omission important, as it was central to the issues under scrutiny and demonstrated a further example of Dr Srinivasan's evidence evolving – potentially to fit the evidence he was presented with. Furthermore, during his oral evidence, Dr Srinivasan accepted that his fingers could have passed over Patient B's underwear. Dr Srinivasan also accepted that he had examined Patient B twice and could have been shaking, as he has a tendency to do so when he is nervous, which was absent from his initial account. The Tribunal was conscious that Dr Srinivasan's evidence was otherwise largely consistent with that in his initial account, but was also aware that it was only comparing two previous accounts – not four as with Patient B. The Tribunal did not speculate on the contents of any evidence not before it, but noted that Dr Srinivasan confirmed he gave evidence on the same issues in both Crown Court trials.

90. The Tribunal was mindful of the need for cogent evidence before a factual finding could be found. Patient B and Ms C have provided clear and largely consistent accounts on the main factual differences between the GMC Allegation and Dr Srinivasan's account. The Tribunal heard evidence that Patient B and Ms C initially did not wish to involve the police – they were unfamiliar with United Kingdom police procedures and had limited command of English – but representatives of the hospital insisted. The Tribunal has also not been able to identify any explanation for how both Patient B and Ms C would be mistaken around the events, or why they would provide deliberately false accounts. The Tribunal was satisfied that the evidence in support of the Allegation was cogent.

91. The Tribunal considered that Dr Srinivasan's evidence was not persuasive; he gave different accounts on important issues and was unable to assist the Tribunal on significant points. The Tribunal also considered the chronology of events, in particular that Dr Srinivasan indicated in his first police interview that he had altered his practice and would ensure that he had a chaperone when conducting similar examinations to that with Patient A. The Tribunal was not convinced by Dr Srinivasan's account that he considered Ms C a chaperone in the circumstances and found this somewhat inconsistent with his comments in the January 2015 police interview. In the circumstances, Dr Srinivasan's actions, in not even considering the offer of a chaperone to Patient B, demonstrated an improbable disregard for his own professional practice.

92. The Tribunal considered whether the events described by Patient B were inherently improbable, paying close attention to issues raised by Dr Srinivasan; such as the facts that Patient B was menstruating, was with a friend and in an Accident and Emergency Department with several other people who might enter the cubicle at any time. The Tribunal was nevertheless satisfied that the events occurred as described by Patient B. She was new to the UK and was may have been perceived as being less likely to have raised any alarm. Her friend was present in the cubicle, but would not have seen the precise intimate touching as this occurred inside Patient B's underwear. Ms C had no apparent clinical knowledge and would not have known whether any form of the examination was clinically appropriate or

otherwise. Furthermore, whilst the Tribunal was conscious that the incident was alleged to have occurred over two occasions – with an unpredictable interruption by a nurse – it was accepted that the curtains were drawn and routine practice would have required the nurse to ask before entering, providing sufficient time for Dr Srinivasan to halt any inappropriate behaviour.

93. Having regard to the evidence before it, the Tribunal was satisfied that it was more likely than not that Dr Srinivasan touched the clitoral area on two occasions. In touching Patient B's clitoral area, he has placed his hand – or part of it – on Patient B's pubic region. The Tribunal generally accepted Patient B's account of the events, although it found the first incident lasted for a shorter period of time than Patient B suggested and considered that Ms C's account – that the first time Dr Srinivasan's fingers were in Patient B's underwear was for a few seconds – was more likely than not to have occurred. The Tribunal was satisfied that this was more than an inadvertent touch.

94. In determining the issue of whether Dr Srinivasan's fingers were inserted into Patient B's vagina, the Tribunal was mindful of Patient B's evidence, where she stated on the second occasion, he 'attempted' and 'tried' to insert his fingers. Ms C corroborated this account to an extent in describing seeing Dr Srinivasan's whole hand inside Patient B's underwear. In analysing the evidence, the Tribunal was not satisfied that Dr Srinivasan's fingers were either wholly or partly inserted into Patient B's vagina, but was satisfied on the balance of probabilities that Dr Srinivasan's actions represented a clear and unequivocal attempt to do so due to the sensation that Patient B felt and the duration of the incident described.

