

PUBLIC RECORD

Dates: 17/10/2022 - 28/10/2022
22/05/2023 – 25/05/2023

Medical Practitioner's name: Dr Arindam BASU

GMC reference number: 6062430

Primary medical qualification: MB BS 1998 Calcutta

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

Summary of outcome
Suspension, 1 month.

Tribunal:

Legally Qualified Chair	Mr Christopher Harper
Lay Tribunal Member:	Mr Andrew Waite
Medical Tribunal Member:	Dr Vivek Sen
Tribunal Clerk:	Mr Matt O'Reilly

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Tom Day, Counsel, instructed by the MDU
GMC Representative:	Ms Chloe Fordham, 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 - 27/10/2022

Background

1. Dr Basu is a Consultant in XXX for the XXX ('the Trust') at XXX ('the Hospital'). In 1988, Dr Basu graduated from the University of Calcutta, India and has the qualifications of MBBS, XXX. In 2004, he moved to the UK and completed his Higher Specialty Training XXX. Dr Basu has worked in Swindon, the Isle of Wight and Dorset. His Core Training XXX was undertaken at Basildon University Hospital, and he completed his Higher Specialty Training in London Hospitals; XXX Hospital, West Middlesex University Hospital, St Mary's Hospital, Charing Cross Hospital, Chelsea and Westminster Hospital and the Whittington Hospital.
2. In 2015, Dr Basu became a Locum Consultant in XXX and accepted a substantive Consultant post at the Hospital in 2017. Whilst in this post, Dr Basu has been the XXX Department Lead for XXX from October 2015 to May 2020, XXX Director for the Trust from April 2016 to December 2019, and a Staff Governor from February 2017 to February 2020. He is currently the XXX Training Lead and the Lead for training Middle Grade doctors. Dr Basu has also served as a Consultant Representative on the Trust People Forum from June 2021 to March 2022. Dr Basu is also the Consultant lead on two Quality Improvement Projects within the Department aimed at improving the Time to First Clinician contact and the universal testing for blood borne viruses in the XXX at the Trust.
3. The matters surrounding the Allegation which has led to these proceedings can be summarised as: Ms A, XXX, started working at the Hospital in XXX. She and Dr Basu first began speaking to each other at XXX on XXX. They began messaging each other via Facebook Messenger shortly afterwards.
4. During January 2020 a friendship between Dr Basu and Ms A developed and they continued messaging. Between 28 January 2020 and 30 April 2020, and in two instances in December 2020 and January 2021, it is alleged that Dr Basu's conduct, both in relation to his messaging and personal interactions with Ms A, amounted to harassment, as defined in Section 1(1) Protection from Harassment Act 1997. This alleged harassment included, in broad terms, indicating that he loved Ms A, persistent and repeated messaging, asking where she was, what she was doing, seeking to meet up with her, and coordinating his work such that he would spend time with her in the work environment.

5. On 29 January 2020 Ms A made a complaint to Human Resources about Dr Basu’s conduct on that day following a conversation they had the day before. Dr Basu was informed by a letter the next day that the claims against him would be investigated, and that a formal investigation was likely to follow. He was told to interact with Ms A in a purely professional manner if he saw her at work. On 18 February 2020, Dr Basu was informed of a formal investigation. A restriction was placed on his clinical duties such that XXX. He was told not to contact Ms A and, if he came into contact with Ms A at work, interact with her in a purely professional manner. It is alleged that Dr Basu continued to contact Ms A after each of those letters.

6. In early March 2020, a Trust investigation into Dr Basu’s conduct towards Ms A was undertaken. The first Trust investigation report was published on 22 April 2020.

7. Following the conclusion of the initial Trust investigation, it is alleged that Dr Basu’s behaviour towards Ms A began to return to the level of contact he had previously.

8. Ms A made a further complaint about Dr Basu’s ongoing conduct towards her, and a second Trust investigation was undertaken. The Trust wrote to Dr Basu on 10 April 2020 informing him that further concerns had been raised that he had continued to contact Ms A when he was instructed not to do so. That letter also restricted when he was to be on site and required him not to work in the same areas as Ms A, or to contact her. Whilst this investigation was ongoing, Dr Basu was excluded from the Trust in May 2020. The Trust Investigation report was published on 8 July 2020. Dr Basu returned to work at the end of November 2020. Dr Basu was instructed not to contact Ms A on his return.

9. It is further alleged that on or around 31 December 2020, Dr Basu insisted that Ms A carry out an abdominal examination on a patient in the Clinical Decisions Unit, despite Ms A telling Dr Basu the patient was in too much pain, or words to that effect, and that on or around 1 January 2021, Dr Basu left chocolates for Ms A at work.

10. The letter of 10 April 2020 informed Dr Basu that he was to be referred to the GMC.

The Outcome of Applications Made during the Facts Stage

11. At the outset of the hearing Ms Chloe Fordham, Counsel on behalf of the GMC, made an application pursuant to XXX of the General Medical Council (Fitness to Practise) Rules 2004 (‘the Rules’), in respect of XXX. Mr Tom Day, Counsel on behalf of Dr Basu, objected to the application. The Tribunal rejected the application. The Tribunal’s full written decision can be found at Annex A.

12. On Day 4 of the hearing, Ms Fordham made an application pursuant to Rule 17(6) of the Rules, to amend paragraph 3a of the Allegation. Mr Day opposed the application. The Tribunal determined to grant the application. The Tribunal’s full written decision can be found at Annex B.

13. On Day 6 of the hearing, the Tribunal invited submissions in relation to a proposed amendment to the stem of paragraph 6 of the Allegation from 'On 31 March 2020, to, 'On or around 31 March 2020' as the evidence for the GMC is unclear on the date of the incident alleged, and Dr Basu's records indicate it was on 29 March 2020. Neither Ms Fordham nor Mr Day made any objection to the proposed amendment. The Tribunal was satisfied the amendment could be made without any injustice to either party. It therefore determined to amend paragraph 6 as proposed.

14. At the same time, the Tribunal invited submissions on amending paragraph 2d of the Allegation where it reads 'and', to amend it to 'and/or', to avoid a situation where the charge would fail on a technicality if only one of the two elements alleged was proved. Mr Day made no objection to the proposed amendment, accepting that it made no difference to how his case had been presented, and therefore cause no injustice. The amendment was therefore made.

The Allegation and the Doctor's Response

15. The Allegation made against Dr Basu is as follows:

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

1. You are employed as a Consultant in the XXX Department at XXX Hospital. **Admitted and found proved**
2. On 28 January 2020 during work hours you:
 - a. put your car keys into Ms A's pocket without her realising; **To be determined**
 - b. told Ms A to check her pockets before she left work; **To be determined**
 - c. told MS A to wait in your car after work; **To be determined**
 - d. told Ms A that you were having 'XXX' and/or that you 'loved' Ms A or words to that effect. **To be determined**
3. On 29 January 2020 you:
 - ~~a. repeatedly messaged Ms A on Facebook asking her where she was before her shift;~~
 - a. repeatedly messaged Ms A on Facebook asking her
 - i. where she was; **To be determined**
 - ii what she was doing; **To be determined**

- b. asked her to sit next to you in the XXX, and when she declined you moved your chair to sit next to her; **To be determined**
 - c. asked Ms A ‘why do you not like me’ and ‘why do you not want a relationship with me’ or words to that effect; **To be determined**
 - d. when Ms A refused to answer your questions at 3c above you persisted with the line of questioning; **To be determined**
 - e. insisted Ms A look at you and raised your voice, causing Ms A to leave the XXX upset; **To be determined**
 - f. approached Ms A in the carpark and when she told you to ‘leave her alone’ or words to that effect you:
 - i. continued to follow her; **To be determined**
 - ii. grabbed her arm; **To be determined**
 - iii. followed her back into the hospital when she ran away from you shouting at her to wait; **To be determined**
 - iv. waited for her near the management office. **To be determined**
4. On 30 January 2020 you were told by your Medical Director not to contact Ms A, but you repeatedly contacted Ms A as detailed in Schedule 1. **Admitted and found proved**
5. On 18 February 2020 you were told by your Medical Director to re-organise your rota so that you were not working the same shift as Ms A. **Admitted and found proved**
6. On or around 31 March 2020 you went to the zone Ms A was working in and you:
- a. burst into tears in front of Ms A; **To be determined**
 - b. told her your ‘XXX’ or words to that effect; **To be determined**
 - c. told her that you thought you ‘should leave the Trust’ or words to that effect. **To be determined**
7. In April 2020 on more than one occasion you took your breaks to coincide with Ms A’s breaks. **To be determined**
8. On 1 April 2020 you sent an email to Ms A and you said ‘can I please expect that for old time’s sake you will keep this confidential and not share this with anyone’. **Admitted and found proved**

9. On 10 April 2020 your Medical Director reminded you by letter that you were to refrain from contact with Ms A and specified all activity you must not do as detailed in Schedule 2. **Admitted and found proved**
10. On 25 April 2020 when Ms A was due to finish her shift you:
- a. were waiting around for Ms A to finish; **To be determined**
 - b. told Ms A that you wanted to talk to her or words to that effect.
To be determined
11. On 30 April 2020 you:
- a. went with Ms A to collect COVID Testing Swabs from the maternity ward when she told you not to go along; **To be determined**
 - b. waited outside the ward whilst she went in to collect the swabs;
To be determined
 - c. went to do a patient transfer with Ms A when she told you not go along or words to that effect. **To be determined**
12. On or around 31 December 2020 you insisted that Ms A carry out an abdominal examination on a patient in the Clinical Decisions Unit, despite Ms A telling you the patient was in too much pain or words to that effect. **To be determined**
13. On or around 1 January 2021 you left chocolates for Ms A at work.
To be determined
14. Your behaviour at paragraphs 2-4, 6-8, and 10-12 amounted to harassment, as defined in Section 1(1) Protection from Harassment Act 1997. **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 Facts to Be Determined

16. At the outset of the hearing, through his counsel, Mr Day, Dr Basu made admissions to some paragraphs of the Allegation, as set out above. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these sub-paragraphs of the Allegation as admitted and found proved. In light of Dr Basu's admissions, the Tribunal was required to reach a decision in relation to the outstanding paragraphs of the Allegation.

Witness Evidence

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

- Ms A, via MS Teams. Ms A also provided a witness statement dated 26 January 2021 and supplementary witness statements, dated 21 May 2022 and 2 September 2022, respectively;
- Ms B, Clinical Services Manager and XXX Lead for the XXX Department at the Hospital, via MS Teams. Ms B also provided a witness statement, dated 25 February 2022;
- Dr C, Consultant in XXX at the Hospital, via MS Teams. Dr C also provided a witness statement, dated 27 January 2022, and a supplementary witness statement, dated 4 May 2022.

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

- Witness statement from Mrs D, HR Consultant at the Trust (at the time of events before the Tribunal), dated 9 December 2021;
- Witness statement from Dr E, Consultant in XXX at the Hospital (at the time of events before the Tribunal), dated 9 December 2021;
- Witness statement from Ms F, Matron at the Hospital, dated 27 February 2022.

19. Dr Basu provided two witness statements, dated 26 July 2022 and 11 October 2022, respectively. He also gave oral evidence at the hearing. In addition, the Tribunal received evidence from the following witnesses on Dr Basu's behalf:

- Ms G, Senior Nurse working in XXX at the Hospital, via MS Teams. Ms G also provided a witness statement, dated 12 July 2022;
- Ms H, Senior Sister in the XXX Department at the Hospital, via MS Teams. Ms H also provided a witness statement, dated 26 July 2022.
- Mrs I, Senior Sister at the Hospital, via MS Teams. Mrs I also provided a witness statement, dated 19 July 2022;
- Mrs J, Senior Sister at the Hospital, via MS Teams. Mrs J also provided a witness statement, dated 21 July 2022;

Documentary Evidence

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

On behalf of the GMC

- Letters from Dr K, Medical Director at the Trust, to Dr Basu, dated 30 January 2020, 18 February 2020 and 10 April 2020;
- The Trust local investigation report and appendices, dated 22 April 2020;

- The Trust local investigation report and appendices, dated 8 July 2020;
- A letter from the Trust to Dr Basu confirming the outcome of local investigation, dated 16 December 2020;
- Messages and pictures sent between Ms A and Dr Basu via Facebook from 16 December 2019 to 2 July 2020;
- A statement written by Ms A regarding her relationship with Dr Basu, dated 29 January 2020;
- Whatsapp messages sent from Dr Basu to Ms A between 7 March 2020 and 6 April 2020;
- Minutes of Formal Investigation Meeting with Ms A, dated 11 March 2020;
- Email sent from Dr Basu to Ms A, dated 1 April 2020;
- A statement written by Ms A of interactions with Dr Basu since the investigation, dated 20 May 2020;
- Meeting notes of investigation interview with Ms A at the Trust, dated 22 June 2020;
- A timeline of events provided by Ms A to the GMC, dated December 2020;
- Meeting notes of the Trust investigation interview of Mrs D, dated 17 March 2020;
- Meeting notes of the Trust investigation interview of Dr E, dated 19 June 2020;
- Meeting notes of the Trust investigation interview of Dr C, dated 19 June 2020;
- Meeting notes of the Trust investigation interview of Ms F, dated 18 March 2020 and 17 June 2020;
- A timeline of events produced by Ms B based on the Trust investigation into Dr Basu's conduct towards Ms A, undated;
- Meeting notes of the Trust investigation interview of Ms B, dated 17 March 2020 and 17 June 2020;
- Text messaged between Dr C and Ms A, between 30 March 2020 and 9 April 2020;

On behalf of Dr Basu

- Level 1 XXX Course Feedback, dated 24 February 2020;
- Feedback form for XXX Induction Training: Core Topics – Chest Pain, Difficulty in breathing, Introductions on ABGs, dated 27 February 2020;
- Statement emailed from Dr Basu to the MDU, dated 2 March 2020;
- Photographs of messages between Ms A and Dr Basu, taken by Dr Basu from Ms A's phone. These messages are dated 11 March to 12 March 2020;
- Emails Dr Basu had sent to himself recording interactions he had had with Ms A, dated 2 March 2020; 6 March 2020; and 12 March 2020;
- Email to from Dr Basu to Ms L, Divisional Director at the Trust, dated 19 March 2020;
- An email Dr Basu sent to himself about an interaction he had with Ms A after a training session, dated 25 March 2020;
- A photo of Ms A's ID badge taken by Dr Basu, dated 28 April 2020;
- A group photograph taken by Dr Basu in which Ms A was part of the group, taken on 30 April 2021;
- A draft personal statement of Ms A, for another role, with Dr Basu's hand written amendments to it, undated,

- A group photograph taken by Dr Basu in which Ms A was part of the group, taken on XXX;
- Email from Dr Basu to Ms B expressing concern about XXX Ms A on his return to work, dated 13 November 2020;
- Transcript of a voice note recorded by Dr Basu of a conversation between himself and Ms A relating to a patient abdominal examination, taken on 31 December 2021;
- Dr Basu’s ‘Response to allegations made as per the terms of reference for the interview on 22 June 2020’, undated;
- Testimonial statements from Ms G, Mrs I and Mrs J;
- Email request to the Trust for the CCTV footage regarding a ‘GMC case info request’, dated 4 February 2022;
- GMC Telephone Note regarding a GMC request for a witness statement from Dr M, dated 17 February 2022.

The Tribunal’s Approach

21. The Tribunal accepted the legal advice from the Legally Qualified Chair.

22. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Basu does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, that is to say the Tribunal must determine whether it is more likely than not that the alleged events occurred.

23. The Tribunal also bore in mind that it should assess and determine each paragraph and sub-paragraph of the Allegation separately. It noted that while it can draw inferences from the evidence, it must not speculate. The Tribunal took account of the requirement to examine all the evidence carefully and fully and to give sufficient and clear reasons so that the parties are able to understand how it has reached its decision.

The Tribunal’s Analysis of the Evidence and Findings

24. The Tribunal took into account the submissions of Ms Fordham, counsel on behalf of the GMC, and Mr Day, counsel on behalf of Dr Basu. It evaluated all the evidence in making its findings on the facts.

25. In general terms, the Tribunal accepted that all the witnesses in this case were doing their best to give an accurate account of what they recalled of events some years after they happened.

26. The Tribunal was conscious that Dr Basu and Ms A both recalled events differently. They would both be affected by their own understanding of the state of their relationship at any given moment, the impact of previous interactions as they understood them, and their feelings at that moment towards each other. The Tribunal accepted both were trying to give

an accurate account, but that their interpretation, at times, was affected by their starting point.

27. Ms A noted throughout her evidence that her current recollection of events was limited, but she maintained that everything in each of her statements and exhibits was an accurate account. There were some parts of the evidence on which she was able to add nothing to the written record. The Tribunal did not consider that to harm her credibility.

28. The Tribunal noted that there were instances where she was unable to explain apparent inconsistencies between her recollection and the objective evidence when she was robustly cross examined. The Tribunal noted that the incidents she was recalling, and the processes through which she has subsequently been, had been difficult and upsetting for Ms A. It also noted that events developed over time, and her subsequent experiences may well impact on how she recalled earlier incidents. It did not consider that Ms A was being untruthful to the Tribunal in her evidence, but the objective evidence at certain points in the case showed that her genuinely held belief of what she said had happened, could not be correct.

29. The Tribunal accepted that the contemporaneous notes prepared by Dr Basu in emails and a timeline, were accurate and genuine reflections of his understanding of the interactions he had at the time. His recollection of events has been helped by having reference to those documents continuously since they were written.

Paragraphs 2a and b of the Allegation

2. On 28 January 2020 during work hours you:
 - a. put your car keys into Ms A's pocket without her realising; **Found not proved**
 - b. told Ms A to check her pockets before she left work;
Found not proved

30. The Tribunal first had regard to Ms A's GMC witness statement, dated 26 January 2021, in which she stated:

"14. On 28 January 2020 Dr Basu put his car keys in my pocket without me realising. In [a statement written on 29 January 2020 by Ms A] below I state that Dr Basu gave me his car keys, however the description in this statement is more accurate. He did not give me his car keys and put them in my pocket without me noticing. Later in the day he told me to check my pockets before I left work. I checked my pockets and I noticed that his keys were in there. He later messaged me on Facebook and told me that his car was parked in the recess away from the XXX Centre... I felt nervous and sick when he told me this and I didn't want to go but I needed to give him back his keys, so I went."

31. In the statement Ms A wrote when she got home on 29 January 2020, she stated:

“...At work on the 28th Jan he kept trying to talk to me. He gave me his car keys and asked me to meet him at his car because he wanted to tell me something. He told me had feelings for me and he loved me. I told him I was not interested...”

32. The Tribunal heard evidence that the relationship as friends that Dr Basu and Ms A had, was one which included them often meeting up and talking in each other’s cars in the Hospital car park as their friendship developed. That had been normal practice for them prior to 28 January 2020.

33. There was a suggestion, put in cross examination, that the keys were put into Ms A’s pocket so that she would not be able to refuse to go to Dr Basu’s car. In light of their previous meetings in cars, the Tribunal accepted that there was no reason for Dr Basu to believe, at that point, that Ms A would be unwilling to meet him as they had previously. The Tribunal also noted that the suggestion to “*check her pockets*” was not made in messages, so must have been in person, if it was made. That would provide an opportunity for Ms A to hand back the keys if she found them and would defeat the purpose of secreting them in the first place.

34. The Tribunal noted that in Ms A’s more contemporaneous statement of this incident, she had stated that Dr Basu had *given* her his car keys. In her oral evidence Ms A’s memory of this event was not clear and the suggestion of Dr Basu putting his car keys into her pocket came later, some time before 17 March 2020 when it was included in the notes of a meeting as an account given by Ms A, who was not at that meeting.

35. The Tribunal was of the view that it would have been unusual for Dr Basu to have put his car keys in Ms A’s pocket without her knowledge, and that Ms A’s recollection has changed since her initial recollection.

36. The Tribunal was satisfied that, on the balance of probabilities, Ms A’s original and most contemporaneous statement of the events was accurate, that Dr Basu had given his car keys to her and not placed them in her pocket.

37. The Tribunal therefore found paragraphs 2a and b of the Allegation not proved.

Paragraph 2c of the Allegation

2. On 28 January 2020 during work hours you:

c. told Ms A to wait in your car after work; **Found proved**

38. Dr Basu stated in his witness statement that this allegation was, “*Admitted to the extent that I asked Ms A to meet me in my car after work, I did not tell her to do this.*”

”

39. In his GMC witness statement, Dr Basu stated:

“47. The plan was to talk in my car because it would be private and would limit gossip. Before her handover I gave Ms A my car keys so she could wait for me inside the car if she got there first, it was January and freezing I didn’t want her to have to wait in the cold. Ms A said in her original statement to the Trust that “He gave me his car keys and asked me to meet him at his car”, this statement is now an Exhibit to Ms A’s GMC witness statement... Giving Ms A my car keys is something I had done before and we had also chatted in each other’s cars on previous occasions. On this day I told my colleague that I would be taking my XXX break early and he agreed to look after the bleep for me, I also made sure he had my mobile number in case I was needed.

48. Given the plan to meet in my car and that she had the keys, at 20.03 I messaged the following to Ms A “It’s parked in the recess away from the XXX centre” ...Ms A replied “I’m just going now x”. I expected her to be waiting for me, but in the end we actually ended up walking to the car together. Our discussion in the car was the first time we had discussed the department gossip in person and also how we saw our friendship. I made it clear XXX was not happy about our messages.”

40. The Tribunal also considered the Facebook messages between Dr Basu and Ms A:

[Ms A]
Just walking round now x
28 Jan 2020, 20:19

Ari Basu
Where are you?
28 Jan 2020, 20:18

Ari Basu
Wait in front of XXX centre
28 Jan 2020, 20:13

Ari Basu
Are you there?
28 Jan 2020, 20:13

[Ms A]
I’m just going now x
28 Jan 2020, 20:13

[Ms A]
Where?x
28 Jan 2020, 20:12

Ari Basu

*It's parked in the recess away from the XXX centre
28 Jan 2020, 20:03"*

41. The Tribunal considered that, given its findings at paragraphs 2a and b that the car keys were handed over to Ms A, there must inevitably have been some sort of discussion between Dr Basu and Ms A about meeting in Dr Basu's car. The Facebook messages between Dr Basu and Ms A suggest that a conversation about meeting in Dr Basu's car took place and that they were planning on meeting there after they had both finished work that day.

42. The Tribunal have taken 'told' to mean 'said to her', rather than demanded that Ms A go to the car, or sought to compel her to do so.

43. The Tribunal therefore found paragraph 2c of the Allegation proved.

Paragraph 2d of the Allegation

2. On 28 January 2020 during work hours you:

d. told Ms A that you were having 'XXX' and/or that you 'loved' Ms A or words to that effect. **Found proved**

44. The Tribunal first had regard to Ms A's GMC witness statement, in which she stated:

"When I got to his car it was cold and I think we both sat in his car for a chat, and he told me that XXX and that he loved me. I took this to mean that he wanted a romantic relationship with me. He knew XXX and I think that he thought that this meant I would be open to a romantic relationship with him."

45. The Tribunal noted that by the time of this interaction on 28 January 2020, Ms A was already aware that Dr Basu was XXX. XXX had messaged Ms A on Facebook on 23 January 2020 inviting her to XXX before a drinks event that weekend. The Facebook messages between Dr Basu and Ms A on 23 January 2020 read:

Ari Basu

My suggestion would be to XXX and message her something like XXX that this Saturday's drinks will go on till late, so you can't make it that day, but you'll fix something soon.

23 Jan 2020, 10:28

...

Ari Basu

I think it will be great for you to come over one day for dinner, XXX. I don't think this Saturday is a good idea as I need to figure out XXX.

23 Jan 2020, 09:35

Ari Basu

XXX.

23 Jan 2020, 09:25

Ari Basu

XXX told me XXX messaged you asking for you to come over this Saturday.

23 Jan 2020, 09:22

Ari Basu

Don't msg me now till I figure out what

23 Jan 2020, 08:01

Ari Basu

I'll msg you later

23 Jan 2020, 07:50

Ari Basu

Don't open it.

23 Jan 2020, 07:50

[Ms A]

So I don't know what it says x

23 Jan 2020, 07:42

[Ms A]

I haven't opened it x

23 Jan 2020, 07:42

[Ms A]

And has sent me a message x

23 Jan 2020, 07:42

[Ms A]

XXX x

23 Jan 2020, 07:41"

46. In his witness statement and oral evidence, Dr Basu said that XXX which had been resolved, but denied that he had told Ms A in the car on 28 January 2020 that he was XXX. However, he also said that Ms A had asked XXX and he told her they were XXX. The Tribunal noted the message indicating a XXX a few days earlier, which Dr Basu said had been about the relationship with Ms A.

47. XXX challenged Dr Basu about this relationship and then XXX. The Facebook messages show that Dr Basu openly told Ms A about XXX.

48. The Tribunal determined that in the context of the conversation Dr Basu had with Ms A in the car on 28 January 2020, it was more likely than not, that Dr Basu did tell Ms A he was XXX, or words to that effect, XXX and it was a live issue in respect of Dr Basu's and Ms A's relationship.

49. In respect of telling Ms A that he 'loved' her, or words to that effect. It had regard to Ms A's witness statement:

"...He knew XXX and I think that he thought that this meant I would be open to a romantic relationship with him..."

...It was in this capacity that Dr C told me that Dr Basu had told him that he thought I may have wanted a romantic relationship with him because of XXX. I told Dr Basu in the car that this would not happen and that I did not want a relationship with him. This was the first time I told him that I didn't want a romantic relationship with him, and it was the first time the conversation had been raised."

50. In his witness statement, Dr Basu stated:

"19. From the outset we messaged each other frequently. The messages seemed natural and friendly and at times silly. I was conscious Ms A was XXX. We had a lot of conversations about XXX, and the language XXX use which I didn't really understand. She would often say for example that XXX, so XXX was a recurring theme. She also told me that there had been XXX. For me the fact XXX made it even more clear in my mind that our relationship was purely a friendship."

51. In his oral evidence, Dr Basu denied that he told Ms A he 'loved' her. He stated that he expressed how he felt to Ms A in that he 'liked her more than friends, deeper' but not in a romantic way and did not want a romantic relationship with her, that he considered her to be his best friend. He said that he was uncomfortable with a 'secret relationship' with Ms A and that XXX had pointed out to him that he had never had that deep an affection for anyone else at work.

52. The Tribunal also had regard to the Facebook messages between Dr Basu and Ms A, in which it was stated:

"Ari Basu

I just had to be honest
28 Jan 2020, 22:53

Ari Basu

Thank you for some of the happiest days of my life.
28 Jan 2020, 22:52

Ari Basu

I just want you to be happy.

28 Jan 2020, 22:49

Ari Basu

I am so sorry.

28 Jan 2020, 22:49

[Ms A]

Yeah

28 Jan 2020, 22:48

Ari Basu

Are we still friends?

28 Jan 2020, 22:42

[Ms A]

I'm sorry, I'm not interested in having a relationship with you

28 Jan 2020, 22:29"

And:

“**[Ms A]**

Aww thank you 😊 that's so sweet x

24 Dec 2019, 18:58

Ari Basu

Just means, you are drop-dead gorgeous 😊

24 Dec 2019, 18:54

Ari Basu

Refers to the Greek epic. Iliad and the mythical Helen of Troy 😊

24 Dec 2019, 18:52

[Ms A]

What does that mean x

24 Dec 2019, 18:47

[Ms A]

You are x

24 Dec 2019, 18:47

Ari Basu

You, senorita, on the other hand, can launch a thousand ships 😊

24 Dec 2019, 18:40

Ari Basu

Haha, even my Mum never said that 😊

24 Dec 2019, 18:37

[Ms A]

See you are photogenic x

24 Dec 2019, 18:29”

53. The Tribunal considered that even on his own evidence, Dr Basu was confused about his feelings for Ms A. In answer to questions from the Tribunal, Dr Basu struggled to articulate the nature of a relationship between the “*close friendship*” he had previously enjoyed with Ms A, and a romantic relationship, even having had time to reflect and consider it since this incident. He referred to “*deep affection*” and a relationship that was “*more than friends*”. He described feelings he had never had for a work colleague before. The Tribunal also noted the reference to “*some of the happiest days of my life*”. He accepted that he was infatuated with Ms A, though denied any element of sexual attraction. The Tribunal was satisfied that whatever the precise words Dr Basu used, they would carry the connotation of love or a desire for a romantic relationship. The Tribunal accepted that Ms A’s account of that at the time, was a fair reflection of what she had been told, even if the precise words said were the same as Dr Basu’s oral and written evidence.

54. The Tribunal is fortified in that conclusion by the message she sent indicating that she was “not interested in having a relationship” with Dr Basu, and his apology.

55. It determined that it was more likely than not, Dr Basu did tell Ms A that he ‘loved’ her, or words to that effect.

56. The Tribunal therefore found paragraph 2d of the Allegation proved.

Paragraphs 3ai and ii of the Allegation

3. On 29 January 2020 you:

- a. repeatedly messaged Ms A on Facebook asking her
 - i. where she was; **Found Proved**
 - ii. what she was doing; **Found Proved**

57. The Tribunal first had regard to the Facebook messages that were sent on 29 January 2020:

Ari Basu

Phone's running out of charge

29 Jan 2020, 15:52

Ari Basu

I cannot go anywhere until you come back

29 Jan 2020, 15:31

Ari Basu

Where are you?

29 Jan 2020, 15:20

Ari Basu

Are you on your break now?

29 Jan 2020, 13:24

Ari Basu

Will you let me know when you're on your break?

29 Jan 2020, 11:42

Ari Basu

Are you on XXX?

29 Jan 2020, 11:17

Ari Basu

Where are you working today?

29 Jan 2020, 10:19

Ari Basu

I am in the hospital.

29 Jan 2020, 10:18

Ari Basu

I'll be back to hospital at 1000. We can have lunch at the same time if that's OK with you.

29 Jan 2020, 08:28

Ari Basu

Wanted to meet you before you get to hospital this morning. Reached there at 0715. Didn't know you're such an early bird.

29 Jan 2020, 08:26

Ari Basu

Are you already at work?

29 Jan 2020, 07:24

Ari Basu

Good morning

29 Jan 2020, 07:10”

58. The Tribunal noted that all these messages were sent to Ms A without response and that a number of the messages explicitly and implicitly asked where Ms A was and what was she doing.

59. The Tribunal therefore found paragraph 3ai and ii of the Allegation proved.

Paragraph 3b of the Allegation

3. On 29 January 2020 you:

b. asked her to sit next to you in the XXX, and when she declined you moved your chair to sit next to her; **Found proved**

60. In the statement Ms A wrote on 29 January 2020, in respect of her relationship with Dr Basu, she also stated:

“...This morning the 29th of Jan I had received a call from [Dr Basu] during hand over, I did not answer. He then waited to talk to me after handover asking where I was this morning as he cycled passed my car and couldn’t see me. [Dr Basu] was not meant to be on shift today. [Dr Basu] then kept messaging me asking where I was at work, asking to see me on my break. When I went on my break he was sitting in the XXX. Other people were present so I went to eat my lunch. He asked me to sit next to him, I told him I wanted to eat my food at the table as there was no more space at the table so he could not sit next to me. He then pulled a seat up from the other side of the room next to me to talk to me...”

61. In her GMC witness statement, Ms A stated:

“16. On the morning of 29 January 2020 when I was due to be working that day, Dr Basu was not working the morning shift (he may have been working the afternoon shift) and he messaged me on Facebook before I started work asking me where I was before my shift. I had got to work early, and he messaged me on Facebook and told me that he wanted to catch me on the way to work, and he called me an ‘earlybird’... There is a 15--minute walk to work from where I park my car and I think that he wanted to speak to me whilst I was walking, but I am not sure what he wanted to speak to me about. Later that morning I was approached by Ms B, who works in Management at the Trust, and was asked to tell her about what had happened with Dr Basu on the previous day. Ms N had told Ms B about what I had told her the previous day and Ms B asked me to write a statement in relation to the incident. Later that day, I was in the XXX and Dr Basu was already in there. I sat down at a table with

my food and Dr Basu was sat on a sofa and he asked me to sit next to him. I told him that I was eating my food and I wouldn't go to sit next to him, and he then pulled a chair up to my table and sat next to me whilst other people were also there. When everyone had left the XXX, he asked me why I didn't like him and why I didn't want a relationship with him. I wasn't looking at him when he asked me these things and I ignored him. He persistently asked me, and I told him that I just didn't want a relationship with him and for him to drop it. He then asked me to look at him and started raising his voice and at this point I walked out..."

62. In Ms A's oral evidence, she stated that she was sitting at a circular table and there was XXX sitting across from her and that Dr Basu was sitting on a long sofa behind them eating his lunch. She said that he asked her to come and sit next to him and she refused and carried on eating her lunch. She said that when he had finished his lunch he came and joined her and the other XXX at the table they were sat at and when he tried to talk to her, she blanked him.

63. Dr Basu stated, in his GMC witness statement, that this allegation was, *"admitted to the extent that I asked her to sit next to me, the rest of the allegation is denied. I was sitting on a sofa and when I finished my lunch I went over to sit at the table she was at and where there was another people."*

64. In his statement, to the first Trust investigation, Dr Basu stated:

"...I assumed that she was exhausted and really could do with a break. At 1500 I asked her if she was to go to her break soon and she replied 'maybe soon'. I felt really bad as she had started at 0700 and thought she had gone through 8 hours without a break. I couldn't wait any longer, so I went on my break without her. In the XXX, I had my lunch sitting on one of the sofas and was talking to Mr O, XXX who was sat at the table. After a few minutes [Ms A] came in with her food. I told her there was an empty space next to me on the sofa and she could sit there. This was usual for us – we would normally sit next to each other in the XXX if there was a space. That day she didn't, said 'I can't eat with the food on my lap, can I?'. I had finished by then, so I pulled up a chair and sat down near to [Ms A] and Mr O – we were talking about lentils and the XXX way to prepare it. She said she can cook but her Mum had made her lunch that day. After a few minutes, the others left and we two were on our own. As soon as they left I noticed that she had become very quiet. I told her I'm sorry if she felt bad because of what I confided in her the evening before..."

65. In his oral evidence, Dr Basu said that he was sitting on a long sofa having his lunch and Ms A was at the table on her break eating her lunch. He said there were about four chairs at the table and that there was another person sitting there also, across the table from Ms A. He said that usually if there was a seat available next to one of them, they would sit next to each other and talk on their break. Dr Basu said that when he saw her he had wanted to talk to her to clarify matters about what had occurred the evening before on 28 January 2020 in the car. He said that there was a need to clear up matters and that if he had done

something wrong, he wanted to clarify. He said Ms A was upset and unsettled and he understood it to be because of the conversation the night before in the car. Dr Basu said he asked Ms A to sit on the sofa to talk but she refused and the reason she refused was because she had lentils and rice, which was runny, and she could not eat it on her lap on the sofa. He accepted that when he had finished his lunch he left his seat on the sofa and sat on a chair by the table between Ms A and another XXX.

66. The Tribunal considered that Ms A had presented an apparent practical reason for declining to sit with Dr Basu, in that she had told him the reason she could not sit next to him was because she was eating her lentil and rice lunch which she could not eat on her lap.

67. Both Ms A and Dr Basu presented different reasons as to why and how his sitting next to her at the table came about, but on any reading of the evidence, it was clear that Dr Basu did ask Ms A to sit next to him in the XXX, and when she declined Dr Basu moved chair to sit next to her.

68. The Tribunal therefore found paragraph 3b of the Allegation proved.

Paragraph 3c of the Allegation

3. On 29 January 2020 you:

- c. asked Ms A ‘why do you not like me’ and ‘why do you not want a relationship with me’ or words to that effect; **Found not proved**

69. In the statement Ms A wrote when she got home from work on 29 January 2020, in respect of her relationship with Dr Basu, she stated:

“When everyone had left he was asking me why I was not interested in him. He was trying to force me to look at him. I said no but he wouldn’t leave me alone...”

70. In her GMC witness statement, Ms A stated:

“...When everyone had left the XXX, he asked me why I didn’t like him and why I didn’t want a relationship with him. I wasn’t looking at him when he asked me these things and I ignored him. He persistently asked me, and I told him that I just didn’t want a relationship with him and for him to drop it. He then asked me to look at him and started raising his voice and at this point I walked out...”

71. In her oral evidence, Ms A stated that she felt uncomfortable, awkward and put her head down when Dr Basu was talking to her. She said he was asking her why she did not want to be in a relationship with him, that he was persistent and controlling.

72. In his statement, undated, to the Trust investigation, 22 April 2020, Dr Basu stated:

“...She stopped eating and her head was stooped down and from where I was sat, it looked like she was crying. I asked her to face me. I asked her if she was crying and she didn't respond. I felt very sad. I told her '[Ms A], look at me'. She said 'No, I won't', and then she ran out of the room...”

73. In his GMC witness statement, Dr Basu stated:

“61. Once I had finished my lunch I went over to where she was sitting, there was one other person at the table. When they left and we were sat together on our own and I told her that I was sorry if she felt bad because of our conversation the night before. She seemed withdrawn and I tried to reassure her about our conversation the night before, and that I was sorry if I had upset her, because it seemed that something had changed. I remember she stopped eating, lowered her head and did not look at me, she looked as though she was crying. I asked her directly if she was crying but she would not reply, I genuinely felt awful. I asked her to look at me, she wouldn't and then she ran out of the room. I tried to find her but couldn't see her anywhere...”

74. In his oral evidence, Dr Basu stated that he could see she was upset and crying with her head down, that he asked her to look at him but that he did not raise his voice or lose his temper, that he asked her to look at him because he was concerned as she was upset, but that she did not look at him, got up and left the room.

75. The Tribunal noted that the night before, on 28 January 2020, Ms A had sent Dr Basu a message on Facebook at 22:29 on 28 January 2020, after the car incident in which Dr Basu had expressed to Ms A how he felt about her, in which she stated that *“I'm sorry, I'm not interested in having a relationship with you”*. Dr Basu had sent Ms A a message at 23:05 asking her if she was angry with him. Dr Basu had said in oral evidence that on 29 January 2020 in the break room he had wanted to speak to Ms A to clarify matters from the previous night when they were sat in the car and he had expressed how he felt about Ms A.

76. The Tribunal bore in mind that Ms A was emotional and upset during the interaction with Dr Basu during the lunch break, and that in her emotional state, she may have misunderstood the tone of Dr Basu's approach about the conversation of the night before.

77. The Tribunal accepted that Dr Basu had a genuinely held belief that he meant that he had a 'deeper, more than friends' feeling towards Ms A, but not a desire for a romantic relationship. It accepted Dr Basu's account that he was trying to resolve the situation from the night before in the car to clarify with Ms A that he did not want a romantic relationship with her but to stay friends. The Tribunal noted that Dr Basu, even after considerable reflection, struggles to articulate his meaning in respect of the relationship he sought with Ms A, and appears confused about the strength of his own feelings towards her. His attempts to explain the difference between what he felt and what Ms A had understood may well have been clumsy and led her to the conclusion that he was questioning her about having a relationship with him, particularly in light of her understanding of the conversation the night before.

78. The Tribunal however did not accept it is more likely than not that Dr Basu asked the questions alleged or questions of that type. The Tribunal therefore found that paragraph 3c of the Allegation not proved.

Paragraph 3d of the Allegation

3. On 29 January 2020 you:

- d. when Ms A refused to answer your questions at 3c above you persisted with the line of questioning; **Found not proved**

79. The Tribunal determined that that there was no evidence to support the contention, on the balance of probabilities, that Dr Basu had persistently questioned Ms A. Given that it has found paragraph 3c of the Allegation not proved, it follows that paragraph 3d of the Allegation is not proved.

Paragraph 3e of the Allegation

3. On 29 January 2020 you:

- e. insisted Ms A look at you and raised your voice, causing Ms A to leave the XXX upset; **Found not proved**

80. Ms Fordham accepted that the key element of this paragraph of the Allegation was in the alleged raising of Dr Basu's voice, and that the insistence alleged was linked to the raising of his voice.

81. Dr Basu stated in his witness statement that this allegation was, *"admitted to the extent that I asked Ms A to look at me, the rest of this allegation is denied"*.

82. In oral evidence, Dr Basu stated that Ms A had her head down and was sobbing, that he asked her whether she was ok and to look at him. He accepted that he did ask her to look at him but denied that he raised his voice.

83. The Tribunal heard oral evidence on Dr Basu's behalf, from Ms G, Ms H, Mrs I and Mrs J, all of whom stated that they had never seen Dr Basu get angry, lose his temper or raise his voice, and that he was a calm person. It had received a good character direction and noted that, particularly where there is witness evidence that something alleged is out of character, then it was fundamentally less likely to have happened.

84. The Tribunal considered that even if Dr Basu had spoken normally, given her emotional state at the time, Ms A may genuinely have perceived him to have been raising his voice when he was not.

85. While, in the circumstances of this incident, Dr Basu could have been prompted to act out of character, the Tribunal concluded it did not have sufficient evidence to conclude that he did, on the balance of probabilities.

86. The Tribunal could not, therefore conclude, that Ms A left the room because Dr Basu raised his voice and insisted she looked at him. The Tribunal noted she may well have been understandably upset and left the room due to the content of the conversation, and her perception of Dr Basu's tone, regardless of whether he actually raised his voice and insisted she look at him.

87. The Tribunal therefore found paragraph 3e of the Allegation not proved.

Paragraph 3fi of the Allegation

3. On 29 January 2020 you:

- f. approached Ms A in the carpark and when she told you to 'leave her alone' or words to that effect you:
 - i. continued to follow her; **Found not proved**

88. In her witness statement, Ms A stated:

"16. ...I called Ms B's telephone number and she told me that she was no longer at work and told me to go to Ms P, who also works in Management at the Trust. I went to Ms P and told her that Dr Basu had again approached me and asked me why I didn't want to be in a relationship with him and she told me to go home. I went to the Hospital's carpark to leave and he followed me. I started crying when I realised that he was following me. He was telling me to stop and that he wanted to talk to me, and he started shouting and grabbed my arm. At this point I turned around and fast -walked/ran back to the management office. I was petrified and in tears when I got there. It all happened very quickly, and I think that he just wanted to stop me from leaving the Hospital, but I don't know. I think he must have known that I was upset because I was crying in the carpark, and I think that he was angry that I had told him I didn't want a relationship with him. I also think he knew I had spoken to the managers, but I can't say for sure. He had a different demeanour about him in this instance, as he was normally calm but on this occasion he wasn't."

In her statement to the Trust, Ms A said:

"As I was walking out of the hospital (near XXX) Ari was walking around (appeared to be looking for me) He then started walking over to me I told him to leave me alone. He kept following he came over to me and grabbed my arm telling me to wait. I told him to get off. I started to run back to the hospital. He was following. He was shouting telling me to wait and that he wanted to talk to me. I briskly walked back to A&E. I got

to the management office and he was waiting outside. I walked straight passed him into the office.”

89. In his witness statement, Dr Basu stated:

“63. I left the XXX again to see if I could find her, this time I went towards where I thought she could have parked. Having left the building I went towards one the roads where she normally parked and where there is free parking. I saw her and as soon as she saw me I could tell for the first time ever that she looked frightened and distressed, but I had no idea what about. I walked towards her and she ran then stopped. I told her I was really worried about her and asked if we could talk. Ms A told me she didn’t want to talk to me and shouted that I should leave her alone, I respected that and told her I was going to leave her alone as requested. I have never had anyone look frightened of me before. I did not follow her back into the Hospital and I did not shout at her at all. I also did not touch or grab Ms A. During the Trust investigation I asked for the CCTV to be obtained as evidence that this incident did not occur as alleged but unfortunately this evidence was never obtained. The Trust’s finding dated 22 April 2020 was that there was insufficient evidence to support an allegation that I had grabbed Ms A and I deny that this happened, it did not.”

90. In his statement to the Trust investigation, Dr Basu stated:

“She told me that one of the staff wasn’t feeling well and was going home and she had come to pick up her things. I asked her who it was and she told me that it was [Ms A]. I was extremely worried. I knew she hadn’t slept much the night before, she appeared very disturbed and now that I was told that she was so unwell that she had to go home, I was concerned that she wouldn’t be able to drive back home safely. I felt quite guilty that this may have resulted from what I told her the evening before. I tried calling her again but my phone was running out of charge. I started walking towards the XXX side of the hospital because that’s where she normally parks the car. I got towards the side road near XXX when I saw her. She saw me at the same time and she looked absolutely terrified and upset. As I walked towards her, she initially ran, then stopped and waited and as I got near her and told her ‘I am really worried. Can we just talk?’, she told me ‘Ari, I don’t want to talk now’. I said ‘That’s fine, but are you OK? Will you be alright to drive?’ She started running at the same time as I got near her and shouted, ‘Ari, leave me alone’. I told her ‘OK I am going away, I’m leaving now’. She was gone towards the department.”

91. In Dr Basu’s oral evidence, he said that a member of Hospital staff came to the kitchen to collect the belongings of another member of staff who was unwell and going home sick. He said that he asked which member of staff was leaving and he was told that it was Ms A. He said that he went to see if Ms A was ok to drive if she was unwell, that she had worked a long shift, had been up early and he had seen she had been online at around 1.30am and again at around 3.30am. He said that when he entered the carpark, he saw her across from the XXX Unit. Dr Basu said that the conversation from earlier that he wanted to have with Ms

A was no longer important, he just wanted to check she was ok. He said that when he saw her it was a great relief so that he could speak to her. He said that when she saw him, she turned around and quickly moved away from him. Dr Basu said that he was about 5 to 6 feet away from Ms A, walking towards her and stopped at about a 4 to 5 feet speaking distance from her. He said that he asked her if they could talk and she had said that she did not want to speak now, that she said “Ari leave me alone” and she started running back towards the Hospital. Dr Basu said that he did not get close enough to Ms A to grab her arm, that she was quite athletic, she ran back to the department and there was no way in which he could have run after her. He said that he stood there shocked for about three minutes.