Paragraph 3(a) of the Allegation

95. The expert witnesses agreed that a chaperone was not obligatory for the proposed examination of Patient B. The Tribunal therefore concluded that a chaperone was not required and found Dr Srinivasan had not failed to offer Patient B a chaperone.

96. Therefore, the Tribunal found Paragraph 3(a) of the Allegation not proved.

Paragraph 3(b) of the Allegation

97. The Tribunal had regard to the chronology of events which were alleged to have occurred during the examination.

98. After balancing all the evidence, the Tribunal preferred Patient B's evidence of the events to that of Dr Srinivasan, and therefore found it was more likely than not that Dr Srinivasan, on one or more occasions, placed his hand on Patient B's pubic region.

99. Therefore, the Tribunal found Paragraph 3(b) of the Allegation proved.

Paragraphs 3(c) and (d) of the Allegation

100. During his oral evidence, Ms Barlow asked Dr Srinivasan if there was anything that occurred during the examination that would have caused Patient B to feel the sensation of him inserting his fingers into her vagina. Dr Srinivasan responded that he did not think so.

101. The Tribunal, as outlined in its reasoning above, was not satisfied, based on the evidence before it that Dr Srinivasan inserted his fingers into Patient B's vagina. However, the Tribunal has determined that Dr Srinivasan's fingers were inside Patient B's underwear and that he touched Patient B's clitoral area, in her pubic region.

102. The Tribunal concluded that on the second occasion Dr Srinivasan placed his hand further in Patient B's underwear and on the balance of probabilities, it was likely that Dr Srinivasan attempted to insert his fingers into Patient B's vagina during the examination. However, for the reasons provided above, there is insufficient evidence before the Tribunal that Dr Srinivasan did in fact insert his fingers into Patient B's vagina during the examination.

103. Therefore, the Tribunal found:

- Paragraph 3(c) of the Allegation not proved; and
- Paragraph 3(d) of the Allegation proved.

Paragraph 4(a) of the Allegation

104. The Tribunal was satisfied that there was clear and cogent evidence which suggested that Dr Srinivasan that on one or more occasions placing his right hand on Patient B's pubic region and attempted to insert his fingers into her vagina, during the examination. Patients and the public expect doctors to respect a patient's boundaries and dignity during the course of clinical examinations and not to conduct intimate examinations in the manner described. The expert evidence was unequivocal that neither of these acts was not clinically indicated – an issue that was accepted by the GMC and on behalf of Dr Srinivasan. On that basis, the Tribunal was therefore satisfied that the conduct was not clinically indicated.

105. Therefore, the Tribunal found Paragraph 4(a) of the Allegation proved in relation to Paragraphs 3(b) and (d) of the Allegation.

Paragraph 4(b) of the Allegation

106. The Tribunal had careful regard to all the evidence before it, reminding itself of the need to consider each allegation separately and of Dr Srinivasan's good character. However, having found that Dr Srinivasan, on one or more occasions, had placed his hand on Patient B's pubic region, and on one or more occasions he attempted to insert his fingers into Patient B's vagina during the examination, which was not clinically indicated, the Tribunal considered whether his conduct was sexually motivated. Dr Srinivasan has always denied that he behaved in the manner described by Patient B and it was recognised on behalf of Dr Srinivasan that if Patient B's evidence was accepted, then the actions were likely to have been sexually motivated. Patient B and Ms C described Dr Srinivasan as shaking when he was

touching Patient B and she inferred that he was aroused. The Tribunal was not able to identify any other reason for Dr Srinivasan's behaviour and, having considered all of the evidence in the case, was satisfied that it was more likely than not that his actions were for his own sexual gratification and were sexually motivated.

107. Therefore, the Tribunal found Paragraph 4(b) of the Allegation proved in relation to Paragraphs 3(b) and (d) of the Allegation.

Overview

108. For the reasons already provided, the Tribunal was satisfied that the events happened as described by the individual patients, having appraised the evidence and considered each allegation separately. However, in addition to the above findings, the Tribunal took an holistic view of the allegations made by Patients A and B. The Tribunal noted some similarities in the allegations: both were young women, who exhibited various vulnerabilities and no other hospital staff member was present when Dr Srinivasan purported to perform abdominal examinations. It was accepted between the parties that there was no evidence of collusion or interference between Patients A and B, who are entirely unknown to each other and live in separate geographic locations. The Tribunal considered it unlikely that two separate people would either be mistaken or make false allegations against the same clinician in similar circumstances in a comparatively short time period. The Tribunal was satisfied that this enhanced the probability that the Allegation occurred as it had found.