92. The Tribunal also had regard to the timeline document produced during the Trust’s investigation into Dr Basu’s conduct, provided by Ms B, which stated:

“15:20 [Ms P] went to door and called her into the office. [Ms A] extremely upset. Sat in [Ms P] office. Consoled and asked to talk about what happened. [Ms P] also spoke with [Ms B] and she came to the dept. Check that [Ms A] was ok and advised that best for her to go home. Prepared [Ms A] to go home. [Ms B] left the dept.

XXX admin staff collected property from XXX as [Ms A] felt intimidated to go back there.

Walked [Ms A] out the department and down the steps and watched her walk to back of hospital. [Ms P] asked [Ms A] to txt when she go to the car and when home.

16:00 [Ms P] in office. [Ms A] runs back into management office crying. Very distressed. [Ms A] informs [Ms P] that [Dr Basu] had approached her in the car park pulled her arm and asking her where she was going and that her was concerned and worried about her and why was he leaving without talking to her.

(Shortly after [Ms A] entering the office [Dr Basu] entered the main office)

[Ms B] called back and she came to the department.

16:08 - During conversations with [Ms A] he called [Ms P] via the XXX secretary mobile. [Ms P] informed him that she could not talk to him and to leave the office and she would talk to him later. [Ms B] had not arrived in the department at this moment. [Ms B] arrived in the department. Both calmed [Ms A] down and she agreed to do a statement and [Ms B] agreed to escort her to the car. [Ms B] informed [Ms P] that she bumped into [Dr Basu] on route to car but [Ms A] was visibly upset.

[Dr Basu] entered [Ms P] office and requested to speak with her. [Ms P] informed him that she would not speak with him until [Ms B] came back to department.”

93. The Tribunal heard evidence that there was CCTV covering the car park and throughout the Hospital. Further, that both Ms A and Dr Basu had requested the CCTV be produced as each of them said that it would support each of their conflicting accounts of this incident. The CCTV evidence was not gathered at the time. The Tribunal had before it evidence that the CCTV footage had been requested by the GMC on 4 February 2022, but that it was no longer available.

94. The Tribunal noted that this sub-paragraph deals with a very short period of time, between Ms A telling Dr Basu to leave her alone in the car park, and the further alleged following in paragraph 3fiii of the Allegation.

95. The Tribunal noted that the brief reference in Ms A’s statement to the Trust, is the only time this allegation features in the evidence. It does not appear ever to have been repeated, and does not feature in her statement to the GMC, which refers to her being followed but does indicate whether that included after she had told him to leave her alone, and in fact does not refer to saying that at all.

96. In the absence of any objective evidence, and with a confused timeline through the evidence, the Tribunal was not satisfied it was more likely than not that Dr Basu followed Ms A after being told to leave her alone. The Tribunal therefore found paragraph 3fi of the Allegation not proved.

Paragraph 3fii of the Allegation

3. On 29 January 2020 you:

f. approached Ms A in the carpark and when she told you to ‘leave her alone’ or words to that effect you:

ii. grabbed her arm; **Found not proved**

97. In her oral evidence Ms A stated that she could not clearly recall the incident. Dr Basu said that he could clearly recall the incident and that he did not grab Ms A’s arm. The Tribunal considered that it was particularly disappointing that there was an opportunity at the time to secure CCTV footage but that it was not sourced during the Trust investigation.

98. The Tribunal again had regard to the timeline document produced during the Trust’s investigation into Dr Basu’s conduct, provided by Ms B, at 16:00 in which it stated that Ms A had run back into the management office, very distressed and informed Ms N that Dr Basu had grabbed her arm. It is clear, therefore, that this is an allegation that was made at the time.

99. The Tribunal noted that, in her Trust interview of 11 March 2020, Ms A said she “*felt it was a misunderstanding*”. In her oral evidence, she has explained that she did not want to make matters worse for Dr Basu and that she was referring to the overall events, rather than to what happened in the car park. The Tribunal was of the view that the allegations in the car park could not be considered a “*misunderstanding*” but accepted that Ms A may not have had that specific incident in mind when giving her description in the interview.

100. The Tribunal was therefore left with two contradictory witness accounts. Ms A was clearly upset at the time of the incident and her experience of it came in the context of her experience of aggression inside which the Tribunal has not found proved. The Tribunal was satisfied that grabbing an arm would be out of character for Dr Basu, in light of the good character direction and the witness evidence about his temperament. Had he acted in the way alleged, Dr Basu’s request for CCTV evidence at the time, would have harmed his case.

101. In the circumstances, the Tribunal determined that the GMC had not, on the balance of probabilities, discharged its burden to prove this paragraph of the Allegation.

102. The Tribunal therefore found paragraph 3fii of the Allegation not proved.

Paragraph 3fiii of the Allegation

3. On 29 January 2020 you:

f. approached Ms A in the carpark and when she told you to ‘leave her alone’ or words to that effect you:

iii. followed her back into the hospital when she ran away from you shouting at her to wait; **Found not proved**

103. As already set out above, Dr Basu’s oral evidence was that he was left shocked for about three minutes after Ms A ran back to the department. Dr Basu did make his way back to the Department to the management office and Ms P told Dr Basu that she would speak to him later as Ms A was with her in the management office.

104. The Tribunal could see no evidence of Ms A making a reference in the evidence to Dr Basu having followed her back to the hospital. It is agreed evidence that he did end up at the management office, which is also where Ms A went. There is no evidence to suggest he followed her there.

105. The Tribunal therefore found on the balance of probabilities, paragraph 3fiii of the Allegation not proved.

Paragraph 3fiv of the Allegation

3. On 29 January 2020 you:
- f. approached Ms A in the carpark and when she told you to ‘leave her alone’ or words to that effect you:
 - iv. waited for her near the management office. **Found not proved**

106. Dr Basu accepted that he did go to the management office following this incident in the carpark to discuss that which had just occurred and the person he would need to speak to would be in the management office. In her statement to the Trust investigation, Ms P gives an account of having spoken to Dr Basu after she spoke to Ms A, in the management office. The Tribunal considered that to be consistent with his account. The Tribunal therefore accepted Dr Basu’s account that he had a legitimate and plausible reason for going to the management office.

107. The Tribunal therefore found paragraph 3fiv of the Allegation not proved.

Paragraphs 6a of the Allegation

6. On or around 31 March 2020 you went to the zone Ms A was working in and you:
- a. burst into tears in front of Ms A; **Found proved**

108. In her GMC witness statement, Ms A stated:

“27. I initially didn’t feel scared when Dr Basu came back to work after the first investigation, as he kept his distance to begin with. This did not last long and he started following me around the Hospital, which he had done before the first investigation was opened, and on one occasion I was moved from XXX to help in XXX and he magically appeared in XXX two minutes later. I felt like everyone was watching our interactions and it made me feel uncomfortable, but I didn’t feel scared until an encounter on 31 March 2020 between Dr Basu and I in the Hospital’s XXX area. I was initially in XXX and was asked by the staff nurse coordinating XXX, although I cannot recall exactly who it was, to go to the XXX area to cover a colleague’s break and to hold the keys for XXX. I said I did not want to do it because I knew I would be alone, and I knew Dr Basu would come in. I was told I had to be in there because if anyone needed XXX, they would have to come to me to request them. Dr Basu came into the room and he burst into tears. This was before he knew the outcome of the first investigation, and he told me that XXX and that he thought he should leave the Trust.”

109. In her statement to the Trust investigation on 20 May 2020, Ms A stated:

“Just over a month ago Ari found me in XXX when I was alone and burst into tears and was saying he was worried about the investigation and that he was having issues at home and he didn’t know what to do. I told him I could not help him and that he

should seek support. A couple of days later he followed me into the treatment room in XXX and burst into tears again saying a similar things and that he was worried what the department was thinking of him. I told him he needed to seek support that I couldn't help."

110. In the Meeting notes of investigation interview with Ms A on 22 June 2020, it stated:

"What interaction have you had with AB since Feb 2020? Have these interactions been purely professional?"

He messaged me on Facebook and Whats App and he sent me a long email which I sent to Ms B. I haven't responded. One time I was covering in XXX, [Dr Basu] knew I was there by myself; he came there and burst into tears. He said he was upset and XXX. I told him you need help but I cannot help."

111. In his witness statement, Dr Basu stated:

"103. I think I was generally feeling a bit low. One of the things on my mind was that before the investigation it was intended that I would be the new clinical lead, but that had been knocked back and I was thinking about leaving the Trust. I commented to Ms A that we used to be such good friends to which she replied that we still were. I told her that I was stressed because the investigation had been dragging on for so long. Ms A told me she hadn't heard anything but that she had told the investigators she wanted to withdraw her statement and didn't want it to go any further. I confided in her that the investigation had drained me and because of it I really wondered about my future at the Hospital. I was not trying to make her feel bad, I was sad. Ms A told me that I couldn't leave, and if I did she would leave with me, she semi joked that if I left there would be no one to teach her ECGs. I felt my eyes welling up and she also looked tearful..."

He further stated:

"I believe that these allegations stem from the discussion I had with Ms A on 29 March 2020 in the XXX and not 31 March 2020."

112. The Tribunal also noted that in his oral evidence Dr Basu accepted that during this interaction with Ms A he had become tearful.

113. The Tribunal determined that, given Dr Basu's own written and oral evidence, and based on the accounts provided by Ms A, Dr Basu had burst into tears when he went to see Ms A on or around 31 March 2020 in the XXX room.

114. The Tribunal therefore found paragraph 6a of the Allegation proved.

Paragraph 6b of the Allegation

6. On or around 31 March 2020 you went to the zone Ms A was working in and you:
- b. told her your 'XXX' or words to that effect; **Found not proved**

115. The Tribunal bore in mind the accounts set out by Ms A above at paragraph 6a. It also considered the oral evidence of Dr Basu who stated that he never told Ms A that XXX, or words to that effect.

116. The Tribunal considered that the evidence was not consistent. It noted that there were times when Dr Basu had discussed XXX with Ms A, but what was discussed about XXX was not clear. The Tribunal noted that this matter is first raised in Ms A's statement to the Trust investigation in June 2020, and not contemporaneous to the time of the event, on or around 31 March 2020. In her statement of 20 May 2020, Ms A refers to "XXX" being discussed in that incident.

117. The Tribunal noted that it had no evidence to suggest there were XXX between Dr Basu and XXX at the end of March. While there may well have been discussion about Mr Basu's XXX, the Tribunal took the view that the comment alleged was inconsistent with the evidence about the state of Dr Basu's XXX available to it. It was not able to conclude, on the available evidence that Dr Basu would seek to mislead Ms A about the XXX.

118. The Tribunal therefore could not conclude that it was more likely than not that Dr Basu told Ms A that XXX.

119. The Tribunal therefore found paragraph 6b of the Allegation not proved.

Paragraph 6c of the Allegation

6. On or around 31 March 2020 you went to the zone Ms A was working in and you:
- c. told her that you thought you 'should leave the Trust' or words to that effect.
Found proved

120. At paragraph 103 of Dr Basu's witness statement, set out above, and in his oral evidence, Dr Basu accepted that he did tell Ms A that he thought he should leave the Trust, or words to that effect. In oral evidence, he accepted that he was concerned the investigation was having an impact on his career and that he had discussed that with Ms A on this occasion.

121. The Tribunal therefore found paragraph 6c of the Allegation proved.

Paragraph 7 of the Allegation

7. In April 2020 on more than one occasion you took your breaks to coincide with Ms A's breaks. **Found not proved**

122. In her statement to the first Trust investigation, dated 20 May 2020, Ms A stated:

"I have been working with Ari since the last investigation. Whenever I work with him it appears he changes the area he works to be able to work with me. On one occasion he was asked to move to XXX when I was in XXX. He refused and said he could manage XXX remotely. It appears to both myself and other colleagues that he follows me round the department. When myself and Ari work in the same area he will primarily talk to me, on occasions other would try to talk him and he would ignore them. Whenever I go on a break Ari would also go on his and see me in the XXX. Occasionally I would try to remove myself from the situation and go somewhere else, Ari would then ask me after the break where I disappeared to."

123. In her witness statement to the GMC, Ms A stated:

"25. Dr Basu began going on breaks at the same time as me again in roughly the end of March or the beginning of April 2020. Even if he was due to start work at 12:00, and I was taking my break at 12:00, he would take his break at this time. He did the same as this before the first investigation as well, but as discussed above, I am aware that he was told not to do this following the conclusion of the first investigation. He went back to his old ways and during work he would follow me to where I was going and would message me on Facebook or WhatsApp to ask where I had gone if I was going on a transfer. He would also ask me when my breaks were and would ignore people and talk to me if they tried talking to him and would stand waiting to speak to me even if I was speaking to other people. This happened before the first investigation and continued afterwards."

124. In his witness statement, Dr Basu stated:

"145. As per the evidence I gave to the Trust, Ms A appeared caring, she would ask me whether I had had a break and if had had anything to eat or drink. If the timings of our breaks coincided it was not uncommon to use that time to chat together, that was before the end of January 2020. I found Ms A supportive, I thought she found me supportive and I liked having a real friend at work, someone to talk to and share thoughts with without fear of being judged in the same way I may if it were a Consultant Colleague."

146. It is alleged that in April 2020 I took my breaks to coincide with Ms A's. Ms A and I were put on same shifts several times after 28 March 2020, this was even after Dr K's letter of 10 April 2020. The shift rota was arranged by Dr C as Consultant rota manager. I also did some locum shifts during this period to cover absences. With the worsening of the Covid 19 situation and the changes initiated in the department taking breaks in a separate area to Ms A was also very difficult. The Consultants were

only doing long clinical shifts and there were no formal breaks. I would mostly take short breaks to ensure that I was not away from the shop floor for a long period of time. It would be more like picking up a quick coffee or a bite to eat. I have always preferred to take my breaks in the XXX. I have excellent relationships with all members of staff and I enjoy the human contact and chats during breaks, that felt even more important during Covid. There was also a lot of donated food coming in which would be left in the XXX and every night there would be a pizza delivery when more staffs would go to the XXX. I specifically remember incidents where we both arrived at the XXX separately but at the same time and I offered to come back later. On no occasion did Ms A say it was not OK or leave the XXX herself, rather she smiled and said it was OK if we were on a break together. I made sure that I never sat next to her or was ever alone with her.

147. *Ms A has said at paragraph 25 of her Witness Statement that I would message on Facebook or Whatsapp to ask where she had gone on a break or if she was on a transfer. I dispute that I sent messages of that nature in April 2020 and I have not seen any evidence that they exist. I deny that I specifically took my breaks to coincide with Ms A at this time.*

148. *It is also said by Ms A at paragraph 25 of her witness statement that I would directly ask Ms A when her breaks were and I would wait for her and actively ignore people and talk to her if they tried talking to me. It is said that this behaviour happened before the first investigation and continued afterwards. There were a handful of occasions when I asked when her break would be, but I deny the behaviour described as this does not correspond with how I conduct myself at work.”*

125. In oral evidence, Dr Basu told the Tribunal that this was during the height of the Covid 19 Pandemic, that he had a little more flexibility than Ms A for taking breaks and that Ms A’s breaks were more controlled. He said however that he did not manufacture situations to coincide his breaks with Ms A’s break.

126. The Tribunal had before it no evidence that Dr Basu’s breaks deliberately coincided with Ms A’s breaks. It did however note that Dr Basu and Ms A were working in the same department and, at times, XXX. The Tribunal does not have any messages appearing to seek to coordinate breaks, and there has not been any evidence from other members of the department to suggest there was an unusual level of overlap.

127. What evidence there was from other XXX staff in the department indicated that Dr Basu and Ms A were not seen on breaks together. That evidence did not assist the Tribunal. Both Ms A and Dr Basu have made clear they did spend some breaks in the same room, both before the incident of 29 January 2020 and after.

128. The Tribunal had no reliable way of gauging whether Dr Basu and Ms A had breaks at the same time more frequently than would be expected by chance.

129. The Tribunal also considered that by this time Ms A would potentially have been very sensitive to Dr Basu's presence having made the complaint against him. Therefore seeing him on breaks may have made her feel anxious and she may well have genuinely interpreted the frequency of that to be an indication that breaks were being planned to align.

130. The Tribunal therefore found paragraph 7 of the Allegation not proved.

Paragraph 10a of the Allegation

10. On 25 April 2020 when Ms A was due to finish her shift you:

- a. were waiting around for Ms A to finish; **Found not proved**

131. In her witness statement, Ms A stated:

"31. On 25 April 2020 I was due to finish my shift and I was chatting to Dr M, a Doctor at the Trust who is one of my friends. Dr Basu was lingering around us and said that he wanted to talk to me. Dr M accompanied me to the XXX as I think he knew that I felt uncomfortable and was scared."

132. The Tribunal then had regard to a Telephone Note taken by the GMC in relation to a telephone conversation between the GMC and Dr M, on 17 February 2022. The Telephone Note records that Dr M was asked whether he recalled an incident between Dr Basu and Ms A, where Dr Basu was apparently lingering around and wanted to speak to Ms A and Dr M had taken Ms A to the XXX. The Telephone note recorded that:

...Dr M said he could not remember if this happened and has no recollection or knowledge of previous interactions with [Ms A] and/or Dr Basu."

133. The Tribunal did not have the benefit of receiving formal evidence from Dr M, and did not therefore take his hearsay account as positive evidence that there was no incident. Rather, the Tribunal noted that there was no corroborating evidence to support the account of Ms A. In her oral evidence this matter was not directly addressed. The Tribunal considered again that Ms A and Dr Basu worked in the same department at the Hospital and that by this time she was very sensitive to Dr Basu's presence. It was possible that by being near her towards the end of her shift, Dr Basu's presence caused Ms A to perceive that Dr Basu was lingering, and to feel uncomfortable. The Tribunal had no evidence that Dr Basu was waiting around for Ms A to finish her shift.

134. The Tribunal therefore found paragraph 10a of the Allegation not proved.

Paragraph 10b of the Allegation

10. On 25 April 2020 when Ms A was due to finish her shift you:

- b. told Ms A that you wanted to talk to her or words to that effect.
Found not proved

135. In his oral evidence Dr Basu denied this paragraph of the Allegation and said that it definitely did not happen.

136. The Tribunal considered that given the background to this case, Dr Basu had on a number of occasions said that he wanted to speak to Ms A through the messages he had sent her. However, by early April Dr Basu had stopped messaging Ms A. It also noted that Ms A and Dr Basu had had a number of conversations and that, logically, there will have been times Dr Basu has told Ms A that he wanted to talk to her in person.

137. Dr Basu had collated a timeline chronology of events from 24 February 2020 to 20 May 2020. Dr Basu had recorded on several occasions any interactions he had had with Ms A. On 25 April 2020 he noted that he was on-call for that shift on that day but made no note of any interactions that had occurred.

138. The Tribunal determined that it had no positive evidence to support this paragraph of the Allegation. While the words alleged are very likely to have been said, possibly several times, during the time period covered by the Allegation, the Tribunal could not conclude it was more likely than not that Dr Basu had told Ms A he wanted to talk to her after her shift finished on 25 April 2020 specifically.

139. The Tribunal therefore found paragraph 10b of the Allegation not proved.

Paragraph 11a of the Allegation

11. On 30 April 2020 you:

- a. went with Ms A to collect COVID Testing Swabs from the maternity ward when she told you not to go along; **Found not proved**
- b. waited outside the ward whilst she went in to collect the swabs;
Found not proved

140. In her statement to the Trust investigation, dated 20 May 2020, Ms A stated:

“Last week on my night shift Ari was doing the on call shift and I was asked to go to maternity ward to pick up some rapid swabs. When I was walking over there he appeared and said he wanted to talk to me. I told he should not be coming with me and he will get in trouble...”

141. In her GMC witness statement, Ms A stated:

“32. On 30 April 2020 I had been asked to collect rapid COVID testing swabs from the maternity ward. Dr Basu was aware that I was going, and he came with me. I told him not to come as he would get into trouble, and when I went into the maternity building to collect the swabs, he was still standing outside the building waiting for me to walk back to the A&E ward.”

142. In his GMC witness statement, Dr Basu stated:

“120. On 30 April 2020 I joined in the ‘clapping for keyworkers’ and I saw Ms A which I wasn’t expecting as she had told me earlier that day that she was only working a day shift. She told me that she had been swapped onto a night shift in lieu of 2 day shifts. I was taking photos and selfies and Ms A joined in. Later, she asked me to send her the photos, but I said I couldn’t because of the letter I had received from the Medical Director, Dr K. There was no indication she was uncomfortable being in my presence or letting me take a photo with her in it.”

143. Ms A said in oral evidence that Dr Basu had offered to walk her back from the maternity ward. She was adamant that it happened.

144. In his timeline of events for the second Trust investigation, Dr Basu recorded under the heading of ‘[Ms A’s] Shift’:

“Night Told me she was supposed to do 2 days (30th and 1st) , now doing only one night”

And under the heading Interactions/Events on 30 April 2020:

“...during the clapping for Keyworkers, I suddenly saw [Ms A] there. I was surprised to find her there as she had earlier told me that she was working a day shift that day. She said she has been swapped into a night in lieu of two days. I was taking a few photos and selfies and she joined in. She had later asked me to message her the photos to which I said that I won’t be able to do that as per CC’s direction in her e-mail on 10/04/20. I shared the photos instead on my FB page later. I was in the XXX for the second half of my shift. She showed me her personal statement for her application for XXX course at XXX. She told me that Dr M and Dr Q had composed it for her. She showed it to me for my opinion, said she can’t email it because of the investigation, but printed it out so that I could make any changes. I made some changes and gave it back to her. I kept a copy, told her I’d think about it more when I have time and let her know if it needs any more change.

We discussed her personal statement with XXX. She asked me not to tell that she is applying for the XXX Course to any XXX. Sometime later she came to me and asked for help with a patient in XXX– she was doing obs before transferring patient to XXX and was unsure about respiratory rate and sats. Asked me to review the patient. I again showed her how to check resp rate in patients with shallow breathing. The sats were

on the low side and she seemed uncomfortable going alone with the patient to the ward...”

145. In his oral evidence Dr Basu was adamant that he did not go to the maternity ward with Ms A. Dr Basu recorded his interactions with Ms A and had done so for this date but made no note of any interactions with Ms A going to the maternity ward to collect COVID Testing Swabs. There is only mention of the patient transfer to the XXX ward.

146. The Tribunal noted that by this time, Dr Basu had been explicitly told not to interact with Ms A.

147. The Tribunal was satisfied that Dr Basu had no reason to deliberately mislead or falsify his contemporaneous chronological timeline of events to present a different narrative on this point. The Tribunal accepted Dr Basu’s timeline as reliable contemporaneous evidence.

148. The Tribunal also noted that Ms A’s original statement to the Trust did not go as far as the allegation contained in this paragraph. In that statement, she indicates that she told Dr Basu he should not be coming with her and would get into trouble, and does not indicate either way whether he remained with her.