109. The Tribunal also concluded that the events represented an escalation in behaviour by Dr Srinivasan, who having exposed and stared at Patient A's breasts, showed a further propensity to act in a sexually motivated manner with regards to Patient B. The Tribunal considered the facts found demonstrated Dr Srinivasan had a tendency to commit similar conduct, in acting with sexual motivation in touching Patient B's pubic region and attempting to insert his fingers in her vagina.

The Tribunal's Overall Determination on the Facts

110. The Tribunal has determined the facts as follows:

1. On or around the 24 October 2014, you undertook an examination of Patient A at Addenbrooke Hospital and you:

    a. failed to offer Patient A a chaperone;
    Determined and not proved

    b. lifted Patient A's top, exposing her breasts without explanation and/or warning;
    Determined and found proved

c. stared at Patient A's exposed breasts;
Determined and found proved

d. pulled down Patient A's trousers;
Determined and found proved

e. took a femoral pulse.
Determined and found proved

2. Your actions at paragraphs:

a. 1b-e were not clinically indicated;
Determined and found proved in relation to:
Paragraph 1(b) and (c) of the Allegation

Determined and not proved in relation to:
Paragraphs 1(d) and (e) of the Allegation

b. 1a-e were sexually motivated.
Determined and found proved in relation to:
Paragraphs 1(b) and (c) of the Allegation

Determined and not proved in relation to:
Paragraphs 1(a), (d) and (e) of the Allegation

3. On 6 October 2016, at the Emergency Department at John Radcliffe Hospital you undertook an examination of Patient B and you:

a. failed to offer Patient B a chaperone;
Determined and not proved

b. on one or more occasions placed your hand on Patient B's pubic region; **Determined and found proved**

c. on one or more occasions inserted your fingers into Patient B's vagina during the examination;
Determined and not proved

d. in the alternative to Paragraph 3c on one or more occasions you attempted to insert your fingers into Patient B's vagina during the examination.
Determined and found proved

4. Your actions at paragraphs:

a. 3b-3c/3d were not clinically indicated;
Determined and found proved in relation to:
Paragraphs 3(b) and (d) of the Allegation

Determined and not proved in relation to:
Paragraph 3(c) of the Allegation

b. 3a-c/d were sexually motivated.
Determined and found proved in relation to:
Paragraphs 3(b) and (d) of the Allegation

Determined and not proved in relation to:
Paragraphs 3(a) and (c) of the Allegation

Determination on Impairment - 25/05/2021

1. 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 Srinivasan's fitness to practise is impaired by reason of misconduct.

The Outcome of Applications Made during the Impairment Stage

2. The Tribunal granted the GMC's application, made pursuant to Rule 31 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to proceed in the absence of Dr Srinivasan. The Tribunal's full decision on the application is included at Annex A.

The Evidence

3. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received further evidence as follows.

4. The Tribunal had regard to the further documentary evidence provided on behalf of Dr Srinivasan. This evidence included but was not limited to:

- Testimonials on behalf of Dr Srinivasan;
- 360-degree feedback;
- Placement feedback.

- Details of Dr Srinivasan's Interim Order Tribunal orders of suspension and conditions;
- End of placement reports; and
- Documents relating to teaching that Dr Srinivasan has delivered and academic prizes.

Submissions

5. On behalf of the GMC, Ms Barlow submitted that Dr Srinivasan's fitness to practise is impaired by reason of misconduct.

6. Ms Barlow reminded the Tribunal of the two-stage process to be adopted regarding misconduct and impairment. Ms Barlow submitted that, as a medical student, Dr Srinivasan had exposed and stared at the breasts of Patient A and his actions were sexually motivated. Two years later, during the course of an examination of Patient B, Dr Srinivasan placed his hand on Patient B's pubic bone and attempted to insert his fingers into her vagina. His actions in this regard were sexually motivated. Ms Barlow submitted that this actions clearly amount to misconduct. She submitted that Dr Srinivasan's conduct would be regarded as deplorable by fellow practitioners. She referred the Tribunal to Good Medical Practice (2013 edition) ('GMP') and submitted that Dr Srinivasan's actions constituted a serious departure from the expected standards.