149. The Tribunal could see no evidence to corroborate the allegations contained in paragraphs 11a and b. The detail of the allegation has developed over time and there is a degree of overlap with the allegation at paragraph 11c. The Tribunal relied on the evidence of Dr Basu’s chronological timeline and determined that there was insufficient evidence to prove, on the balance of probabilities, these paragraphs of the Allegation.

150. The Tribunal therefore found paragraphs 11a and b of the Allegation not proved.

Paragraph 11c of the Allegation

11. On 30 April 2020 you:

- c. went to do a patient transfer with Ms A when she told you not go along or words to that effect. **Found proved**

151. In her statement to the Trust investigation, dated 20 May 2020, Ms A stated:

“...Later on in the shift I was going on a transfer to XXX with a ported [sic] which I believe was just after midnight. Ari also came along and said he wanted to talk to me and said he was walking that way anyway. Before this transfer the porter had joked with another porter saying that Ari would probably tag along to as he had done this on more than one occasion.”

152. In her GMC witness statement, Ms A stated:

“32. ...Later that day I was going on a patient transfer and he said that he would come with me. I told him not to come but he came anyway and said that he was doing so because it was on his way out of the Hospital. I think I told Dr C about this incident, but I am not 100% sure.”

153. In Ms A’s oral evidence she asked why Dr Basu had to go along and not a junior registrar. She said that consultants do not go on patient transfers. That was supported by the witness statements of Dr E and B, and Dr E’s account in a meeting of 19 June 2020.

154. In his GMC witness statement, Dr Basu stated:

“122. Sometime later that day she came to me and asked me for help to review a patient in the XXX, she had been doing the patient’s observations but was unsure about their respiratory rate or saturations. I showed her again how to check the respiratory rate in patients with shallow breathing, I confirmed that the saturations levels were on the low side. Ms A seemed uncomfortable taking the patient on her own to XXX Ward, so I went with her, we had a porter with us. I was just about to finish my shift and my primary concern was the patient’s wellbeing and safety which is why I went. The porter was not with us on the way back and I asked Ms A if she was ok to walk back with me on our own, which she said was fine. I regret asking her if she had heard anything about the progress of the Investigation and she told me she hadn’t. She asked me how I was and I answered honestly that I was stressed but fine. I then went to the Consultant’s office.”

155. In his response statement to the second Trust investigation, dated 22 June 2020, Dr Basu stated:

“...[Ms A] was doing obs before transferring patient to XXX – unsure about respiratory rate and the O2 sats were low. She asked me to review the patient which I did. I felt that though the patient was unwell, she could still be transferred to XXX ward. I could see that [Ms A] was anxious so I offered to go with her and Mr R who was portering for ED. After handover at XXX, Mr R had left; so it was just the two of us on the way back. I asked her if she was okay walking back with me or would prefer to walk back on her own. She said she had no problems walking with me. I asked her if she has heard anything about the course of the investigation. She said she hasn’t received any email. She asked me how I was. I told her that I am alright apart from all the stress.”

156. The Tribunal also had regard to Dr Basu’s chronological timeline of events for the second Trust investigation under the heading Interactions/Events (with Ms A) on 30 April 2020, in which he recorded:

“...I went with patient to XXX ward with Mr R (porter) – on the way back, Mr R wasn’t there. I asked her if it was okay walking back together and she said yes. I asked her if she has heard anything about the course of the investigation. She said she hasn’t

received any email. She asked me how I am. I told her that I am alright apart from all the stress. I went to the office and she went back to XXX.”

157. Dr Basu accepted in both his written and oral evidence that he did go the XXX ward with Ms A and a porter for a patient transfer on 30 April 2022.

158. Dr Basu’s oral evidence was that he went with Ms A as she was the patient was very poorly and she was anxious if the patient deteriorated during the transfer. His justification for going along was in case the patient had a cardiac arrest, and he would know what to do. Dr Basu said he could have asked a junior registrar to go along for the patient transfer but that the registrar was busy in XXX. He indicated that he, Dr Basu, was at the end of his shift, and for him to send another doctor he would have to handover the transferring patient, and receive a handover for patients he would then need to cover. He said it could have been any XXX and he would have gone along. Dr Basu accepted that in hindsight he should have found someone else to go along with Ms A but that he went for clinical reasons.

159. The Tribunal noted that Dr Basu’s timeline recorded that he and Ms A both declined to do things that day because of the restrictions imposed on him. It accepted Ms A’s evidence that she told Dr Basu that he should not come along with her, or words to that effect, as he could get in trouble. This was because Dr Basu had been strictly told to leave Ms A alone and not interact with her.

160. On Ms A’s account, she had made clear to him at that time of the incident alleged in paragraph 11a and 11b. The Tribunal has found those charges not proved but accepts that she said those words, or words to that effect during the course of that day. The Tribunal determined that, on the basis that Ms A had made it clear to Dr Basu at some point on 30 April 2020 that he should not be going along with her as he could get into trouble because he should not be interacting with her, those comments applied to the transfer of the patient, whenever they were made.

161. The Tribunal determined that it was more likely than not, on the balance of probabilities, that Dr Basu did do a patient transfer with Ms A when she told him not go along, or words to that effect, on 30 April 2020.

162. The Tribunal therefore found paragraph 11c of the Allegation proved.

Paragraph 12 of the Allegation

12. On or around 31 December 2020 you insisted that Ms A carry out an abdominal examination on a patient in the XXX, despite Ms A telling you the patient was in too much pain or words to that effect. **Found not proved**

163. In her email to Ms B, dated 3 January 2021, Ms A stated:

“I just wanted to inform you of something that happened on the 31st at work. I was in XXX and received a handover that a patient was referred to surgeons by XXX but when called they said that they hadn’t accepted and had to be seen by XXX. It was handed over by day staff that Ari was going to allocate someone to see then patient. About half an hour into my shift I called XXX for a doctor to prescribe some analgesia and to see the patient. Ari then came over and was in XXX for a long period of time (2ish hours). He had suggested I could practice an abdominal examination on him, I said he was in too much pain and wouldn’t be fair on the patient but Ari insisted. While doing it I could see the patient was in pain so I said I would stop. I tried to keep all conversation to professional conversation only. But I am unsure if he needed to be present in XXX for the period of time that he was.”

164. In her supplementary GMC witness statement, dated 21 May 2022, Ms A stated

“5. I told Dr Basu that if he was referring the patient to surgeons, we needed to print the report as the computer in the area wasn’t working and you could not see imaging or load ICE. Dr Basu told me this was a good chance for me to examine the patient. I said there was no point as XXX, not in work time, but he insisted. There was a nurse present, I don’t recall who this was. Dr Basu said to the nurse something along the line of ‘do you not think she should do this, its good practice’, so I examined the patient before stopping as the patient was in pain. Dr Basu then referred the patient for a CT scan.”

165. In his witness statement, Dr Basu stated:

“141. Ms A has alleged that on 31 December 2020 I insisted that she perform an abdominal examination on a patient, I refute this entirely. I made a voice recording on this occasion which I have disclosed to the GMC and have had transcribed... As can be seen Ms A told me that she has her stethoscope in her bag and asked me if she could perform an abdominal examination, that can be heard in our discussion. I then asked Ms A if that was something she had been trained to do on her course and she said it was.

142. Throughout this entire interaction Ms A seemed comfortable speaking to me, she was relaxed, she was even laughing.”

166. In the transcript of Dr Basu’s recording that he had transcribed, the transcript stated:

*“08.01 Dr Basu Could be or diverticulitis or abscess, something like that
 yeah. No idea erm, but...
08:09 [Ms A] Ahh, just do an abdo examination [...] (laugh)
 Dr Basu [?Mmm??]
 [Ms A] (Laugh) Got my stethoscope in my bag (laugh)
 Dr Basu What is that?
 [Ms A] I said I asked if I could do an abdo examination [..]*

08.22 Dr Basu *Yeah you can. Is that a part of XXX?*
 [Ms A] *Yeah, I did it 4 months ago"*

167. The Tribunal noted that even under the terms of Dr Basu's restrictions in relation to Ms A, he was allowed to have a professional conversation with her.

168. The Tribunal noted that the recording ends before the actual examination of the patient. Dr Basu said that this was because this was when he had a more direct interaction with the patient, which he would not record. The Tribunal did note however that during the audio recording, Dr Basu appeared calm and professional. It concluded that his responses indicate an apparent belief that Ms A made a genuine request, rather than a joke. Ms A also appeared to be calm, laughing, comfortable and it did not appear, on the face of it, that Ms A was under any pressure to undertake the abdominal examination at that point. Ms A could be heard asking to do the examination, though in oral evidence she said that she laughed after saying that as it was a joke.

169. In her oral evidence Ms A was asked about having her stethoscope with her, she said that she always has it with her and had it in her bag when she was giving her oral evidence. She said that she was she was reluctant to undertake the abdominal examination and that Dr Basu was pressuring her. She said that she was trying to be relaxed in front of the patient, that she knew she would not do the examination unless she was on placement which was why she had laughed. Ms A also said that her email to Ms B was rushed in ten seconds after a twelve-hour shift. She was adamant that Dr Basu insisted she carry out the examination even though the patient was in pain.

170. The Tribunal determined that, however she was feeling internally, Ms A's demeanour on the audio recording is not such that Dr Basu could reasonably be expected to recognise reluctance on her part. In that recording she seemed enthusiastic to perform the examination and, although she has explained her interpretation of her laughing, the Tribunal does not accept Dr Basu should have interpreted it as she said he should have.

171. The Tribunal considered that Ms A would have taken out her stethoscope before she could have undertaken the abdominal examination. That would have demonstrated a level of willingness to Dr Basu.

172. The Tribunal was conscious that Ms A, by this point, was likely to be anxious around Dr Basu, and likely to interpret his behaviour as more negative than might have objectively been.

173. The Tribunal was of the view that in order for Dr Basu to have acted in the way described by Ms A, his manner would have had to have changed significantly from that on the recording. It determined that it was more likely than not, that Ms A misread the situation.

174. The Tribunal therefore found paragraph 12 of the Allegation not proved.

Paragraph 13 of the Allegation

13. On or around 1 January 2021 you left chocolates for Ms A at work.

Found not proved

175. In her email to Ms B, dated 3 January 2021, Ms A stated:

“On the 31st, I was working on XXX. I believe I was moved to XXX because Ari was present but I don’t actually know. Later that evening I was in the treatment room preparing medication with a agency staff I could see that Ari was hanging around outside the door when the XXX left he came in and put chocolates on the side. He left chocolates in all the areas out on the main desks. So I’m unsure why he didn’t just leave them on the nursing station in XXX.”

176. In her GMC witness statement, Ms A stated:

“...Dr Basu left chocolates in the treatment room where I was working instead of leaving them on the nursing station for everyone like he had done in all the other clinical areas, and he offered me some chocolate directly.”

177. In his GMC witness statement, Dr Basu stated:

“143. It is very common for people to bring food into the department, often sweets and chocolates are brought in and this is something which always happens and particularly around Christmas. I remember that I brought in a box of Quality Street chocolates for the Department on new years day. I remember I brought in Quality Street because they are individually wrapped, which was better because of Covid. I am certain that I did not bring in any chocolates specifically for Ms A, there is absolutely no way I would have. I would not dream of giving a XXX gift to a person I knew XXX, this is simply inconceivable. By this point I realised that Ms A was absolutely not my friend and I had become suspicious/concerned so I would not even have wanted to give her a gift.

144. There was an occasion in January 2021 when I walked into the Consultant’s Room and found Ms A there alone. I immediately left the room. Later that day I needed to go back to the room and because of the fact Ms A had been there on her own earlier, I found a colleague and took them with me. She was still there, I did not speak to her at all, I got the things I needed and I left the room with my colleague. I also spoke to B about this and told her I was unhappy she had been allowed into the Consultant’s room.”

178. The Tribunal was satisfied that Dr Basu had brought chocolates in. In his oral evidence Dr Basu said that he would not have left chocolates in the treatment room as this was during the Covid 19 Pandemic and that he would leave them someone central where people could access them.

179. The Tribunal noted that Ms A was working in a XXX and that Dr Basu said that he did not leave chocolates in the XXX due to Covid. He said that he left them in the ‘clean room’ for all the staff.

180. In her GMC witness statement, Ms A said that Dr Basu directly offered her some chocolates. Dr Basu categorically denied this as he said that he knew Ms A was XXX and he would not offer those chocolates to XXX.

181. The Tribunal had regard to Facebook messages sent between Ms A and Dr Basu, which stated:

[Ms A]
Yeah I did and they are XXX x
24 Dec 2019, 21:14

Ari Basu
Did you make the XXX ?
24 Dec 2019, 21:04
...

Ari Basu
Doesn't have to be XXX, but XXX has all the usual high street restaurants and all places do a XXX selection. Do you have a cuisine preference?
24 Dec 2019, 10:51
...

[Ms A]
I can be very persuasive 😊 you wouldn't want to cook for XXX anyway x
23 Dec 2019, 17:31

Ari Basu
What are your plans for dinner?
....

Ari Basu
2 Bananas, biscuits, plum , grapes - XXX except probably the biscuits 😊 What did you have?
22 Dec 2019, 16:23

[Ms A]
What did you find x
22 Dec 2019, 15:53

[Ms A]

Oh really how come x

22 Dec 2019, 15:52

Ari Basu

Haven't brought lunch, will have to forage 😊

...

Ari Basu

Wow, XXX ! Respect ! See you.

18 Dec 2019, 14:57

[Ms A]

Look forward to it x

18 Dec 2019, 14:29

[Ms A]

Haha I like to keep busy!! I don't take any vitamins, although I am XXX x

18 Dec 2019, 14:29"

182. The Tribunal considered the fact that Dr Basu knew Ms A to be XXX for quite some time, and that it came up in their Facebook messages on several occasions, to be compelling evidence that he would not have either bought the chocolates for her, or directly offered them to her.

183. The Tribunal again noted that Ms A would have been very sensitive to Dr Basu's presence and so if he was leaving chocolates in her vicinity, she may well have thought that he was leaving them for her, but that she was more than likely mistaken.

184. The Tribunal therefore found paragraph 13 of the Allegation not proved.

Paragraph 14 of the Allegation

14. Your behaviour at paragraphs 2-4, 6-8, and 10-12 amounted to harassment, as defined in Section 1(1) Protection from Harassment Act 1997.

Found proved in respect of paragraphs 4 (in part) 6a, 6c and 8 of the Allegation

185. The Tribunal first considered what the definition of harassment was in Section 1(1) Protection from Harassment Act 1997. It noted that Section 1(1) of the Protection from Harassment Act 1997 (the 1997 Act) does not define harassment; section 1(1) prohibits harassment. Section 7 of the 1997 Act deals with interpretation of the Act and provides:

(2) References to harassing a person include alarming the person or causing the person distress.

186. The Tribunal noted that which was summarised by the editors of Blackstone’s Criminal Practice: *“The definition provided by s. 7 is clearly inclusive and not exhaustive (DPP v Ramsdale [2001] EWHC Admin 106). ‘Harassment’ is generally understood to involve improper oppressive and unreasonable conduct that is targeted at an individual and calculated to produce the consequences described in s. 7. By s. 1(3) of the Act (see B2.210), reasonable and/or lawful courses of conduct may be excluded (see N(Z) [2016] EWCA Crim 92, [2016] 2 Cr App R 10 (112) at [38] (where this summary is endorsed) and Tan [2017] EWCA Crim 493 at [18]). The practice of stalking is arguably the prime example of harassment (Curtis [2010] EWCA Crim 123, [2010] 1 Cr App R (S) 31 (193)) but a wide range of other actions could, if persisted in, be so categorised. A course of conduct which is unattractive and unreasonable does not of itself necessarily constitute harassment; it must be unacceptable and oppressive conduct such that it should sustain criminal liability. See Majrowski v Guy’s and St Thomas’s NHS Trust [2006] UKHL 34, [2007] 1 AC 224, per Lord Nicholls at [30]. Harassment includes negative emotion by repeated molestation, annoyance or worry. The words ‘alarm and distress’ are to be taken disjunctively and not conjunctively, but there is a minimum level of alarm or distress which must be suffered in order to constitute harassment.”*

187. The Tribunal therefore had to determine whether that alleged at paragraph 14 of the Allegation:

- a) Amounted to a course of conduct;
- b) The course of conduct amounted to harassment under the 1997 Act, such that it was sufficiently unacceptable and oppressive such that it should sustain criminal liability;
- c) Dr Basu knew or ought to have known that it amounted to criminal harassment (i.e. a course of conduct sufficiently unacceptable and oppressive such that it should sustain criminal liability).

188. The Tribunal approached the question of whether Dr Basu’s conduct amounted to harassment objectively in respect of each of the paragraphs referred to within paragraph 14 of the Allegation and previously found proved. It accepted that Ms A perceived Dr Basu’s conduct to have amounted to harassment. The Tribunal bore in mind that the GMC had not advanced its case on the basis that Dr Basu had intended Ms A to feel harassed. The Tribunal accepted that had not been Dr Basu’s intention.

189. In approaching whether this paragraph could be found proved, the Tribunal had to determine if any of Dr Basu’s conduct did amount to harassment and also whether he knew or ought to have known it at the time. In order to answer that second question, the Tribunal placed itself in Dr Basu’s position on the timeline and considered what information he had available to him at the time.

190. The Tribunal first considered what information was available to Dr Basu which could have indicated to him that his behaviour towards Ms A was unwelcome, or abnormal, and could amount to harassment:

i. Ms A had made Dr Basu aware of the ongoing gossip within the department about his and Ms A's relationship provided an early indication that things may not be interpreted as he intended them. The Tribunal accepted that Dr Basu's conduct at the time the gossip started reflected a mutual approach between them, so the gossip could be no more than an indication that the relationship was drawing attention at that stage. It would not indicate to Dr Basu that Ms A was negatively impacted by his behaviour directly.

ii. XXX. Whilst this could not be considered harassment, the Tribunal considered that it was a warning to Dr Basu that his conduct may not be deemed appropriate by XXX, which provided him an opportunity to reflect on it.

iii. In Dr Basu's GMC witness statement, he recognised that Ms A appeared frightened of him in the car park on 29 January 2020:

"...I told her I was really worried about her and asked if we could talk. Ms A told me she didn't want to talk to me and shouted that I should leave her alone, I respected that and told her I was going to leave her alone as requested. I have never had anyone look frightened of me before."

iv. In Ms B timeline of events for the first Trust investigation, she recorded on 29 January 2020:

"[Ms P] and [Ms B] spoke with [Dr Basu]. [Dr Basu] requested to know what had been said and informed him that [Ms A] was very upset by the attention he was showing her. [Dr Basu] expressed that he felt [Ms A] liked him from messages he had received and he liked her. Statement requested. [Dr Basu] informed that this would be investigated formally and that support was available via Vivup, OH and HR and that he was not to discuss this with anyone. Informed that he could speak with [Ms P] if needed. Advised to continue to work as scheduled but to make no contact with [Ms A]. Advised that medical director would be informed and she would advise of the formal process and how to proceed."

This was the first occasion on which Dr Basu received a direct warning from someone at work that his conduct towards Ms A had upset her. He was, from that point, on notice that there would be an investigation into his conduct on 29 January 2020, and that he should not contact Ms A.

v. On 30 January 2020, Dr K sent a letter to Dr Basu stating:

"Thank you for meeting with me this afternoon. I explained that concerns had been raised with me regarding your behaviour towards a XXX in XXX, in particular that yesterday you followed her to her car and she felt "stalked". She

was very upset by this. We discussed how you had come to know this XXX since the XXX. You were visibly upset and remorseful during our meeting.

I told you that as these concerns had happened whilst you were at work and on the hospital site I would need to investigate them further. I will take some additional advice, but there will probably be a formal investigation. I advised you that you may wish to write an account of events whilst they are fresh in your mind, and to speak to your defence organisation or the BMA...

I have not put any restrictions on your clinical work. I have asked the department manager to adjust both of your shifts for a couple of weeks so that you are not working together.

I have told you not to contact the XXX concerned, and if you do see her at work to interact with her in a purely professional manner..."

Dr Basu from the receipt of that letter was aware that matters were being dealt with by the Medical Director and that his conduct on 29 January was likely to be subject to a formal investigation. He also knew that efforts were being put in place to minimise interaction between him and Ms A at work.

vi. On 18 February 2020, Dr K sent a letter to Dr Basu stating:

"Re: Investigation

I am writing to summarise our meeting earlier today.

I discussed that I have taken advice from PPA (letter attached). In the meeting I advised you that we will be conducting an investigation in line with our Conduct, Capability, Ill Health and Appeals Policy and Procedure... I have asked for the investigation to be completed by 20th March. I will endeavour to write to you within 5 days of receiving the report to provide you with a copy of the report. If the investigation is delayed for any reason, I will endeavour to keep you updated.

I have considered whether to exclude you or limit your clinical practice. I consider that you may continue to work as an XXX consultant during the investigation. However, I am placing a restriction on your clinical duties in that you must re-organise your rota so that you are not working the same shifts as Ms [A]. The department manager (Mr R) is aware of this and will ensure that you are supported for this to happen. You should not to contact Ms [A], and if you do see her at work you must interact with her in a purely professional manner..."

Dr K's second letter provided a further warning regarding Dr Basu's ongoing contact with Ms A. The fact that exclusion was being considered should have made clear that matters were at a serious level and the formal restriction on him should have had the same effect.

vii. In his email to himself on 2 March 2022, Dr Basu identifies an occasion when Ms A specifically referred to the risk of talking to her at work.

"...We stopped talking at this point as she said that 'someone can see us and you (myself) would get into trouble..."

That interaction at least indicates to Dr Basu that Ms A did not want non-professional contact in the workplace.

viii. Dr Basu himself records that Ms A is feeling harassed by him in an email he sent to himself on 6 March 2020:

"As advised before by my mentor in this matter, Dr C,, who I have discussed this with, I am emailing myself to put a time stamp on this statement. I am writing this since in the past my intention has been misunderstood and I don't want this to happen again. Last Monday, [Ms A] met me and told me that she wanted to meet me today at 1900 and speak to me. I agreed to send her a message to let her know I am in the hospital. I will let [Ms A] know by messenger when I reach. She doesn't know that I am not starting my shift from 1900 as I told her but from 2000 which will give me some time to listen to what she has to say. This will only be if she comes to meet me {I won't seek her out and try to meet her if she doesn't respond to my message or has changed her mind) as the rationale behind not meeting her, as I understood it was that she had felt harassed before and this could no longer be a reason if she herself wanted to meet me. Dr C has further advised me to see her only in a public place. Since this meeting will be after she has met the interview panel, I cannot be accused to trying to influence her statement / her views."