7. In relation to impairment, Ms Barlow submitted that there is a risk of repetition in this case. She submitted that, irrespective of the hospital and police investigations into the incident with Patient A, Dr Srinivasan repeated and escalated his misconduct. She submitted that the Tribunal cannot be satisfied that Dr Srinivasan will not behave in the same way in the future.

8. Ms Barlow submitted that a finding of impairment is necessary to reaffirm to the public and doctors the standard of conduct expected of medical practitioners. She invited the Tribunal to conclude that, given the seriousness of the misconduct in this case, it must be marked by a finding of current impairment.

9. Whilst Dr Srinivasan was not in attendance, the Tribunal had regard to a letter sent to the GMC and MPTS by his representatives, dated 20 May 2021 which stated:

> *'Dr Srinivasan denied the allegations that were found proved at the conclusion of Stage 1 of these proceedings. He maintains that denial, and is currently contemplating an appeal, subject to advice and further consideration. Consequently, we make no submissions on his behalf upon either misconduct or impairment.'*

The Relevant Legal Principles

10. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone.

11. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct, and then whether the finding of that misconduct which was serious, could lead to a finding of impairment.

12. The Tribunal must determine whether Dr Srinivasan's fitness to practise is impaired today, taking into account Dr Srinivasan's conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

13. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the Fifth Shipman Report, as adopted by the High Court in *CHRE v NMC and Paula Grant [2011] EWHC 297 Admin.* In particular, the Tribunal considered whether its findings of fact showed that Dr Srinivasan's fitness to practise is impaired in the sense that he:

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

The Tribunal's Determination on Impairment

Misconduct

14. The Tribunal first considered whether Dr Srinivasan's actions, as set out in the Allegation, amounted to misconduct.

15. The Tribunal had regard to its earlier findings. As a medical student, Dr Srinivasan had exposed and stared at Patient A's breasts under the guise of a medical examination. The Tribunal has already determined that his actions in relation to Patient A were sexually motivated. Two years later as an FY1 doctor, the Tribunal found that, during an examination

of Patient B, Dr Srinivasan placed his hand on Patient B's pubic region and attempted to insert his fingers into her vagina. The Tribunal has already determined that his actions in relation to Patient B were sexually motivated.

16. The Tribunal was mindful of the fact that, after the incident with Patient A, Dr Srinivasan had undergone both hospital and criminal investigations. Notwithstanding these investigations, the Tribunal was of the view that Dr Srinivasan had not modified his practice to prevent a similar incident from happening again. The Tribunal considered that Dr Srinivasan had opportunistically targeted two vulnerable young women, demonstrating escalating behaviour.

17. The Tribunal also had regard to GMP and considered that the following paragraphs were engaged in this case:

> *'1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.*
>
> *65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession'*

18. The Tribunal took the view that Dr Srinivasan's conduct did breach the paragraphs in GMP it has identified. In all the circumstances, the Tribunal determined that Dr Srinivasan's conduct would be considered as deplorable by fellow practitioners. It concluded that his conduct did fall far short of the standards of conduct reasonably expected of a doctor and amounted to misconduct which was serious.

Impairment

19. The Tribunal having found that the facts found proved amount to misconduct, went on to consider whether, as a result of that misconduct, Srinivasan's fitness to practise is currently impaired.

20. In determining whether Dr Srinivasan's fitness to practise is currently impaired, the Tribunal considered whether there was any evidence of insight or remediation on the part of Dr Srinivasan and whether there was a likelihood of him repeating his misconduct in the future.

21. The Tribunal had regard to the letter from Dr Srinivasan's representatives, as set out above. The Tribunal was conscious that Dr Srinivasan maintained the denials to the Allegation, but it had not received evidence of insight or any steps that Dr Srinivasan has taken to remediate his misconduct. Therefore, there was no material on which a determination could be made.

22. The Tribunal took into account the lapse of time since Dr Srinivasan's misconduct. It acknowledged that, at the time of his misconduct Dr Srinivasan was in the early stages of his career and there has been no indication that there has been any repetition of his misconduct since October 2016. However, given Dr Srinivasan's periods of suspension and conditional registration since the incidents, the Tribunal was mindful that he has not had a period of unrestricted practice where he has been able to demonstrate that he can practise without any repetition of the misconduct. Notwithstanding the lapse of time since the incidents, the Tribunal determined that his misconduct was not an isolated incident and, given the serious nature of his misconduct, the Tribunal concluded that a risk of repetition remained.