Dr Basu was, at that stage, putting measures in place himself to avoid risk of misunderstanding. That indicates to the Tribunal that he knew there was such a risk, and that Ms A could be made to feel distressed or alarmed by his behaviour if it were not strictly managed.

ix. Dr Basu felt the need to start sending himself emails of his interactions with Ms A, to keep a chronological timeline of what shift both he and Ms A were on, and record his interactions. This demonstrated further to the Tribunal that he knew his intentions risked being misinterpreted.

x. Ms A pulled out of the meeting arranged for 11 March 2020 to discuss and clarify matters between them. That came a day after an interaction between them

about which Dr Basu had sent himself an email outlining an apparently positive discussion between them and should have indicated to him that all was not well. In his email to himself of 12 March 2020 he noted: *“I noticed that she wasn’t smiling, biting her nails and looked very anxious”*.

xi. Dr Basu received a message from Ms A on 12 March 2020 which largely ended Facebook communication between them. Dr Basu sent Ms A 36 unanswered Facebook messages between 28 January 2020 at 22:56 to 12 March at 09:38. These messages included: *“Are you angry with me?”, “Where are you working today?”, “Are you on transfer?”, “Will you let me know when you’re on your break?”, “Are you on your break now?”, “Where are you?”, “Can you talk?”, “Haven’t you had your lunch break yet?”, “Are you still in the hospital?”, “Sorry if I bothered you. I thought you wanted to speak to me.”, “You can message me if you want. I promise to delete it.”*. At this point Ms A responded stating:

*“[Ms A]
Please do not contact me
12 Mar 2020, 09:41”*

That message was unambiguous and appeared to the Tribunal to be interpreted by Dr Basu as such.

xii. Dr Basu spoke with Dr C on 30 March 2020, which Dr C set out in his email to Dr K on dated 14 April 2020:

“On the 30th March I was contacted by [Ms A] by text who had somehow obtained my number. When I spoke to her she made it very clear that she did not want [Dr Basu] to contact her and she was feeling harassed as he was continually following her around the dept and coming in to the dept at various times when she was there. She made it very clear that she was distressed by this. I asked [Dr Basu] to keep away from her but on each occasion he seemed to ignore by advice and would say to me that she is giving him a different message and wants to keep in touch with him. This was in complete contrast to what [Ms A] had told me repeatedly.”

xiii. Dr Basu had a further conversation with Dr C on 3 April 2020, which Dr C set out in his email to Dr K on dated 14 April 2020:

“Eventually on 3rd April I spoke to [Dr Basu] in much stronger terms and said that he was at risk of getting into serious trouble with authorities such as the Police if this did not stop. I made certain people aware I was having this conversation with [Dr Basu]. He continued to protest that she wanted to continue their friendship but I wanted the strongest reassurance from him that he would not speak to her unless she spoke to him first. I recall actually pleading with him. He gave me that and I conveyed the same to [Ms A].”

xiv. Dr Basu spoke with Dr C again on 7 April 2020, which Dr C set out in his email to Dr K on dated 14 April 2020:

“[Ms A] contacted me again on 7th April and clearly he had not taken my advice yet again. I spoke to her that day and said I would be at work the next day and perhaps she could make it clear to him that she did not want to be contacted; I was happy to be present and reassured her she should not be afraid. However I learnt that on 8th April [Ms A] had become distressed at work when [Dr Basu] had come in for simulation training and had spoken to [Ms B] who had in turn spoken to you. [Ms B] advised me that it was best not to proceed with the meeting between [Dr Basu] and [Ms A]. I explained this to both parties but again that evening [Ms A] reiterated how frightened she was of [Dr Basu's] behaviour. I again told [Dr Basu] to keep away from her but again it was the same reply that she had been giving him a different message. The next day [Dr Basu] undertook a locum shift and was in the XXX with [Ms A]. She made me aware of this and the fact that he had gone for a coffee at the same time as her and I called [Ms B] as I was offsite, she in turn called [Ms F] who asked [Dr E] to remove [Dr Basu] from that area in which [Ms A] was working. He did this. However later that day [Ms A] again contacted me to inform me that [Dr Basu] had returned to the area half an hour after being asked to move.”

He further stated:

“I must also point out that during all this time [Dr Basu] has called me on numerous occasions and spoken about his home circumstances and [Ms A] and on each occasion I have pleaded with him not to contact [Ms A]. I have also suggested he makes XXX aware of the situation as she had raised concerns to him. In addition [Dr Basu] has spoken to me about leaving the trust and of his emotional attachment to [Ms A].”

xv. In his witness statement Dr C stated that he set out in no uncertain terms that he should stay away from Ms A, and he stated how shocked Dr Basu was when Ms A had likened his behaviour towards her as stalking:

“13. The more conversations I had with Dr Basu about this, the more my frustration grew. I told Dr Basu that it was clear, either he knew that he was not completely right about the situation, or [Ms A] wasn't, and he had to decide which one it was. I think Dr Basu genuinely believed that [Ms A] was contacting him, or that she wanted him to contact her, whereas I was telling Dr Basu that that was not the case. I was trying to speak to Dr Basu as a friend to say that he needed to stay away.

14. *During one of the conversations I showed Dr Basu a message that [Ms A] had sent to me in which she described his behaviour as stalking, and he was shocked and raised his hands and said words to the effect of ‘oh my god’ and ‘stalking, that’s a strong word’. At that point he promised that he would stop contacting [Ms A] but I believe he continued to. My main concern was Dr Basu and him not getting into any further trouble.”*

In his supplementary GMC witness statement, Dr C provided further clarification:

“5. In paragraph 14 of my earlier statement, I mentioned that I showed Dr Basu a message that [Ms A] had sent to me in which I said she described the behaviour of stalking. I wrote this earlier statement without the benefit of seeing the messages, and I would like to clarify that I now recall that there had been an in-person conversation with [Ms A] and myself where she had described Dr Basu's behaviour as stalking. The message which I showed Dr Basu ... where [Ms A] says that she cried the whole journey home. During the conversation with Dr Basu in which I showed him the messages I also told him that [Ms A] had commented that his behaviour was like stalking.”

xvi. In his GMC witness statement Dr Basu stated that:

“I was clearly shocked by Ms A having become so upset because of me and utterly confused that she said I grabbed her...”

And:

“...I was so shocked to read Ms A’s second statement that she provided to the Trust, because it did not reflect how she was behaving towards me...”

xvii. The reduced rate at which Ms A was responding to his messages on Facebook and no responses to his messages on Whatsapp. Ms A, in her oral evidence said that the reduction in messaging indicated her reduced enthusiasm for the friendship and a change in their relationship. The Tribunal accepted that interpretation but did not find that it would be sufficiently clear to Dr Basu that reduced responding in itself would be indicative of a fundamental change in the nature of their relationship.

xviii. The lack of an ‘x’ at the end of some of Ms A’s messages, which had been a part of her earlier messaging. The Tribunal placed no weight on this feature which Ms A highlighted in her oral evidence.

xix. There was a power imbalance between Dr Basu and Ms A. Dr Basu was a consultant and long-standing member of staff established within the Trust and Hospital. Ms A was a XXX member of staff at a more junior level and this should have been apparent to Dr Basu. He appeared to have no understanding of the power

imbalance, which he should have known could have resulted in Ms A feeling unable to challenge him directly.

191. The Tribunal then considered what objective evidence there was before it which could have indicated to Dr Basu that his course of conduct towards Ms A was acceptable:

i. The Tribunal heard evidence from Ms A and from other witnesses that she could be a 'flirty person'. The Tribunal noted that within some of the Facebook messages between her and Dr Basu, both appeared to have sent flirty messages before the relationship deteriorated, in late January 2020. This was a close and flirty relationship early on.

ii. Dr Basu and Ms A and a Facebook message exchange on 24 January 2020, in which Ms A told Dr Basu that the issues arising from gossip at work were easily mended and that she would explain in person:

[Ms A]
Just don't stress x
24 Jan 2020, 23:16

[Ms A]
I'll explain in person c
24 Jan 2020, 23:16

Ari Basu
How is it mended? I won't even be able to talk to you at work
24 Jan 2020, 23:15

[Ms A]
Focus on XXX x
24 Jan 2020, 23:13

[Ms A]
Don't stress about work, that's easily mended x
24 Jan 2020, 23:13

Ari Basu
Plus the thing at work
24 Jan 2020, 23:13

Ari Basu
Things are getting worse here
24 Jan 2020, 23:12

[Ms A]

*What's happened x
24 Jan 2020, 23:11"*

iii. Following the incident in the car where Dr Basu expressed how he felt about Ms A on 28 January 2020, the following Facebook messages were sent in which Ms A confirms that she and Dr Basu were still friends:

*"[Ms A]
Yeah
28 Jan 2020, 22:48*

*Ari Basu
Are we still friends?
28 Jan 2020, 22:42*

*[Ms A]
I'm sorry, I'm not interested in having a relationship with you
28 Jan 2020, 22:29"*

iv. There are two occasions where Dr Basu completely stopped messaging Ms A, in February and April 2020, after he received letters from Dr K. From that, the Tribunal discerned that Dr Basu took seriously the content of Dr K's letter of 18 February 2020 and recognised that he had to respect the limitations required of him within it. The letter on 10 April 2020 significantly increased the restrictions on Dr Basu and it seems he largely respected them with no messaging between then and his return from a period of exclusion.

v. There were training sessions at which Dr Basu was the trainer on 24 February 2020 (XXX) and 27 February 2020 (XXX) which Ms A attended. After these training sessions, Dr Basu told the Tribunal he felt the friendship was back to normal because Ms A had indicated she intended to withdraw the allegation. Ms A disputes that but the Tribunal accepts it was Dr Basu's genuine belief, as recorded in his contemporaneous records. Dr Basu's perception of a "reset" in their relationship may have led Dr Basu to believe that Ms A no longer felt harassed by contact from him.

vi. Dr Basu said that Ms A had told him that she was forced to make a complaint and that the decision as to whether to proceed with an investigation was 'taken out of her hands'. That may have indicated to Dr Basu that the steps taken to protect Ms A were not desired by her, and that she would welcome further contact with him.

vii. In the email sent to himself on 12 March 2020, in relation to 11 March 2020, Dr Basu stated:

"Went to the hospital around 1230 to do some paperwork for the upcoming appraisal and revalidation. As usual, walked through the XXX centre. Saw [Ms

A] in front of the XXX on her phone. This was not pre-arranged. She saw me and then she moved away towards the ground-floor exit where the stairs are and waited for me there She told me she has told the panel that she does not want to proceed with the complaint. 'They told me they can't proceed without her consent'. She told me 'Don't worry. It will all be over'. She asked me if I was alright. I asked her if we could talk about the whole thing. I asked this as the day before she had told me that we are friends. She told me that she had told the panel that she has not spoken to me and was not comfortable people seeing us talking. She said she can see me after work..."

viii. In respect of the first complaint, Dr Basu stated that *"Ms A told me she hadn't heard anything but that she had told the investigators she wanted to withdraw her statement and didn't want it to go any further"*. It was his case that it was his genuinely held belief that she was going to do this and held Ms A's word at face value. He said this is why he continued to speak, text and interact with Ms A when he had been told by the Trust and Dr C that he should leave Ms A alone.

ix. After the message from Ms A on 12 March, Dr Basu significantly reduced the level of his Facebook messaging and it became largely professional in nature.

x. The Tribunal is satisfied there had been an arrangement in place between Ms A and Dr Basu in that he had given Ms A some XXX that he had had for XXX, for Ms A's XXX. Dr Basu provided evidence of this in relation to a XXX. In oral evidence Ms A said that she could not recall this and that she did not even know what a XXX was. However, the Tribunal considered that there would have been no reason for Dr Basu to have messaged Ms A about this if it were not true. He messaged:

"Ari Basu

*I was carrying the XXX for but not sure if I can give it to you today. Everyone's in the department. Maybe next week.
20 Mar 2020, 19:05"*

xi. On Dr Basu's account, he and Ms A were friends, and she could have been blunt and told her to stop messaging her at any time. He was under the impression they were still friends, and he was getting mixed messages from her. This is why, on his account, he carried on messaging Ms A and interacting with her.

xii. In Dr Basu's chronological timeline, he has provided a detailed account. The Tribunal accepts the content reflect his genuine reflection on interactions he had. He has recorded interactions with Ms A when he knew he should not have been having any interactions with her. It does not appear to the Tribunal, that the document is designed to be self-serving, or intentionally misleading.

xiii. In respect of the abdominal examination on 31 December 2020, Ms A said that she was feeling scared and sick and she believed that at that point she was not

encouraging contact with Dr Basu. However, the Tribunal has discounted that assertion. The audio recording of the abdominal examination demonstrated that Dr Basu was being calm and professional in his interaction with Ms A, and that Ms A appeared to be relaxed and laughing.

xiv. The total number of messages available to the Tribunal is not high, but there were intense periods within the messaging. On some days 7-8 messages during a 12-hour shift. The Tribunal is of the clear view that the quantity of messages is not in itself oppressive.

xv. It was Dr Basu's case that it was his genuinely held belief that his understanding as to why messages between them should be deleted was so that others would not see that they had been messaging each other due to the gossiping in the department. That in turn provided an explanation in his mind as to why there may need to be reduced contact between them and provides, to some extent, an alternative explanation for reduced contact from Ms A.

xvi. There has been more direct contact face to face with Dr Basu and Ms A than Ms A has suggested there has been at work.

Key Features of the Timeline

192. The Tribunal considered the following features of the timeline to be particularly important to the analysis it conducted:

193. The Tribunal determined that Ms A and Dr Basu interacted as friends until 28 January 2020. It considered that it was only after Dr Basu had expressed how he felt for Ms A in the car on 28 January 2020 that the dynamic in their friendship changed and their relationship began to deteriorate. On 29 January 2020 Ms A became upset and raised her concern with the Trust. Consequently, none of their interactions before 30 January 2020 could be considered harassment. There was no reason for a reasonable person to believe there was anything within them causing alarm or distress, and the messaging was largely mutual.

194. Dr Basu was then on notice about the impact his behaviour had had on that single occasion as a result of Ms P, Ms B, and Dr K's interjection.

195. By the time of Dr K's second letter of 18 February Dr Basu must have known that his conduct that day, and continuing communication after it, were impacting on Ms A. It would also be clear to Dr Basu that Ms A was continuing to engage with those conducting the investigation, because they were aware of the continued communication between him and Ms A.

196. The training sessions on 24 and 27 February, and in particular the conversations around them, indicated to Dr Basu that there was a "reset" in the relationship and that the upset caused by his revelation of his feelings on 28 January, and the subsequent interactions

on 29 January, may be behind them. The Tribunal accepted there may be justification in Dr Basu thinking the friendship could continue as it had before, albeit in the context of what he had said in the car on 28 January.

197. Dr Basu began messaging Ms A again on 4 March, which she did not respond to until 12 March.

198. The message from Ms A on 12 March, following her decision not to attend a meeting with Dr Basu the day before, should have confirmed to Dr Basu that the “reset” he believed had occurred, could not be relied upon.

199. Dr Basu did not message again on Facebook until 19 March and then only three substantive messages, though there was further communication on WhatsApp.

200. Dr C’s interventions at various stages, but certainly on 30 March, 3 April, and 7 April must have made abundantly clear to Dr Basu that his conduct was unreasonable and risked causing Ms A very serious upset. After those interactions, there is considerably less interaction between Ms A and Dr Basu.

The Effect of the Power Imbalance

201. Dr Basu described receiving “mixed messages”. The Tribunal accepts that may well have been the case. Dr Basu’s response to those mixed messages was to assume that things were normal between them and that any information he received to the contrary was a misunderstanding between Ms A and the person who received that information from her.

202. It did not appear to the Tribunal that Dr Basu had considered the opposite interpretation with the same care. He had taken steps to record his interactions. That ensured a record of “normal” conversations, and provided documentary evidence to support his interpretation of what was said.

203. On occasions when Dr Basu had interactions with Ms A at work, the Tribunal accepted her evidence that there was a social and professional pressure on her to behave normally.

204. Dr Basu should have recognised that risk and considered the apparently normal conversations in the context of the abnormal and, at times, clear indications, that Ms A was being negatively affected by his conduct.

205. A reasonable person in his position, even one believing there was a deep friendship between them, would have recognised that the apparently normal interactions between them may well have masked feelings that were being reported to other people. He should have recognised that Ms A may not feel able to tell him directly each time she did not feel comfortable with a conversation or interaction.

Paragraph 14 in respect of paragraphs 6a and c of the Allegation

206. The Tribunal considered paragraph 14 in respect of paragraphs 6a and c of the Allegation, namely that; on or around 31 March 2020 Dr Basu went to the zone Ms A was working in and burst into tears in front of Ms A and told her that he thought he 'should leave the Trust', or words to that effect.

207. The Tribunal noted that this incident came after a number of events set out above, namely the letters from Dr K telling Dr Basu not to contact Ms A, the Trust investigation and Ms A telling Dr Basu not to contact her on 12 March 2020.

208. Following these events, in the knowledge that Ms A had put in a complaint about him, Dr Basu went to the XXX room where Ms A was; where she could not leave as she was looking after the XXX; when Dr Basu had no good reason to be there other than to speak to Ms A; approached her and burst into tears stating that he thought he should leave the Trust.

209. The Tribunal considered that his actions would be seen by a reasonable person to be putting emotional pressure on Ms A, whether he intended to or not, as she was the one who had made the complaint against him. She was a XXX member of staff at a more junior level and he was the established consultant, stating in tears that he thought he should leave the Trust, or words to that effect, the implication being that his career was being affected by her complaint against him. That would, the Tribunal determined, put pressure on her not to maintain her complaint, or to feel guilt for doing so.

210. The Tribunal was of the view that this did amount to harassment as Dr Basu was putting emotional pressure on Ms A to withdraw the complaint, and he ought to have known how his behaviour would impact on her. It considered that this incident met the threshold of criminal harassment.

211. The Tribunal did not conclude that Dr Basu had intended that effect or premeditated it.

212. The Tribunal therefore found paragraph 14 in respect of paragraphs 6a and c of the Allegation proved.

Paragraph 14 in respect of paragraph 8 of the Allegation

213. The Tribunal considered paragraph 14 in respect of paragraph 8 of the Allegation, which was admitted and found proved, namely that; on 1 April 2020 Dr Basu sent an email to Ms A and he said 'can I please expect that for old time's sake you will keep this confidential and not share this with anyone'.

214. The Tribunal had regard to the email from Dr Basu to Ms A, dated 1 April 2020, which stated:

"Dear [Ms A],

Apologies in advance for a long email. I just wanted to put down my thoughts and get them across to you and it is so difficult to speak to you at work. Can I please expect that for old time's sake you will keep this confidential and not share this with anyone.

[Dr C] spoke to me yesterday, said you had called him and you wanted to pass on a message through him. I am a bit hurt. Why couldn't you just tell me yourself? We were alone in XXX, you could just have told me. [Ms A], for the umpteenth time. I am your friend and I really care about you and as you yourself said to me we are best friends. Best friends don't need to communicate through someone else. I give you the rights. You can tell me off. You can swear at me, you can be honest with me. I am not too good with social skills, I don't understand subtle hints. I want you to be brutally honest with me. If one day we are to be really good friends and best friends, not just as a phrase but in the true sense, I need to change and I need your help with it. I need you to show me the boundaries if you think I am ever crossing them.

Anyway it was a wake-up call for me. I really don't want to have a birthday where you can't wish me, I can't bear to not have you reply to my messages or not to have you to share any news with. I really can't bear to not be invited to your birthday party or your XXX or not to be there to celebrate all the successes and milestones of your amazing life ahead. I almost lost you once. I never want to lose you again.

Last Sunday, I came in early so that I could chat to you while you are having your break but I was too late. I feel like I never get to speak to you. I so want to just sit down with you and just talk. I saw how close you and Mr S are as friends; that used to be us. How you guys message and meet for coffee; that used to be us. How you smile at him like you used to smile at me. I just felt a pain burning inside and in this instance I couldn't stop my tears. I am so sorry I made you upset. Please believe me, I am trying hard. I do not want any other of my feelings to come in the way of our friendship and I can't thank you enough for being so understanding when I told you this. Your hug made me feel so much better and I really want to do everything possible that you don't feel uncomfortable in my presence. As you suggested, I will try to speak to everyone when we are in a group and only speak to you in a professional way when we are with others.

[Dr C] told me that I 'need to back off'. I am not sure what this means. It may be that you have decided that do not even want me as a friend. I remember how upset you were when I offered to leave this job and you wanted me to work with you. If this changes at any time, will you please let me know? I don't want you to face any difficulty at work or be in any way unhappy because of me. I owe you this much.

So today when we meet, I want it to be like the first day of the rest of our friendship - I will work towards making you feel happy not stressed, work towards building up trust not doubts and I will use all the power in my feelings for you to make this friendship

work. I will help you learn and develop and support you if you ever feel low and I can only hope that one day you will be proud to call me your friend...”

215. The Tribunal noted that in this email, Dr Basu stated that; ‘*Can I please expect that for old time’s sake you will keep this confidential and not share this with anyone*’. The Tribunal considered this to be an attempt to pressure and to control Ms A. Dr Basu expressed how hurt he was when he saw that Ms A had become close to another member of staff and that that used to be him and her. The Tribunal was of the view that Dr Basu was expressing a level of jealousy which would inevitably have an impact on Ms A, who had made a complaint about him, asked him to stop contacting her, and had, by then, approached his mentor to seek help in stopping contact.

216. Dr Basu explicitly stated in this email that Dr C had told him he needed to “back off” from contacting Ms A, this was in the context of all the warnings he has already received not to contact Ms A, complaints from Ms A, Ms A herself messaging him asking him to stop contacting her, a Trust investigation, concerns XXX about his relationship with Ms A and Ms A messaging him asking him to stop contacting her. In sending Ms A this email Dr Basu was continuing to ignore the warnings to leave her alone when he knew he ought to have stopped.

217. There is nothing in this email to demonstrate that Dr Basu has understood the seriousness of the situation, he should have recognised that, and the impact, alarm and distress it could cause Ms A.

218. The Tribunal considered large parts of the email to be self-centred recitations of Dr Basu’s own feelings. In outlining his jealousy, telling Ms A he “can’t bear” not having the same relationship with her, that he “[is] a bit hurt” by her passing a message through Dr C, repeatedly outlining how he feels for her and about the nature of their friendship, and reminding her that he thought she was upset at the prospect of him leaving work, the Tribunal took the view Dr Basu was acting in an emotionally manipulative manner.

219. The Tribunal accepts Dr Basu may have been blind to that impact. However, by putting his thoughts into writing Dr Basu had time to reflect on what he was saying and doing. The Tribunal concluded that a reasonable person in his position would know that the content of that email went far beyond an invitation to resolve issues outside the formal process, and would cause Ms A alarm and distress.

220. The Tribunal determined that the content of this email could be considered oppressive and unacceptable behaviour amounting to conduct that met the threshold of criminal harassment. As such it was satisfied that the email amounted to an incident of harassment.

221. The Tribunal therefore found paragraph 14 in respect of paragraph 8 of the Allegation proved.

Paragraph 14 in respect of paragraph 4 of the Allegation

222. The Tribunal considered paragraph 4 of the Allegation, which was admitted and found proved, namely that; on 30 January 2020 Dr Basu was told by his Medical Director not to contact Ms A, but he repeatedly contacted Ms A, as detailed in Schedule 1. Schedule 1 refers to Facebook messages sent via Facebook between 4 March 2020 and 2 July 2020, and Whatsapp messages sent between 7 March 2020 and 6 April 2020.