23. Given the nature of its findings and their seriousness, the Tribunal was satisfied that, the need to promote and maintain public confidence in the medical profession and the need to promote and maintain proper professional standards and conduct for members of the profession would be undermined if a finding of impairment were not made in this case.

24. Accordingly, the Tribunal determined that Dr Srinivasan's fitness to practise is impaired by reason of his misconduct.

Determination on Sanction - 26/05/2021

1. Having determined that Dr Srinivasan's fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

The Evidence

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

Submissions

3. On behalf of the GMC, Ms Barlow submitted that the appropriate and proportionate sanction in this case is to erase Dr Srinivasan's name from the Medical Register.

4. Ms Barlow referred the Tribunal to the relevant paragraphs of the Sanctions Guidance (November 2020 edition) ('the SG'). She reminded the Tribunal that Dr Srinivasan's sexual misconduct involved two young and vulnerable patients. He had breached his position of trust as a doctor. Whilst Ms Barlow accepted that Dr Srinivasan was entitled to deny the allegations made against him, she reminded the Tribunal of its earlier finding that there remains a risk of repetition in this case.

5. Ms Barlow acknowledged that the Tribunal should have regard to any mitigating factors that it thinks are appropriate.

6. Ms Barlow submitted that Dr Srinivasan's actions constitute a serious departure from the standards expected of a doctor. Further, she submitted that Dr Srinivasan's misconduct is fundamentally incompatible with continued registration and that because of the risk of repetition, a sanction of suspension would not go far enough. Consequently, she submitted that the only appropriate sanction in this case in order to uphold public confidence in the profession and maintain proper professional standards is that of erasure.

7. Whilst Dr Srinivasan was not in attendance, the Tribunal had regard to a letter sent to the GMC and MPTS by his representatives, dated 20 May 2021 which stated:

> *'Again, Dr Srinivasan denied the allegations that were found proved at the conclusion of Stage 1 of these proceedings. He maintains that denial, and is currently contemplating an appeal, subject to advice and further consideration. Consequently we make no submissions on his behalf upon sanction.'*

The Tribunal's Determination on Sanction

8. The decision as to the appropriate sanction, if any, to impose in this case is a matter for the Tribunal exercising its own judgment. In reaching its decision, the Tribunal has taken GMP and the SG into account and borne in mind the overarching objective.

9. The Tribunal reminded itself that the main reason for imposing any sanction is to protect the public and that sanctions are not imposed to punish or discipline doctors, even though they may have a punitive effect. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Srinivasan's interests with the public interest.

10. The Tribunal has already given a detailed determination on facts and impairment and it has taken those matters into account during its deliberations on sanction.

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

Mitigating Factors

12. The Tribunal considered the following to be mitigating factors:

- During the course of these proceedings, through his representative, Dr Srinivasan made apologies to patients A and B for any distress he caused them;
- The significant lapse of time since the incidents;
- The workplace assessments provided on behalf of Dr Srinivasan demonstrate that there are no deficiencies in other areas of his practice; and

- The testimonials received in support of Dr Srinivasan demonstrate that he is a well-regarded clinician.

Aggravating Factors

13. The Tribunal considered the following to be aggravating factors:

- Dr Srinivasan's misconduct included sexually motivated behaviour with more than one vulnerable young patient;
- Dr Srinivasan failed to change his practice following the incident with Patient A in 2014 and that with Patient B in October 2016, instead displaying escalating behaviour;
- The sexual misconduct occurred in the context of Dr Srinivasan's practice as a doctor under the guise of medical examinations; and
- Dr Srinivasan abused his position of trust as a doctor.

Insight and remediation

14. The Tribunal acknowledged that Dr Srinivasan is entitled to maintain his denial of the allegations made against him. The Tribunal noted that it has not received any evidence that Dr Srinivasan has insight into the sexual misconduct, although this was consistent with his continued denials. However, the Tribunal was of the view that Dr Srinivasan could have appreciated or acknowledged that others have clearly perceived him to have behaved inappropriately. The Tribunal therefore considered that, in light of the Allegation, there were potential steps that Dr Srinivasan could have made to remediate, such as attending a professional boundaries course. The Tribunal was concerned that notwithstanding his denials, Dr Srinivasan has not provided any evidence of personal reflection or remediation. The Tribunal has already determined that there remains a risk of Dr Srinivasan repeating his behaviour.

No Action

15. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Srinivasan's case, the Tribunal first considered whether to conclude the case by taking no action.

16. The Tribunal considered that there are no exceptional circumstances in which it might be justified in taking no action against Dr Srinivasan's registration. The Tribunal determined that in view of its findings on impairment, it would not be sufficient, proportionate or in the public interest, to conclude this case by taking no action.

Conditions

17. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Srinivasan's registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

18. The Tribunal was conscious that Dr Srinivasan has abided by the interim conditions imposed upon him for some time. However, the Tribunal is of the opinion that a period of conditional registration would not adequately reflect the serious nature of Dr Srinivasan's sexual misconduct, nor could conditions be devised that would protect the public interest and maintain public confidence in the medical profession.

19. The Tribunal has, therefore, determined that it would not be sufficient to direct the imposition of conditions on Dr Srinivasan's registration at this time.

Suspension

20. The Tribunal next considered whether a sanction of suspension would be appropriate.

21. The Tribunal had regard to paragraph 92 of the SG:

> *'92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration…'*

22. The Tribunal also had regard to paragraphs 148 and 150 of the SG,

> *'148 More serious action, such as erasure, is likely to be appropriate where a doctor has abused their professional position and their conduct involves predatory behaviour or a vulnerable patient or constitutes a criminal offence.*
>
> *150 Sexual misconduct seriously undermines public trust in the profession. The misconduct is particularly serious where there is an abuse of the special position of trust a doctor occupies, or where a doctor has been required to register as a sex offender. More serious action, such as erasure, is likely to be appropriate in such cases.'*

23. Dr Srinivasan misconduct concerned sexually motivated behaviour towards two patients which were committed under the guise of medical examinations. The Tribunal considered the misconduct to be serious, an abuse of trust and showed disregard for fundamental tenets of the medical profession.

24. In all the circumstances, the Tribunal determined that Dr Srinivasan's conduct was fundamentally incompatible with continued registration. Given the seriousness of Dr Srinivasan's misconduct and the risk of repetition, it concluded that an order of suspension would not adequately maintain public confidence in the profession or uphold proper professional standards for members of the profession. The Tribunal concluded that it would therefore not be sufficient or appropriate to suspend Dr Srinivasan's registration.

Erasure

25. The Tribunal considered whether it would be appropriate and necessary to erase Dr Srinivasan's name from the Medical Register.

26. The Tribunal took into account paragraph 108 of the SG:

> *'108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor'*

27. The Tribunal considered paragraph 109 of the SG and concluded 109a, d, e, and i all apply in this case:

> *'109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive)*
>
> *a A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.*
> *…*
> *d Abuse of position/trust (see Good medical practice, paragraph 65: 'You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession')*
> *…*
> *e Violation of patient's rights/ exploiting vulnerable people…*
> *…*
> *i Putting their own interests before those of their patients …'*

28. The Tribunal determined that Dr Srinivasan's behaviour was a particularly serious departure from the principles set out in GMP which seriously undermined public confidence in the profession and was fundamentally incompatible with continued registration. Whilst the Tribunal acknowledged that Dr Srinivasan was at the early stages of his career when these incidents occurred, it reminded itself that the reputation of the profession as a whole is more important than the interests of an individual doctor. Dr Srinivasan also remained a risk of

repeating the behaviour. Given its findings, the Tribunal determined that a lesser sanction than erasure would not sufficiently maintain public confidence in the profession and uphold proper professional standards for members of the profession.

29. In all the circumstances, the Tribunal therefore concluded that it was necessary and proportionate to direct that Dr Srinivasan's name be erased from the Medical Register.

Determination on Immediate Order - 26/05/2021

1. Having determined to erase Dr Srinivasan's name from the Medical Register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Srinivasan's registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Ms Barlow submitted that an immediate order is necessary in this case. She referred to the Tribunal's earlier findings, including the finding of sexual misconduct, and submitted that an immediate order was necessary to maintain public confidence in the medical profession.