223. The Tribunal noted that on 10 March 2020, it was Dr Basu's case that Ms A told him that the Trust investigation panel could not continue without her consent, that she was going to withdraw her complaint and that it would all be over soon. It considered that as far as Dr Basu was concerned, he and Ms A's friendship had been reset as a result of the conversations on 24 and 27 February which was also on those lines. However, on 12 March 2020, Ms A sent Dr Basu the message to stop contacting her. Dr Basu sent 4 further messages after this point up until 2 July 2020, 1 blank message, 2 missed calls and 1 missed video chat. The last 3 of which Dr Basu said he made in error.

Ari Basu

*You missed a video chat from Ari.
2 Jul 2020, 09:09*

Ari Basu

*You missed a call from Ari.
12 May 2020, 18:56*

Ari Basu

3 Apr 2020, 15:03

Ari Basu

*You missed a call from Ari.
3 Apr 2020, 06:08*

Ari Basu

*Please stay safe. Ivo has gone off self-isolating.
20 Mar 2020, 21:14*

Ari Basu

*I was carrying the XXX for [x] but not sure if I can give it to you today. Everyone's in the department. Maybe next week.
20 Mar 2020, 19:05*

Ari Basu

*XXX advised not to meet 😞
19 Mar 2020, 17:14*

Ari Basu

I understand. Sorry.
12 Mar 2020, 09:44

[Ms A]

Please do not contact me
12 Mar 2020, 09:41”

224. The Tribunal consider that the Facebook messages Dr Basu sent, as set out in Schedule 1, after 29 January 2020, were not persistent, demanding and were sent during a period where Dr Basu had a genuinely held belief that for some of that period, he had mixed messages from Ms A, and he had thought they were still friends. The Tribunal determined, notwithstanding the fact that they were sent in contravention of an instruction from Dr K, that these messages did not amount to harassment.

225. However, the Tribunal took the view that messages sent by Dr Basu on WhatsApp around the time of the incidents in paragraphs 6 and 8 of the Allegation, did amount to harassment.

226. The Tribunal has heard no evidence as to why Dr Basu changed to WhatsApp but notes that communication moved almost entirely away from Facebook after 20 March.

227. The WhatsApp messages from 30 March 2020 onwards were all sent at a time Dr Basu must have realised any contact was unwelcome. Therefore, any contact not required in a professional context would be likely to cause Ms A upset. The Tribunal does not know at what time Dr C spoke to Dr Basu on 30 March so has assumed all messages that day came before the conversation between them.

228. These messages contain repeated requests that Ms A respond to him in an email, or meet him, including in her car, despite her indications that she did not wish to.

229. In particular, the comment from Dr Basu that he “*saw [Ms A] active on messenger*”, “*It was lovely to see you smile at work*”, and the instruction to “*get some sleep missy*” were overfamiliar and were likely to give her the impression that he was monitoring her activity despite all the warnings he had received to that point.

230. The Tribunal considered Dr Basu’s reference to a “*pretty lousy day*”, and his apology for sending so many messages on 2 April followed immediately by commentary on his own loneliness, had the same self-centred element as large parts of his email on 1 April and would be likely, in the mind of a reasonable person, to cause her to feel guilt at the breakdown in the previous friendship.

231. The Tribunal noted that some of the messages came after Dr C had spoken to Dr Basu, including at least two messages after they had spoken on 3 April.

232. The Tribunal therefore found paragraph 14 in respect of paragraph 4 of the Allegation proved in part. Specifically, the WhatsApp messaging from 30 March onwards did amount to harassment.

Paragraph 14 in respect of paragraph 11c of the Allegation

233. The Tribunal considered paragraph 14 in respect of paragraph 11c of the Allegation namely that; on 30 April 2020 Dr Basu went to do a patient transfer with Ms A when she told him not go along, or words to that effect.

234. Dr Basu said that he went along on the patient transfer with Ms A, and a hospital porter, as there was a clinical need to do so as Ms A had asked him to because the patient was deteriorating, and Ms A was anxious in case the patient went into cardiac arrest before they reached the XXX ward.

235. By this point on the 30 April 2020 there had been the history of warnings for Dr Basu had not to interact with Ms A, as has been set out above.

236. The Tribunal determined that whilst Dr Basu provided a clinical justification for going on the patient transfer with Ms A, he should have recognised that this justification did not outweigh his responsibility to the Trust and the restrictions they had placed on him. Further he should not have ignored the impact and effect his behaviour could have on Ms A's wellbeing knowing what he knew about her not wanting any contact from him.

237. However, the Tribunal determined that this incident in itself did not meet the threshold of criminal harassment. There was some clinical justification for Dr Basu's actions and, while the Tribunal took the view he should have been more mindful of the impact on Ms A, and should have acted differently, the test was not met in respect of this incident.

238. The Tribunal therefore found paragraph 14 in respect of paragraph 11c of the Allegation not proved.

Course of Conduct

239. The Tribunal was mindful that a "course of conduct" requires conduct on at least two occasions. Tribunal therefore concluded that Dr Basu's conduct between 29 March and 6 April was a course of conduct which amounted to harassment under s1 of the Protection from Harassment Act 1997.

240. The Tribunal therefore found paragraph 14 proved in respect of paragraphs 4 (in part), 6a, 6c, and 8.

The Tribunal's Overall Determination on the Facts

241. The Tribunal has determined the facts as follows:

1. You are employed as a Consultant in the XXX Department at XXX. **Admitted and found proved**
2. On 28 January 2020 during work hours you:
 - a. put your car keys into Ms A’s pocket without her realising; **Found not proved**
 - b. told Ms A to check her pockets before she left work; **Found not proved**
 - c. told Ms A to wait in your car after work; **Found proved**
 - d. told Ms A that you were having ‘issues with XXX’ and/or that you ‘loved’ Ms A or words to that effect. **Found proved**
3. On 29 January 2020 you:
 - a. repeatedly messaged Ms A on Facebook asking her
 - i. where she was; **Found proved**
 - ii. what she was doing; **Found proved**
 - b. asked her to sit next to you in the XXX, and when she declined you moved your chair to sit next to her; **Found proved**
 - c. asked Ms A ‘why do you not like me’ and ‘why do you not want a relationship with me’ or words to that effect; **Found not proved**
 - d. when Ms A refused to answer your questions at 3c above you persisted with the line of questioning; **Found not proved**
 - e. insisted Ms A look at you and raised your voice, causing Ms A to leave the XXX upset; **Found not proved**
 - f. approached Ms A in the carpark and when she told you to ‘leave her alone’ or words to that effect you:
 - i. continued to follow her; **Found not proved**
 - ii. grabbed her arm; **Found not proved**
 - iii. followed her back into the hospital when she ran away from you shouting at her to wait; **Found not proved**

- iv. waited for her near the management office. **Found not proved**
- 4. On 30 January 2020 you were told by your Medical Director not to contact Ms A, but you repeatedly contacted Ms A as detailed in Schedule 1. **Admitted and found proved**
- 5. On 18 February 2020 you were told by your Medical Director to re-organise your rota so that you were not working the same shift as Ms A. **Admitted and found proved**
- 6. On or around 31 March 2020 you went to the zone Ms A was working in and you:
 - a. burst into tears in front of Ms A; **Found proved**
 - b. told her your 'XXX' or words to that effect; **Found not proved**
 - c. told her that you thought you 'should leave the Trust' or words to that effect. **Found proved**
- 7. In April 2020 on more than one occasion you took your breaks to coincide with Ms A's breaks. **Found not proved**
- 8. On 1 April 2020 you sent an email to Ms A and you said 'can I please expect that for old time's sake you will keep this confidential and not share this with anyone'. **Admitted and found proved**
- 9. On 10 April 2020 your Medical Director reminded you by letter that you were to refrain from contact with Ms A and specified all activity you must not do as detailed in Schedule 2. **Admitted and found proved**
- 10. On 25 April 2020 when Ms A was due to finish her shift you:
 - a. were waiting around for Ms A to finish; **Found not proved**
 - b. told Ms A that you wanted to talk to her or words to that effect. **Found not proved**
- 11. On 30 April 2020 you:
 - a. went with Ms A to collect COVID Testing Swabs from the maternity ward when she told you not to go along; **Found not proved**
 - b. waited outside the ward whilst she went in to collect the swabs; **Found not proved**

- c. went to do a patient transfer with Ms A when she told you not go along or words to that effect. **Found proved**
12. On or around 31 December 2020 you insisted that Ms A carry out an abdominal examination on a patient in the Clinical Decisions Unit, despite Ms A telling you the patient was in too much pain or words to that effect. **Found not proved**
13. On or around 1 January 2021 you left chocolates for Ms A at work.
Found not proved
14. Your behaviour at paragraphs 2-4, 6-8, and 10-12 amounted to harassment, as defined in Section 1(1) Protection from Harassment Act 1997.
Found proved in respect of paragraphs 4 (in part) 6a, 6c and 8

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 - 25/05/2023

242. 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 Basu's fitness to practise is impaired by reason of misconduct.

The Evidence

243. 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 a Stage 2 defence bundle, which included, but was not limited to:

- Witness statement from Dr Basu, dated 12 May 2023;
- Patient Feedback, undated;
- 360 Degree Feedback, dated 3 March 2022;
- Continuous Professional Development ('CPD'):
 - Registration for Understanding Misunderstandings - something for everyone's wellbeing, dated 11 March 2021;
 - Leadership Update, dated 29 April 2021;
 - Managing Complaints, dated 11 May 2021;
 - Boundaries Course Content (in brief)
 - Professional Boundaries in Practice, dated 17 September 2021;
 - Maintaining Professional Boundaries, dated 8-10 February 2022;
 - Compassionate and Inclusive Leadership, dated 3 March 2022;
 - Identity and Inclusion Workshop, dated 3 May 2022;
 - Unconscious Bias in Healthcare, dated 22 November 2022;
 - 4-week wellbeing workshop, dated January to February 2023;

- Being Assertive in Challenging situations, dated 15 February 2023;
- Negotiating and Influencing with Impact, dated 14 March 2023;
- Care of the Elderly, dated 23 March 2023;
- Educational & Clinical Supervision Refresher Webinar, dated 24 April 2023.
- Testimonials.

Submissions on behalf of the GMC

244. Just before Ms Fordham made her submissions, Mr Day had confirmed that misconduct is conceded in respect of paragraphs 4, 6a, 6c and 8 of the Allegation, although it is still a matter for the Tribunal to decide. Ms Fordham submitted that Dr Basu’s fitness to practise is impaired as there is a risk of repetition and on public interest grounds. Ms Fordham invited the Tribunal to be alive to the risk of similar behaviour in the future. She said that this is based on the fact that the misconduct in this case was a continuing course of conduct over a number of months and, more importantly, conduct which continued despite warnings, both friendly and formal. She reminded the Tribunal that a clear warning came in a very direct letter from the Medical Director, and that Dr C had “begged” Dr Basu to leave Ms A alone. She said however that Dr Basu did not heed those warnings and thought that he knew better.

245. Ms Fordham submitted that Dr Basu behaved in a way which put his own interests over those of Ms A, a junior member of staff. Ms Fordham acknowledged Dr Basu’s genuine efforts to develop insight into his misconduct. She said however, the very nature of this misconduct makes it difficult to remediate and difficult for the Tribunal to be satisfied that there is no risk of repetition.

246. Ms Fordham submitted that the question of public interest provides more significantly a basis for a finding of impairment. She relied on the case of *CHRE v NMC and Grant [2011] EWHC 927*, where the judge cited the case of *Cohen v GMC [2008] EWHC 581 (Admin)* and the approach to take when considering whether a doctor's fitness to practise should be regarded as impaired citing, *“the collective need to maintain confidence in the profession as well as declaring and upholding proper standards of conduct and behaviour of the public in their doctors, and that public interest includes, among other things, and protection of patients and maintenance of public confidence in the profession... in my view at stage two and fitness to practice is being considered the task of the panel is to take account of the misconduct of the practitioner and then to consider it in the light of all the other relevant factors known to them in answering whether by reason of the doctor's misconduct, his or her fitness to practise has been impaired.”*

247. Ms Fordham also referred the Tribunal to the *Grant* ruling, in which it stated: *“there must always be situations in which a panel can properly conclude that the act of misconduct was an isolated error on the part of a medical practitioner and the chance of it being repeated in the future is so remote that his or her fitness to practice has not been impaired”*. Ms Fordham submitted that this is not such a case. She submitted that there is emphasis in the judgment that there is a need to protect the public and the need to declare and uphold

proper standards of conduct and behaviour so as maintain to maintain public confidence in the profession.

248. Ms Fordham submitted that there has been breaches of fundamental tenets of the medical profession in this case, by reference to Good Medical Practice (2013) ('GMP') namely that it states that doctors should *"establish and maintain good partnerships with your patients and colleagues and maintain trust in you and the profession by being open, honest and acting with integrity"*. Ms Fordham submitted that integrity did not relate to dishonesty in this case. She also said that the following paragraphs of GMP have been breached in this case.

*"35. You must work collaboratively with colleagues, respecting their skills and contributions."*¹

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."

249. Ms Fordham submitted that it is an important feature of this case that there was a power differential between Dr Basu and Ms A, as Dr Basu acknowledged in his Stage 2 reflection, and that this was something he should have given better consideration to. She reminded the Tribunal that Dr Basu's Stage 1 evidence was that Ms A was reliant on him for support. Ms Fordham submitted that the reality was therefore that he was taking advantage of her in his actions and continued to do so. Even though he had been warned repeatedly, she submitted that he carried on in the belief that he knew better than those who were warning him. She submitted that Dr Basu put his own interests over those of Ms A, a junior member of staff.

250. Ms Fordham reminded the Tribunal of the test for harassment and that these actions could, if proven to the requisite standard, be actions which amounted to conduct deserving of criminal liability. She said that if a finding of impairment was not made, it would be dangerously detrimental to public confidence in the profession. When considering public confidence, Ms Fordham submitted that the Tribunal can take into account how Dr Basu's actions affected Ms A. Ms A said it affected not only how she felt in a general sense outside of work, but also her ability to work; that she had to XXX and she was being ostracised by other members of staff who questioned her about their perception that her manner towards Dr Basu appeared rude. Ms Fordham invited the Tribunal to take this into account when considering the need to uphold proper professional standards for doctors and in particular what the expected standard of conduct should be by a doctor towards colleagues.

251. Ms Fordham referred the Tribunal to Dame Janet Smith's Fifth Shipman report which set out questions to be asked when considering whether a doctor's fitness to practise is impaired. Ms Fordham submitted that limbs b and c of the test were engaged, namely,

- “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...”*

252. Mr Fordham submitted that there have been fundamental breaches of tenets of the profession and that in order to uphold proper professional standards, the Tribunal should make a finding of impairment against Dr Basu.

Submissions on behalf of Dr Basu

253. Mr Day conceded that paragraphs 4, 6a, 6b and 8 amounted to misconduct. He submitted however that it was a matter for the Tribunal’s own judgment and that the admission did not act as a form of proof, rather indicated Dr Basu’s insight. Mr Day referred the Tribunal to Dr Basu’s ‘glowing’ testimonials and that they all spoke with one voice that Dr Basu is a great colleague and a very good doctor. He submitted that the Testimonials are genuinely impressive and should carry a significant amount of weight.

254. Mr Day referred the Tribunal to the relevant case law when considering impairment. He acknowledged that paragraph 14 of the Allegation was tied up in respect of paragraphs 4, 6a, 6c and 8, in that it is an allegation characterising the conduct in other paragraphs. He referred to the Tribunal’s findings that Dr Basu ought to have known the impact of what he was doing, albeit he did not. Mr Day submitted that the remaining allegations found proved do not amount to misconduct.

255. Mr Day submitted that Dr Basu’s conduct up to and including 29 January 2020 was awkward and Dr Basu accepts he should have been more mindful of the professional distinction and the power imbalance between himself and Ms A in terms of seniority. He invited the Tribunal to find that the discussion in the car and Dr Basu’s “clumsy” effort to check Ms A was ok afterwards, did not amount to misconduct.

256. In respect of allegations 9 and 11c, Mr Day submitted that the Tribunal found that there was some clinical justification for Dr Basu’s decision to go on the patient transfer and submitted that his actions did not, therefore, constitute misconduct. Mr Day accepted however that Dr Basu ought to have been more mindful of the impact this might have on Ms A.

257. Mr Day submitted that Dr Basu has always accepted that he was wrong and stupid to resume contact with Ms A at the end of February 2020 after having been directed by the Medical Director not to. He said that Dr Basu wrongly believed that their friendship had been reset, that Ms A would welcome further contact from him, and that perception was a mistake on his part. Mr Day said that this is a mistake Dr Basu has learned from.

258. Mr Day referred the Tribunal to the messages sent from Dr Basu to Ms A after 30 March 2020 after Dr C had raised concerns with Dr Basu. Mr Day submitted that in respect of the XXX incident and the email he sent to Ms A, these could be dealt with holistically. He said that these incidents were not motivated by malice, ill will or wanting to manipulate Ms A to cause her any her alarm or distress. He said that Dr Basu was somewhat self-centred in his approach and focused more on his own perception rather than whether she welcomed his friendship.

259. Mr Day referred the Tribunal to its Stage 1 reasoning in respect of the effects of the power imbalance and that Dr Basu had received some mixed messages, but did not consider them properly. He said that this was a classic example of confirmation bias, in that Dr Basu focussed on the signals that he wanted to be correct and ignored those he did not. Mr Day submitted that Dr Basu's behaviour towards Ms A was clingy, embarrassing, overbearing and inadvertently distressing.

260. Mr Day submitted that through Dr Basu's remediation, reflection and having gone through this process and read the Tribunal's Stage 1 determination, he is now hyper alert to any risk that he may be in any way overbearing and to any risk that there is any imbalance in a relationship with a colleague. He said that Dr Basu has maintained purely professional relationships at work in the three years since this incident. He submitted that the Tribunal can therefore be confident that there is no risk of repetition. Mr Day said that prior to this incident, Dr Basu had a 16-year unblemished career in the NHS.

261. Mr Day submitted that this matter has had a significant impact upon Dr Basu having been excluded from the Trust for six months during the investigation and that he has been through the process of a fitness to practise investigation and these fitness to practise proceedings. He submitted that it could be easy to underestimate how all of these provide the greatest motivator one can possibly have to avoid placing oneself in a similar position again.

262. Mr Day submitted that Dr Basu has developed the insight he needs to remediate his actions. He said that Dr Basu has reflected upon his failures in this case such that the Tribunal can be confident there is no risk of repetition. He submitted that in the three years since the incidents Dr Basu has XXX maintained totally appropriate behaviour.

263. Mr Day submitted that an evidential foundation for the proposition that Dr Basu was at risk of doing the same thing again, simply is not there.

264. Mr Day referred to Ms Fordham's submission that this conduct might, if it were proven to the requisite standard, result in a possible conviction in the criminal courts and a finding of no impairment would be detrimental to the public interest. He submitted that convictions do not inexorably lead to impairment and this Tribunal is not dealing with a hypothetical conviction.

265. Mr Day acknowledged that Dr Basu has been fortunate that he has had time to consider and digest the Tribunal's Stage 1 decision and to confront his own failings. He submitted that the public would be reassured Dr Basu has completed that insight and demonstrated the learning a Tribunal would look for, having looked at himself to explain where he went wrong and corrected it. He submitted that as Dr Basu had been excluded from the Trust for six months in 2020, he has already experienced a significant sanction.

266. Mr Day submitted that not only has Dr Basu shown clear insight, but he has looked at himself and reached difficult decisions having recognised that the root factor of his behaviour was that he was working extremely long hours and he had no one to blame for that but himself. Further, that Dr Basu felt very lonely at work and, in those circumstances, he now sees that when Ms A came along that relationship took on greater importance in his mind than it should have done and clearly did not to Ms A.

267. Mr Day said that Dr Basu had put in place concrete changes to improve his wellbeing, including reducing his hours, ensuring there are more colleagues present so that the risk of repetition is reduced, and that this demonstrates his insight. Mr Day said that Dr Basu was lonely, overworked and, in those circumstances, reacted disproportionately to a relationship with a colleague at work and did not have regard to the power imbalance, which he now recognises. Mr Day said that Dr Basu is truly mortified by his behaviour and is deeply sorry towards Ms A, his colleagues, the Tribunal and to the public as a whole. He said that Dr Basu reassures the Tribunal that there is no risk of this happening ever again.

268. Mr Day invited the Tribunal to therefore consider whether a finding of impairment in those circumstances is needed to maintain public confidence and declare and uphold proper standards. He submitted that the public may understand the errors that Dr Basu made, while not condoning them. He submitted that the maintenance of public confidence in the profession is not solely dependent upon the outcome of an impairment decision. He reminded the Tribunal of the importance of this hearing, the hearing in October 2022, the Tribunal's factual determination, a finding of misconduct and, the option of a warning being an important part of declaring and upholding proper standards and maintaining the public interest.

269. Mr Day referred the Tribunal to the case of *PSA v the GMC and Uppal [2015] EWHC 1304 (Admin)*, in which the relatively junior doctor lied about their interaction with a poorly child and their interaction with the child's mother and in that case the Tribunal found no impairment and also issued no warning. He said that the matter was dealt with by the High Court, and it concluded that the finding of no impairment was proper, but that the decision not to impose a warning was not. He said that the High Court said on the basis of their findings, *"...the Panel was entitled to conclude that patients and the public were not at risk. Professional standards have been upheld and public confidence in the profession maintained by the fact that Dr Uppal has undergone a rigorous disciplinary assessment in her fitness to practice, resulting in a finding of misconduct on her record, with the option of a warning, by way of sanction."*

270. Mr Day submitted this reasoning summarises this case. He said that Dr Basu received a final written warning from the Trust investigation into his conduct. Mr Day submitted that if the Tribunal finds that there is no current impairment and that the public interest is maintained by the rigorous disciplinary assessment of Dr Basu's fitness to practise and a finding of misconduct, the Tribunal will also have the option of a warning and it would no doubt readily conclude that a warning was necessary for those purposes. Mr Day invited the Tribunal to conclude that Dr Basu's conduct amounted to misconduct but that as of today he is fit to practice without restriction.

The Relevant Legal Principles

271. 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.

272. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved were sufficiently serious departures from accepted professional standards so as to amount to misconduct, and then whether a finding of misconduct should lead to a finding of current impairment.

273. The Tribunal must determine whether Dr Basu's fitness to practise is impaired today, taking into account Dr Basu'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.

274. The Tribunal must also consider the wider public interest and whether the absence of a finding of impairment would undermine public confidence in, and the reputation of, the profession.