3. Ms Barlow acknowledged Dr Srinivasan's current working responsibilities, but she stated that Dr Srinivasan has been aware of the possible outcomes of this hearing for some time and submitted that there has been adequate time for arrangements to be put in place.

4. Ms Barlow invited the Tribunal to revoke the interim order that is currently in place on Dr Srinivasan's registration.

5. Whilst Dr Srinivasan was not in attendance, the Tribunal had regard to the letter sent to the GMC and MPTS by his representatives, dated 20 May 2021. It was submitted that an immediate order for suspension is unnecessary as both the protection of patients and the preservation of the public interest can be adequately maintained by the existing conditions. The letter outlined that a continuation of the existing interim order of conditions would preserve the current position and enable Dr Srinivasan to remain in his present employment, during which time patients and the public interest would be adequately protected, in accordance with the overarching objective.

The Tribunal's Determination

6. In reaching its decision, the Tribunal has exercised its own judgment, and has taken account of the principle of proportionality, balancing Dr Srinivasan's interest with the public interest.

7. The Tribunal had careful regard to the submissions made by parties and to the SG. It considered the following paragraphs to be of the most relevance:

> *'172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.*
>
> *173 An immediate order might be particularly appropriate in cases … where immediate action must be taken to protect public confidence in the medical profession.'*

8. The Tribunal acknowledged that Dr Srinivasan has complied with the current interim conditions on his registration. It noted that he has been working in a non-clinical role which does not involve any face-to-face contact with patients. Whilst the interim conditions could mitigate any patient safety concerns in this case and it is regrettable that the hearing has taken some time to conclude, the Tribunal was of the view that the seriousness of the misconduct found meant that it was necessary to impose an immediate order on his registration. This is necessary in order primarily to maintain public confidence in the profession as well as patient safety due to the risks posed.

9. This means that Dr Srinivasan registration will be suspended from when notification is deemed to have been served. The substantive direction, as already announced, will take effect 28 days from when written notice of this determination has been served upon Dr Srinivasan unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

10. The interim order currently imposed on Dr Srinivasan's registration will be revoked when the immediate order takes effect.

11. That concludes this case.

Confirmed
Date 26 May 2021 Mr Nicholas Flanagan, Chair

DETERMINATION ON: INTERIM ORDER – 18/03/2021

XXX

Annex A - Application on Proceeding in Absence – 25/05/2021

1. The Tribunal has reconvened to continue its consideration of Dr Srinivasan's case. Dr Srinivasan is neither present nor represented. The Tribunal considered, in accordance with Rule 31 of the Rules, whether to proceed with the case in his absence.

2. On behalf of the GMC, Ms Barlow submitted that Dr Srinivasan was present and represented at the hearing when it adjourned in March 2021 and was aware of the agreed dates to reconvene. She submitted that Dr Srinivasan had voluntarily absented himself from today's hearing and has chosen to no longer participate. Further, she submitted that it is in the public interest to proceed in his absence.

3. The Tribunal was mindful that the discretion to proceed in Dr Srinivasan's absence should be exercised with utmost care and caution and with regard to the overall fairness of the proceedings.

4. The Tribunal noted the letter, dated 20 May 2021, sent to the GMC/MPTS from Srinivasan's legal representatives which states that, *'Neither Dr Srinivasan nor his representatives will be attending the review hearing, which he is content should proceed in his absence'.* The letter went on to provide written submissions in relation to misconduct, impairment, sanction and immediate order.

5. On the basis of the information provided, the Tribunal was satisfied that Dr Srinivasan is aware of today's hearing, has not requested an adjournment and is content for the Tribunal to proceed in his absence. Whilst Dr Srinivasan's counsel, Mr Haycroft had previously indicated a potential diary clash, the Tribunal was of the view that Dr Srinivasan had been made aware of the dates to reconvene and it was a matter for him to decide whether to instruct alternative counsel. The Tribunal is satisfied that Dr Srinivasan has therefore voluntarily absented himself. There is no indication that were it to adjourn today, that he would attend a future hearing.

6. The proceedings go back to events in 2014 and 2016 and the Tribunal determined that it is in the public interest and in Dr Srinivasan's own interests to proceed with the case in his absence.

7. Therefore, in accordance with Rule 31, the Tribunal has determined that in the particular circumstances of this case it is fair and reasonable to proceed in Dr Srinivasan's absence.