275. Throughout its deliberations, the Tribunal has been mindful of its responsibility to uphold the overarching objective as set out in the Medical Act 1983 (as amended). That objective is the protection of the public and involves the pursuit of the following:

1. *to protect, promote and maintain the health, safety and wellbeing of the public*
2. *to maintain public confidence in the profession*
3. *to promote and maintain proper professional standards and conduct for members of the profession*

276. With regard to impairment generally, the Tribunal had regard to the case of *Grant* where Dame Janet Smith's observations in the Fifth Report of the Shipman Inquiry were endorsed. Dame Janet Smith suggested that questions of impairment could be considered in the light of the following considerations:

"Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/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*
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future."*

The Tribunal's Determination on Impairment

Misconduct

277. In determining whether Dr Basu's fitness to practise is currently impaired by reason of misconduct, the Tribunal first considered whether the facts admitted and found proved, and those determined and found proved, amounted to misconduct.

278. The Tribunal took into consideration the submissions of Ms Fordham and Mr Day and all the evidence it has received at Stage 1 and Stage 2. However, it exercised its own judgement in making its determination.

Paragraph 1 of the Allegation

1. You are employed as a Consultant in the XXX Department at XXX.

279. The Tribunal was satisfied that this was purely a factual allegation which had no culpable failings attached to it which could amount to misconduct.

Paragraphs 2c and d of the Allegation

2. On 28 January 2020 during work hours you:
 - c. told MS A to wait in your car after work;
 - d. told Ms A that you were having 'XXX' and/or that you 'loved' Ms A or words to that effect.

280. In respect of paragraph 2c, the Tribunal considered that at this time Dr Basu and Ms A maintained a close friendship and matters between them had not yet escalated. The Tribunal reminded itself of the evidence at Stage 1, that Dr Basu and Ms A would have conversations in their cars from time to time. Whilst the Tribunal considered that Dr Basu meeting with Ms A in his car after work was inadvisable, it did not amount to misconduct.

281. In respect of paragraph 2d, the Tribunal was of the view that Dr Basu should not have told a junior colleague that he was having XXX and that he loved Ms A. Dr Basu told the Tribunal at Stage 1 that he was confused about his feelings for Ms A and struggled to articulate the nature of a relationship between the “*close friendship*” he had previously enjoyed with Ms A, and a romantic relationship. Dr Basu had referred to a “*deep affection*” and a relationship that was “*more than friends*”.

282. Whilst their friendship seemed to have entailed meeting each other in his car to talk, the Tribunal noted the obvious power imbalance in this situation and that there was pressure, intended or not, that Dr Basu was putting Ms A in that environment. The Tribunal considered that Dr Basu’s over familiarity with Ms A may have come from a genuine expression of feelings towards her but that it was unprofessional, unwise, improper and inappropriate. The Tribunal was not however of the view that it met the threshold that the conduct was deplorable so as to amount to misconduct.

Paragraphs 3ai and ii of the Allegation

3. On 29 January 2020 you:
 - a. repeatedly messaged Ms A on Facebook asking her
 - i. where she was;
 - ii what she was doing;

283. Ms A and Dr Basu had interacted as friends until 28 January 2020 and once Dr Basu had expressed how he felt for Ms A in the car on 28 January 2020, the dynamic in their friendship changed and their relationship began to deteriorate. On 29 January 2020 Ms A became upset and raised her concerns with the Trust.

284. The Tribunal accepted that Dr Basu’s messages to Ms A on the morning of 29 January 2020 may have caused her upset. It noted, however, that Dr Basu’s messages were sent in the context of the emotional conversation they had the day before, and in an apparently genuine attempt to discuss the matters raised in it. It noted that the messages in this paragraph of the Allegation came before Ms A had made a complaint about Dr Basu’s conduct. Whilst this did not amount to harassment, the Tribunal was satisfied that it was unwanted, persistent and annoying contact which was upsetting her.

285. The Tribunal noted that whilst Dr Basu was more than likely emotionally charged from what had occurred the evening before, he persisted in his contact. The Tribunal were again of

the view that whilst this conduct was unprofessional, unwise, and inappropriate, it did not meet the threshold so as to amount to misconduct.

Paragraph 3b of the Allegation

3. On 29 January 2020 you:

- b. asked her to sit next to you in the XXX, and when she declined you moved your chair to sit next to her;

286. Dr Basu told the Tribunal at Stage 1 that when he saw Ms A in the XXX he had wanted to talk to her to clarify matters about what had occurred the evening before on 28 January 2020 in the car. Dr Basu had said that Ms A was upset and unsettled which he was of the opinion was to do with what had occurred in the car.

287. The Tribunal considered that by this point Dr Basu was becoming more persistent in trying to engage with Ms A. It reminded itself of the power imbalance, that Dr Basu is a senior consultant and Ms A, a junior colleague. The Tribunal recognised that at this point Dr Basu was more than likely still emotionally charged from the day before. The Tribunal did not consider moving to sit next to Ms A after she had declined, on its own, to be conduct that reached the threshold so as to amount to misconduct.

Paragraph 4 of the Allegation

4. On 30 January 2020 you were told by your Medical Director not to contact Ms A, but you repeatedly contacted Ms A as detailed in Schedule 1.

288. The Tribunal noted that paragraph 4a of the Allegation was admitted by Dr Basu at Stage 1. It also noted that Mr Day conceded misconduct in respect of this paragraph on behalf of Dr Basu. However, the Tribunal made its own independent judgment in respect of whether or not this conduct amounted to misconduct.

289. The Tribunal noted that at Stage 1, it found that messages sent from 30 March 2020 onwards were all sent at a time Dr Basu must have realised any contact was unwelcome as he had been directed by the Medical Director, and told by Dr C, to leave Ms A alone. The Tribunal found, at Stage 1, that these messages amounted to harassment.

290. Dr Basu's repeated contact of Ms A included Facebook messages sent between 4 March 2020 and 2 July 2020 and Whatsapp messages sent between 7 March 2020 and 6 April 2020. Following some text conversations on 24 and 27 February in which Dr Basu believed their friendship had been reset, Ms A sent Dr Basu a message to stop contacting her on 12 March 2020. Dr Basu sent four further messages after this point up until 2 July 2020, three of which he said were in error.

291. The Tribunal determined that Dr Basu had breached the direction given to him from his Medical Director and continued his unwanted contact that would have been upsetting and distressing for Ms A. Dr Basu did not consider the adverse impact his behaviour was having on Ms A. The Tribunal determined that this repeated and persistent course of conduct was so serious as to amount to misconduct.

Paragraph 5 of the Allegation

5. On 18 February 2020 you were told by your Medical Director to re-organise your rota so that you were not working the same shift as Ms A.

292. The Tribunal was satisfied that this was purely a factual allegation which had no culpable failings attached to it which could amount to misconduct.

Paragraph 6 of the Allegation

6. On or around 31 March 2020 you went to the zone Ms A was working in and you:
 - a. burst into tears in front of Ms A;
 - c. told her that you thought you 'should leave the Trust' or words to that effect.

293. The Tribunal noted that Mr Day conceded misconduct in respect of paragraphs 6a and c of the Allegation on behalf of Dr Basu. However, the Tribunal made its own independent judgment in respect of whether or not this conduct amounted to misconduct.

294. The Tribunal considered that bursting into tears in front of Ms A may have been a genuine emotional reaction Dr Basu was experiencing, but that he should then have extracted himself from that situation straight away. In remaining in the XXX room crying and telling Ms A he thought he should leave the Trust, or words to that effect, he placed emotional pressure on Ms A which amounted to continued harassment as part of the course of conduct he was exhibiting. Dr Basu accepted he had become self-centred and blind to the impact upon Ms A at the time, however he was not conscious of the power imbalance in that situation.

295. The Tribunal was satisfied that this conduct was after he had been directed in no uncertain terms to desist from contacting Ms A, and he did so without consideration of the effect it had on Ms A. The Tribunal determined that this interaction amounted to misconduct.

Paragraph 8 of the Allegation

8. On 1 April 2020 you sent an email to Ms A and you said 'can I please expect that for old time's sake you will keep this confidential and not share this with anyone'.

296. The Tribunal noted that paragraph 8 of the Allegation was admitted at Stage 1 and Mr Day conceded misconduct on behalf of Dr Basu. However, the Tribunal made its own independent judgment in respect of whether or not this conduct amounted to misconduct.

297. The Tribunal has already found that the request for confidentiality was an attempt to pressure and to control Ms A. Dr Basu was expressing a level of jealousy which would inevitably have an impact on Ms A, who had already made a complaint about him, asked him to stop contacting her, and had, by then, approached his mentor to seek help in stopping contact. Furthermore, Dr Basu explicitly stated in this email that Dr C had told him he needed to “back off” from contacting Ms A. Ms A herself had messaged Dr Basu asking him to stop contacting her and yet he continued to ignore the warnings to leave her alone when he knew he ought to have stopped.

298. The Tribunal has also already found that the content of the email was of Dr Basu acting in an emotionally manipulative manner and of being blind to the impact it had on Ms A, which would have caused her alarm and distress. The Tribunal noted at Stage 1 that, even if Dr Basu was blind to the impact of his words, he had time to reflect on them in the course of writing them down in an email. It determined that Dr Basu’s oppressive and unacceptable behaviour was so serious so as to amount to misconduct.

Paragraph 9 of the Allegation

9. On 10 April 2020 your Medical Director reminded you by letter that you were to refrain from contact with Ms A and specified all activity you must not do as detailed in Schedule 2.

299. The Tribunal was satisfied that this paragraph of the Allegation relates to the actions Dr Basu’s Medical Director, and not Dr Basu’s conduct at the time or afterwards. Therefore, the positive finding in respect of this paragraph could not amount to a finding of misconduct.

Paragraph 11c of the Allegation

11. On 30 April 2020 you:

- c. went to do a patient transfer with Ms A when she told you not go along or words to that effect

300. The Tribunal reminded itself that at Stage 1 Dr Basu said that he went along on the patient transfer with Ms A, and a hospital porter, as there was a clinical need to do so. He said Ms A had asked him to because the patient was deteriorating, and Ms A was anxious in case the patient went into cardiac arrest before they reached the XXX ward. Dr Basu had had several warnings by this point not to interact with Ms A.

301. The Tribunal was of the view that whilst there was a clinical justification for *someone* to go with Ms A, it did not have to be Dr Basu. Whilst Dr Basu has since accepted that he should not have gone with Ms A, he should have recognised that this justification did not outweigh his responsibility to the Trust and the restrictions they had placed on him, at that time. The Tribunal determined that this conduct did amount to misconduct.

Paragraph 14 of the Allegation

14. Your behaviour at paragraphs 2-4, 6-8, and 10-12 amounted to harassment, as defined in Section 1(1) Protection from Harassment Act 1997.

302. The Tribunal has found Dr Basu's conduct amounted to harassment, as defined in Section 1(1) Protection from Harassment Act 1997, in respect of paragraphs 4, 6a, 6c and 8 of the Allegation. Dr Basu, a senior well-established consultant, demonstrated a persistent course of conduct of unwanted contact towards Ms A, a junior XXX, when he had been directed by his Medical Director to desist on two occasions, and had been told by Dr C in no uncertain terms to leave Ms A alone. Dr Basu failed to recognise that there was a power imbalance, and that he was placing emotional pressure on Ms A.

303. The Tribunal was of the view that such conduct would be considered deplorable by fellow medical practitioners. For these reasons and those set out above in respect of paragraphs 4, 6a, 6c and 8 above, the Tribunal found that this conduct was so serious so as to amount to misconduct.

Impairment

304. Having determined that Dr Basu's conduct amounted to misconduct, the Tribunal went on to consider whether his fitness to practise is currently impaired by reason of that misconduct.

305. The Tribunal determined that Dr Basu had breached paragraphs 35, 36 and 37 of GMP, as set out in Ms Fordham's submission.

306. It first considered whether his conduct was remediable, has been remedied and whether there was the likelihood of any repetition of his misconduct.

307. The Tribunal considered that whilst the conduct demonstrated by Dr Basu in this case was remediable, it was difficult to remediate.

308. When considering whether Dr Basu had remediated his conduct, the Tribunal had regard to the Stage 2 Defence Bundle provided on behalf of Dr Basu, and the evidence he gave at Stage 1. It noted that Dr Basu's reflective statement was targeted towards the Tribunal's Stage 1 findings and that Dr Basu had made specific efforts to address the concerns raised in it and how his behaviour had affected Ms A.

309. The Tribunal also noted Dr Basu's CPD evidence. It noted in particular that he had undertaken a number of courses prior to the initial stage of these proceedings in October 2022. These included: Professional Boundaries in Practice, dated 17 September 2021; Maintaining Professional Boundaries, dated 8-10 February 2022; Compassionate and Inclusive Leadership, dated 3 March 2022.

310. Subsequent to the Stage 1 decision in October 2022, Dr Basu undertook further CPD which included: Unconscious Bias in Healthcare, dated 22 November 2022; 4 week wellbeing workshop, dated January to February 2023; Being Assertive in Challenging situations, dated 15 February 2023; Negotiating and Influencing with Impact, dated 14 March 2023.

311. Dr Basu's 360 patient feedback scores appeared to be exceptional. His testimonial evidence is very positive and speaks to him being an excellent clinician and inspiring people around him. The Tribunal accepts that Dr Basu is well respected and that there have never been any concerns about his clinical skills.

312. The Tribunal read a number of testimonial statements which speak to Dr Basu's professionalism and capability. It did note that the testimonials provided are all dated before the Stage 1 findings, and whilst some refer to Dr Basu's relationship with Ms A and his completing the Maintaining Professional Boundaries course, they do not specifically address the Stage 1 factual findings.

313. The Tribunal noted that Dr Basu had undertaken a number of courses prior to the initial part of these proceedings in October 2022. He would, then, have been aware that these proceedings were going to take place. His decision to engage with targeted courses is to his credit and indicates that he was taking the allegations against him seriously. In turn, the Tribunal accepts that demonstrates a level of insight into the fact that there were issues to address. For example, in a case such as this, a Tribunal may have expected to see that a doctor had reflected and undertaken a Maintaining Professional Boundaries course.

314. The Tribunal had the chance to assess Dr Basu's evidence at Stage 1 of these proceedings. It noted that Dr Basu did not appear to have a clear understanding of the nature of the power imbalance between himself or Ms A at that time, or its impact. That is despite his having completed the Maintaining Professional Boundaries course. It did not appear to the Tribunal, therefore, that Dr Basu's insight into his conduct was complete in this respect, or that remediation was complete.

315. The Tribunal also found that a reasonable person in Dr Basu's position, even one believing there was a deep friendship between them, would have recognised that the apparently normal interactions between them may well have masked feelings that were being reported to other people. He should have recognised that Ms A may not feel able to tell him directly each time she did not feel comfortable with a conversation or interaction.

316. The Tribunal had Dr Basu's reflective statement at Stage 2. In it, Dr Basu said that in light of the factual determination, he has had further opportunity to reflect on those matters.

The Tribunal did not hear from Dr Basu in oral evidence, nor was the learning he refers to tested. The Tribunal has already noted that, at Stage 1, his understanding of power imbalances appeared to be limited despite having already undertaken the Maintaining Professional Boundaries course.

317. When considering Dr Basu’s insight into his misconduct, the Tribunal noted he has not addressed how his conduct impacted the wider public interest, the public confidence in, or the reputation of, the profession. Dr Basu also only briefly touched on how his conduct impacted his colleagues. While the Tribunal accepts the genuine remorse expressed in this reflective piece, and apparent in his oral evidence at Stage 1, the Tribunal was not satisfied that Dr Basu had demonstrated full insight into his conduct. It was of the view that Dr Basu still had some learning to do.

318. When considering Dr Basu’s risk of repetition, the Tribunal was mindful of that incomplete insight. The Tribunal accepts that Dr Basu did not set out to cause Ms A harm in the way that he did, but notes that he did so largely blind as to the impact his actions would have on her. It also accepts he is likely to be better placed to identify such a situation in light of his experience of these proceedings. The Tribunal notes the steps he has put in place to reduce stresses on himself, by controlling his workload and XXX. However, in light of his current state of remediation, the Tribunal was unable to say it is “highly unlikely” he would act similarly in the future if a similar situation did arise. The Tribunal took the view there was still some risk of repetition, and consequently, a risk of harm to others.

319. When considering Dame Janet Smith’s Fifth Shipman report in which she set out questions to be asked when considering whether a doctor’s fitness to practise is impaired, the Tribunal determined that limbs b and c were engaged in this case: namely that Dr Basu: has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or; has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession.

320. The Tribunal determined that a finding of impaired fitness to practise was necessary in order to maintain public confidence in the profession and to promote and maintain proper professional standards and conduct for members of the profession. The findings of harassment under s1 of the Protection from Harassment Act 1997 on the specific facts of this case are so serious that a finding of impairment is necessary in the public interest.

321. The Tribunal therefore determined that Dr Basu’s fitness to practise is currently impaired by reason of his misconduct.

Determination on Sanction - 26/05/2023

322. Having determined that Dr Basu’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

323. The Tribunal has taken into account all the evidence received during the earlier stages of the hearing. In addition, the Tribunal received an additional statement by Dr Basu, dated 27 October 2022, and a letter from Ms T, Chief Operating Officer and Dr U, Divisional Director XXX at The XXX Trust.

Submissions on behalf of the GMC

324. Ms Fordham said that sanction is a matter for the Tribunal making its own independent judgment, but that the GMC's submission is that the appropriate sanction in this case is one of suspension. She submitted that when considering the mitigating features of Dr Basu's misconduct, he had admitted a number of the allegations at the outset, which demonstrates in itself a degree of insight. He has now reflected further based on the Tribunal's findings and acknowledged the effect of his actions on Ms A during the Trust's investigation. She said that Dr Basu has no fitness to practise history and no other concerns had been raised since these matters. She also said that the Tribunal has already noted the very positive patient feedback, testimonials from colleagues, and that he had engaged in the professional boundaries course and provided a reflective statement.

325. Ms Fordham submitted that these mitigating features are tempered to some degree by the fact that, given the finding of impairment on public interest grounds, insight and remediation are less pertinent at this stage. She also said that some of the insight and clarity is more recent, as at Stage 1 Dr Basu was unable to properly explain the true nature of his feelings towards Ms A. He was '*confused*' by his feelings, referred to a '*deeper affection and more than friends*', and a '*close friendship*'. Further, Dr Basu also referred to them being some of the '*happiest days of his*' life and accepted that he had somewhat of an infatuation with her. Ms Fordham submitted that it was a rather confused picture even at the fact-finding stage.

326. Ms Fordham submitted that Dr Basu has had a significant time to reflect upon what it was that he was seeking to gain from a relationship with Ms A and that his purported clarity on this is more recent, if there is any. She submitted that it is relevant that Dr Basu continued to dispute that his conduct amounted to harassment, which indicated that at the fact-finding stage he was still struggling to see things from Ms A's point of view, despite having attended the professional boundaries course. She noted that his recognition of the likely impact on Ms A had only been in evidence since the fact-finding stage.

327. Ms Fordham submitted that this case speaks to significant breaches of *Good Medical Practice*, some harm to a junior colleague and the reputation of, and confidence in, the profession. She said that the Tribunal has also found that there is some small risk of repetition. In all those circumstances Ms Fordham submitted, that taking no action is not appropriate.

328. Ms Fordham submitted that conditions are not appropriate in this case although they could help in addressing the risk of repetition. She said that there is no set of conditions which would be capable of addressing the effect of the misconduct on the reputation of the profession. She referred the Tribunal to the relevant paragraphs of the Sanctions Guidance (16 November 2020)('SG') and submitted that where it sets out the circumstances in which conditions might be most appropriate, such as performance shortcomings in a specific area of practice and knowledge of English, these do not characterise this case.

329. Mr Fordham submitted that suspension is therefore the most appropriate sanction in this case. She referred the Tribunal to the relevant paragraphs of the SG in respect of suspension. She said that it states that a period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration. Suspension may be appropriate where there has been an acknowledgement of fault and where the Tribunal is satisfied that the behaviour is unlikely to be repeated. She reminded the Tribunal that it found that there was a low risk of repetition.

330. Ms Fordham submitted that the following paragraphs of the SG were engaged in this case:

“97 Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.

a A serious breach of Good medical practice, but where the doctor’s misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction

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

f No evidence of repetition of similar behaviour since incident.

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

331. Ms Fordham submitted that the Tribunal has found that there were breaches of paragraphs 36, 37, and 65 of GMP and that Dr Basu's actions towards Ms A were repeated and occurred over a period of several months. This was despite Dr Basu being instructed not to contact her and being subject to the Trust investigation. She said that Dr Basu’s actions did amount to serious breaches of GMP. Ms Fordham accepted that there has been no suggestion of any further repetition, that Dr Basu has shown some insight, though perhaps it was still nascent in some regards, and that the Tribunal has found that there is not a significant risk of repeating the behaviour.

332. Mr Fordham submitted that the matters of this case fall squarely in the realm of suspension as the appropriate sanction. She submitted that a period of suspension and can be as short or long as the Tribunal determine is appropriate in order to mark the conduct for the purposes of confidence in the profession.

Submissions on behalf of Dr Basu

333. Mr Day submitted that ordinarily this is not a case that would result in a sanction of conditions, that this was not a case where a doctor suffers from any deficiencies in their performances or any identifiable clinical areas which can be worked on. He said however that conditions could be formulated which would provide positive support to ensure that Dr Basu did not repeat this conduct and did not deprive the public of a truly good and dedicated doctor, which would have a serious detrimental impact upon the entire XXX department at the hospital.

334. Mr Day submitted that it was indeed proper in these circumstances to impose conditions. He submitted that when considering proportionality, it used to be thought of as the doctors' interests versus the public interest. He said however that this case involves an excellent doctor who has 16 years of unblemished practice beforehand and three years of unblemished practice since. He said that the public interest is also reflected in such a doctor remaining in practice if at all possible. Mr Day referred to the letter from Ms T, Chief Operating Officer, and Dr U, Divisional Director XXX, at XXX Trust, in which they set out the difficulties they would encounter in losing another consultant on an already depleted consultant rota and that it would have a significant detrimental impact upon the service.

335. In mitigation, Mr Day submitted that there is clear evidence that Dr Basu understands the problem and has, during the local investigation, and during Stage 1 of these proceedings, expressed remorse for having upset Ms A. He said that Dr Basu has shown insight and genuine attempt to address and remediate his conduct. He referred to the statement dated 27 October 2022 and submitted that it showed Dr Basu had reflected on the impact of a power imbalance at that stage.

336. Mr Day addressed the matters admitted and disputed at Stage 1. He submitted that where there were disputed facts, the Tribunal essentially concluded that Dr Basu's account was more likely than not to be true and, on those matters, where facts were found proved, that it was essentially on Dr Basu's own admission.

337. He referred to the factors in paragraph 25 of the SG and submitted that a number of them applied to Dr Basu. He invited the Tribunal to conclude that Dr Basu is adhering to important principles of good practice, is of good character, and has no previous regulatory history. Mr Day also told the Tribunal about personal and professional matters of mitigation involving close family members, and relied on the lapse of time since these incidents occurred some three years ago. He submitted that this period with Ms A was an aberration and an isolated incident. He submitted that Dr Basu has made real efforts to address and

remediate the problem and identified the need to be conscious of professional boundaries. Mr Day also referred the Tribunal to the testimonial evidence which addresses the issues that were present in this case, namely not maintaining professional boundaries. He said that they all demonstrate that, with the exception of the case with Ms A, he maintains professional boundaries in all of his interactions with his colleagues.

338. Mr Day submitted that Dr Basu had demonstrated the features in paragraph 46 of the SG, which indicate a doctor is likely to have insight. He submitted that Dr Basu's reflection about what had led him into his actions, and changes he needed to make, demonstrated a deep level of learning and insight.

339. When considering the aggravating factors in this case, Mr Day invited the Tribunal to distinguish the matters already addressed in answering the question of whether Dr Basu's action amount to misconduct, from consideration of what aggravates that misconduct. He submitted that the aggravating factors set out at paragraphs 55 and 56 in the SG are not present in this case.

340. Mr Day submitted that conditions are workable, Dr Basu does have insight, and is clearly open to and amenable to remediation and retraining. He said that Dr Basu will comply with conditions and that he has demonstrated that he can and does respond positively to opportunities for remediation. He submitted that if the Tribunal were to impose conditions which included having a mentor, it would mean that Dr Basu would have the support of an individual to whom he could turn. He said that would reduce any risk of any repetition of this behaviour and have the significant added benefit of allowing him to continue in practice. He submitted that the public interest is served by marking this with a finding of impairment and by imposing a sanction of conditions.

341. Mr Day submitted that if the Tribunal determined to impose a period of suspension, it should also take into account that in between May and November 2020, Dr Basu was excluded from work for six months by the Trust during the internal investigation. He said that when considering proportionality, the Tribunal should consider a reduction in the length of any suspension it may impose and that any suspension imposed should be short.

The Tribunal's Determination on Sanction

342. The Tribunal had regard to the submissions of Ms Fordham and Ms Day. The Tribunal has already given detailed determinations on facts and impairment and has taken those matters into account during its deliberations on sanction.

343. The Tribunal reminded itself that, at this stage of proceedings, there was no burden or standard of proof and the decision on sanction is a matter for the Tribunal's judgment alone.

344. In reaching its decision, the Tribunal has given careful consideration to the principles within the SG. It has borne in mind that the main reason for imposing sanctions is to protect

the public, pursuant to the overarching objective. A doctor's misconduct has an inevitable impact on the reputation of the profession and the public's confidence in it. The public has a right to expect high standards of any practitioner. Sanctions are not imposed to punish or discipline doctors, but they may have a punitive effect.

345. The Tribunal has borne in mind that in deciding what sanction, if any, to impose, it should consider the sanctions available, starting with the least restrictive and then consider each sanction in ascending order. It should also have regard to the principle of proportionality, weighing the interests of the public against those of the doctor.

346. The Tribunal bore in mind that it should take into account any mitigating and aggravating factors about the case, including any personal mitigation.

Aggravating and Mitigating factors

Aggravating Factors

347. The Tribunal considered that Dr Basu does not yet have full insight into the nature of his feelings for Ms A or fully recognise that he was blinded by those feelings. Dr Basu failed to work collaboratively with colleagues in that he failed to respond to a number of warnings to leave Ms A alone, both formal and informal. Dr Basu demonstrated an abuse of professional position in respect of the power imbalance between himself and Ms A, although the Tribunal has noted throughout that it was not his intention to do so.

Mitigating Factors

348. Dr Basu has made genuine attempts at reflection, remediation and made a number of admissions at the outset of these proceedings. Whilst not yet fully complete, Dr Basu has insight into his misconduct. The Tribunal notes the continuing development of that insight from the statements in October 2022 and May 2023. He has excellent 360 patient feedback and very positive testimonial. Based on the evidence before the Tribunal, Dr Basu is an excellent clinician. The Tribunal also noted the personal mitigation in respect of the pressure he was under at the time, working during the pandemic, and feeling unable to discuss matters with XXX. In addition, there were personal matters in respect of family and those dependant on him. There has also been a lapse of three years since these matters occurred and he has continued to work at the same hospital with Ms A without any repetition. Dr Basu has cooperated in this regulatory process, as he had done with the Trust investigation.

349. Dr Basu has always accepted that he was at fault and has shown remorse. He completed the Maintaining Professional Boundaries course, took steps to remediate and demonstrated some insight before these proceedings commenced.

No action

350. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Basu's case, the Tribunal first considered whether to take no action. The Tribunal acknowledged that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

351. The Tribunal determined that, given the seriousness of its findings at the facts and impairment stages, taking no action would be insufficient to uphold the overarching objective. The Tribunal determined that there were no exceptional circumstances in this case to justify taking no action.

Conditions

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

353. The Tribunal was of the view that conditions could be formulated to address the concerns it had in respect of Dr Basu's conduct. Conditions requiring that he have a mentor, produce a development plan, meet with his mentor, produce a reflective piece demonstrating how his conduct has impacted public interest in this case, and the development of full insight, could be formulated.

354. The Tribunal noted that Dr Basu had made significant progress himself in developing insight. While he has not completed that process, the Tribunal was satisfied that he continues to develop that insight without the input of a mentor to monitor his progress.

355. The Tribunal determined, however, that conditions would not be an appropriate response to Dr Basu's misconduct and would not be sufficient to meet the public interest, having regard to its findings on facts and impairment. The misconduct in this case was too serious for the public interest to be protected by a sanction of conditions.

Suspension

356. The Tribunal then went on to consider whether suspending Dr Basu's registration would be appropriate and proportionate.

357. The Tribunal bore in mind that suspension can have a deterrent effect and can be used to send a signal to the doctor, the profession, and the public about what is regarded as behaviour unbecoming of a registered doctor.

358. The Tribunal had regard to the relevant paragraphs of the SG which set out the principles applicable to the sanction of suspension. It also accepted that paragraphs 97a, e, f and g, as identified in the submission of Ms Fordham were engaged in this case.

359. The Tribunal was satisfied that Dr Basu’s conduct was not fundamentally incompatible with continued registration and that the risk of repetition was limited.

360. The Tribunal considered that, when balancing the aggravating factors and the mitigating factors, a period of suspension would act as a marker and send out a message to Dr Basu, the public and the profession that such conduct is not acceptable.

361. The Tribunal therefore determined that a period of suspension would address the need to maintain public confidence in the profession and to promote and maintain proper professional standards and conduct for members of the profession.

362. Accordingly, the Tribunal determined that imposing a period of suspension was the appropriate and proportionate sanction in this case.

363. When considering the length of any suspension, the Tribunal referred to the relevant paragraphs of the SG. It noted, again, that there are no patient safety concerns in this case. It determined that imposing a suspension of 1 month would reflect the seriousness of Dr Basu’s misconduct and would promote and maintain confidence in the medical profession, promoting and maintaining proper professional standards and conduct. That period will also allow Dr Basu to reflect on the how his actions have affected public confidence in the profession in light of this determination.

364. The Tribunal determined that directing a review hearing was not necessary in this case given the stage of Dr Basu’s journey towards full insight, and the progress he has made throughout these proceedings. The Tribunal noted that Dr Basu has reflected on each stage of these proceedings, and is satisfied that he will do so again, without the need for a review to assess that progress. A period of suspension without a review will therefore achieve the overarching objective.

Determination on Immediate Order - 25/05/2023

365. Having determined to suspend Dr Basu’s registration, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order.

Submissions

366. On behalf of the GMC, Ms Fordham made no application for an immediate order given the lack of concern about patient safety.

367. On behalf of Dr Basu, Mr Day had nothing to add.

The Tribunal’s Determination

368. The Tribunal had regard to paragraphs 172 to 178 of the SG. It took account of the guidance, the submissions of both parties and the specific basis upon which the Tribunal reached its determination on sanction.

'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...'

369. The Tribunal determined that the substantive order properly marks the seriousness of Dr Basu's misconduct and upholds the overarching objective in maintaining public confidence in the profession and maintaining proper professional standards. It considered that in the absence of any concerns about patient safety, an immediate order would not be necessary in this case.

370. The Tribunal therefore determined not to impose an immediate order of suspension on Dr Basu's registration.

371. This means that Dr Basu's registration will be suspended 28 days from the date on which written notification of this decision is deemed to have been served, unless he lodges an appeal. If Dr Basu does lodge an appeal, he will remain free to practise unrestricted until the outcome of the appeal is known.

372. There is no interim order to revoke.

373. That concludes the case

Annex A

Application for XXX – 17/10/2022

374. At the outset of the hearing, Ms Fordham, on behalf of the GMC, made an application pursuant to XXX of the General Medical Council (Fitness to Practise) Rules 2004 ('the Rules'), with regard to XXX

375. Ms Fordham submitted that XXX

376. Ms Fordham submitted that, XXX

377. Ms Fordham acknowledged that Ms A would be giving evidence via video link and XXX. She reminded the Tribunal that provision for live link had not been made XXX, but as a practical measure for her to give evidence remotely. She applied XXX.

378. Mr Day, on behalf of Dr Basu, did not disagree that Ms A could be XXX

379. Mr Day objected XXX.

380. Mr Day submitted Dr Basu needed XXX.

381. Mr Day submitted that XXX.

382. Mr Day submitted that XXX.

383. The Tribunal received advice from the Legally Qualified Chair.

Tribunal decision

384. The Tribunal concluded that Ms A was a XXX

385. The Tribunal considered that Ms A giving evidence via video link XXX.

386. The Tribunal determined that it was not necessary or proportionate for Dr Basu XXX.

Annex B

Application to amend the Allegation – 20/10/2022

387. On day 4 of the hearing, following the conclusion of live witness evidence on behalf of Dr Basu, Ms Fordham, on behalf of the GMC, made an application to amend the Allegation, pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise) Rules 2004 ('the Rules').

388. Ms Fordham invited the Tribunal to amend paragraph 3a of the Allegation from:

3. On 29 January 2020 you:

- a. repeatedly messaged Ms A on Facebook asking her where she was before her shift;

To:

3. On 29 January 2020 you:

- a. repeatedly messaged Ms A on Facebook asking her
 - i. where she was;
 - ii. what she was doing;

389. Ms Fordham submitted this amendment would allow the Tribunal to take into account all the messaging from Dr Basu to Ms A on that morning not only those before Ms A's shift, and about her location. She relied on Rule 17(6) of the Rules which states:

- (6) *Where, at any time, it appears to the Medical Practitioners Tribunal that—*
- (a) *the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and*
 - (b) *the amendment can be made without injustice,*
- it may, after hearing the parties, amend the allegation in appropriate terms.*

390. Ms Fordham accepted that the application could have been made earlier, and the issue should have been noticed earlier. However, she submitted that the change was proper to reflect the totality of the alleged harassing behaviour that morning. She argued that to take a strict reading of the existing Allegation would risk it falling on a technicality not reflective of the conduct subject to the Allegation.

391. She submitted that the amendment could be made without injustice to Dr Basu because the messages had formed part of the evidence throughout the preparation of the case. She noted that these messages had been considered by Dr Basu, had been addressed in the body of his witness statement and Dr Basu had been cross examined on them.

392. Ms Fordham argued these messages should be considered by the Tribunal and that their content spoke for themselves, without the need for input from witnesses. She reminded the Tribunal that it must consider fairness to both sides and that that this litigation was not a game. She submitted that the proposed amendment was fair for both Dr Basu and the GMC.

393. She submitted that Ms A could be recalled if necessary to resolve any matters not put to her in cross examination. She also noted that Dr Basu could give further evidence if there was more to be said on the new proposed Allegation.

394. Mr Day, on behalf of Dr Basu, submitted that this amendment to the Allegation could not be made without injustice to Dr Basu. He said that he agreed this litigation was not a game but that there were rules. Mr Day submitted that the allegations were settled, largely, in September 2021 and that it was extremely late in the day to seek an amendment after the cross examination of Dr Basu.

395. Mr Day submitted that Dr Basu had addressed the matter of these messages in only a single paragraph of his witness statement, which explained what the messages were for, not what his mindset was when sending them. He submitted that he did not explore the circumstances in which the messages were sent in cross examination because he had prepared his case based on the Allegation as it stood. That, he submitted placed Dr Basu at risk of injustice.

396. Mr Day submitted that the nature of Dr Basu's mindset at the time of the messages after Ms A's shift had begun had not been at the forefront of any question he had asked because it had not been a part of the GMC case. He submitted that had this amendment been made earlier it could have been resolved, that this situation was not ideal, and there was some injustice. He noted, for instance, that he would have asked questions about Ms A not being in the XXX where Dr Basu had known she had been working, when he sent messages asking where she was later in the day.

397. Mr Day further submitted that if Ms A were recalled, any questions would not be in the context of the overall cross examination, causing injustice. He submitted that cross examination was about creating a picture as the case evolved not simply putting the case to a witness. Mr Day submitted that the test was not therefore made out and the application should be refused.

398. The Tribunal received advice from the Legally Qualified Chair.

The Tribunal's decision

399. The Tribunal had regard to Rule 17(6) of the Rules:

(6) Where, at any time, it appears to the Medical Practitioners Tribunal that—

(a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and

(b) the amendment can be made without injustice,

it may, after hearing the parties, amend the allegation in appropriate terms.

400. The Tribunal accepted and agreed with the submission of Ms Fordham that paragraph 3a should not be found proved or not proved on a technicality. It took the view that considering only the messages before the start of the shift created an artificial distinction and that the new proposed wording properly reflected the conduct alleged against Dr Basu, that of the repeated messaging on that morning. Therefore, the Tribunal concluded that the amendment should be made.

401. The Tribunal considered whether the proposed amendment could be made without injustice. It determined that there would be no injustice caused to the GMC if it were to grant the application to amend the Allegation.

402. On the question of any injustice caused to Dr Basu, the Tribunal bore in mind that the context of the messages had been addressed, in detail, throughout Mr Day's cross examination of Ms A. It noted that Mr Day had asked Ms A extensive questions about messages which were sent between herself and Dr Basu which were not directly subject to any paragraph of the Allegation. That cross examination sought to address the overall context of Dr Basu's conduct. Mr Day had the opportunity to, and did ask Ms A questions about the wider messages sent which formed part of the Allegation and the circumstances in which they arose, including those on 29 January 2020.

403. The Tribunal accepted that there could be an application to recall Ms A to address any further questions Mr Day may have in relation to the context of the messages on the morning of 29 January 2020 specifically. It did not accept Mr Day's submission that this in itself would cause injustice to Dr Basu in respect of having built a picture of the context of the relationship between Dr Basu and Ms A throughout the cross examination of Ms A.

404. The Tribunal also bore in mind that Dr Basu could yet give further oral evidence on his mindset if it were necessary, and that Mr Day will be able to make submissions on the content of the messages, which form part of the evidence.

405. The Tribunal noted that the general sequence of messages throughout the exhibits would be relevant to any decision on paragraph 14 of the Allegation, namely whether there

was a course of conduct amounting to harassment as defined in Section 1(1) of the Protection from Harassment Act 1997. That reflects the approach both parties have taken to the messages which fall outside the scope of any specific paragraph of the Allegation. As such, this change to paragraph 3a would have an impact primarily on the findings of fact on that paragraph with limited wider consequences.

406. The Tribunal therefore determined that there would be no injustice caused to Dr Basu were it to amend paragraph 3a of the Allegation as proposed by the GMC. It therefore determined that the amendment could be made without any unfairness or injustice to either party.

407. Accordingly, the Tribunal determined to grant the application and amend the paragraph 3a of the Allegation as proposed by Ms Fordham.

Schedule 1

Via Facebook Messenger

Ari Basu

You missed a video chat from Ari.

2 Jul 2020, 09:09

Ari Basu

You missed a call from Ari.

12 May 2020, 18:56

Ari Basu

You missed a call from Ari.

3 Apr 2020, 06:08

Ari Basu

Please stay safe. XXX has gone off self-isolating.

20 Mar 2020, 21:14

Ari Basu

I was carrying the XXX for XXX but not sure if I can give it to you today. Everyone's in the department. Maybe next week.

20 Mar 2020, 19:05

Ari Basu

[Dr C] advised not to meet 😞

19 Mar 2020, 17:14

Ari Basu

I understand. Sorry.

12 Mar 2020, 09:44

[Ms A]

Please do not contact me

12 Mar 2020, 09:41

Ari Basu

Thank God, you're alive !!!

12 Mar 2020, 09:38

Ari Basu

Good Morning, [Ms A]. Happy SUPBing ☺ Stay safe.

12 Mar 2020, 07:49

Ari Basu

Could you please let me know once you've reached?

11 Mar 2020, 22:38

Ari Basu

You can message me if you want. I promise to delete it.

11 Mar 2020, 20:50

Ari Basu

Sorry if I bothered you. I thought you wanted to speak to me.

11 Mar 2020, 20:46

Ari Basu

Are you still in the hospital?

11 Mar 2020, 20:45

Ari Basu

I hope you are OK. Please drive safely.

11 Mar 2020, 20:41

Ari Basu

Are you coming?

11 Mar 2020, 20:23

Ari Basu

I'll wait near the XXX entrance at 2000. See you then.

11 Mar 2020, 19:16

Ari Basu

I am back in the hospital doing management stuff.

11 Mar 2020, 18:20

Ari Basu

Haven't you had your lunch break yet?

11 Mar 2020, 16:20

Ari Basu

Good night x

7 Mar 2020, 22:55

Ari Basu

You didn't let me know you've reached safely. Hope you aced your assessment. Message me on Whatsapp if you can but I'll understand if you don't. Have a wonderful time. Take care.

7 Mar 2020, 10:46

Ari Basu

Have you reached?

7 Mar 2020, 02:19

Ari Basu

Can you talk?

6 Mar 2020, 19:46

Ari Basu

I have reached the hospital. Starting work from 8.

6 Mar 2020, 19:07

Ari Basu

Hi 🤝

4 Mar 2020, 10:53

Ari Basu

4 Mar 2020, 10:49

Ari Basu

Ari set the emoji to 👍.

4 Mar 2020, 10:42

Ari Basu

Ari set the emoji to 🤝.

4 Mar 2020, 10:42

Via WhatsApp

[07/03/2020, 20:08:07] Ari Consultant: Messages and calls are end-to-end encrypted. No one outside of this chat, not even WhatsApp, can read or listen to them.

[07/03/2020, 20:08:07] Ari Consultant: Your patient from yesterday assaulted one of the Regs today. Still hasn't got a CAMHS bed. Sad for both really.

[09/03/2020, 20:08:40] Ari Consultant: Hi [Ms A], hope you are OK. Came to the hospital now to do some work. Also needed to get out of the house.... difficult as I can't share much at home. Hope you are not stressing much. I am really really sorry for all this mess. Please take care.

[09/03/2020, 22:03:18] Ari Consultant: Going back now. Good night.

[26/03/2020, 21:21:03] Ari Consultant: Just lost a 29 year old patient. Couldn't bring her back. Feeling terrible.

[29/03/2020, 14:23:41] **Ari Consultant:** Please go home if you're not feeling well. Please don't drive if you're not 100%. I can drop you off.

[29/03/2020, 20:25:14] **Ari Consultant:** Bye. Take care and thank you for everything. Please let me know if you're not feeling well. I'll test email you my address. Rest well and see you on Wednesday.

[29/03/2020, 23:35:21] **Ari Consultant:** The hip dislocation lady on high flow oxygen is suspected COVID 19. We didn't even had mask on. Mr S will check the swabs and let us know. Fucking bad luck

[30/03/2020, 13:07:26] **Ari Consultant:** Hope you're fine. I've sent you a test mail from my personal email account. If you're better, come over for the Simulation session today at Sim Centre between 1500 and 1630 today, which will focus on end of life care and I get to see you. Email me if you can x

[30/03/2020, 16:34:55] **Ari Consultant:** Winifred in 14 we looked after on 28/3 is COVID positive and isn't doing too well, NEWS 6 The xray of XXX in XXX yesterday has NOT been reported as COVID, test will be back tomorrow. Asked Mr S how you are, said he doesn't know. If at all possible, will you please email me and let me know.

[30/03/2020, 21:21:01] **Ari Consultant:** Saw you active on Messenger through the day. Can only hope you are okay and not stuck in bed. I have had a pretty lousy day, will just go off to bed. Good night, [Ms A].

[01/04/2020, 17:16:43] **Ari Consultant:** Spoke to [Dr C] yesterday. I agree in principle with what you asked him to tell me. I have sent you an email to [Ms A's email address]. I just needed you to know a few things before our next meeting. I really value your friendship and just can't afford to lose you again as a friend. Take care.

[01/04/2020, 22:02:58] **Ari Consultant:** Chin up, [Ms A]. You fought your corner. Just don't like to see your tears. Take care.

[02/04/2020, 01:05:42] **Ari Consultant:** Hope you're OK. Don't work too hard. Call the hotline tomorrow morning. Please let me know if you aren't feeling well. Good night x

[02/04/2020, 09:09:54] **Ari Consultant:** Have you called the hot line? After last night's words with XXX, you need to log your symptoms and make it official. Please take care. It's so fucking frustrating that I can't even get to know how you are and what's happening! Hope everything was OK.

[02/04/2020, 11:46:47] **Ari Consultant:** Get some sleep, missy !!!!

[02/04/2020, 11:49:03] Ari Consultant: Have you been signed off? Just send me a one word reply and I'll delete it.

[02/04/2020, 18:41:00] Ari Consultant: Hey, any chance I can meet you before work today for 5 mins?

[02/04/2020, 18:42:55] Ari Consultant: I know you can't message, so if you can, wait in your car. If you'd rather not, just get out and go off to work as you would.

[02/04/2020, 18:45:40] Ari Consultant: Please don't discuss this.

[02/04/2020, 18:50:42] Ari Consultant: The hip dislocation lady is COVID 19 NEGATIVE. Yay!!!

[02/04/2020, 18:58:41] Ari Consultant: Our lovely patient from Saturday XXX is also getting better! Both bloods and obs!! I am so happy. Had to share with you!

[02/04/2020, 19:57:25] Ari Consultant: It was lovely to see you smile again. The department's OK, so hope you'll have an easy night. Don't work in XXX till you're better. See you tomorrow
x

[02/04/2020, 20:34:10] Ari Consultant: Sorry I messaged you so many times today. Was just feeling lonely Hope you didn't mind.

[03/04/2020, 06:39:25] Ari Consultant: Sorry touched the messenger call button in error. Hope you had a good shift. Are you working this weekend? They're asking me to work.

[05/04/2020, 07:06:42] Ari Consultant: Morning, [Ms A]. I'll be going to Tesco (NHS slot) this morning. Since you will be (hopefully) sleeping and XXX is isolating, let me know if you need anything. (Email / whatsapp). Sorry for messaging you but I had to at least offer you what I'm offering other friends/ neighbours.

[06/04/2020, 18:36:54] Ari Consultant: Just DEMAND a flipping break!!

Schedule 2

- You must not be present on the XXX Trust sites unless you are attending for a rostered clinical shift or other specific purpose (eg training)
- You must leave at the end of your shift as soon as it is clinically safe for you to do so
- You must not contact Ms A by any means
- You must ensure that when you are working, you work in a separate area to Ms A
- You must ensure that you take your breaks in a separate area to Ms A.