

PUBLIC RECORD

Dates: 22/05/2023 - 01/06/2023

Medical Practitioner's name: Dr Bitrus Jugul DANBOYI

GMC reference number: 6145100

Primary medical qualification: MB BS 1989 Ahmadu Bello University

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	No facts found proved	Not Impaired

Summary of outcome

No action (warning not considered)

Tribunal:

Legally Qualified Chair	Mr Sean Ell
Lay Tribunal Member:	Miss Susan Hurds
Medical Tribunal Member:	Dr Dawn Black
Tribunal Clerk:	Mr Michael Murphy

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Akinola Akinsanya, instructed by Atanda Solicitors
GMC Representative:	Mr David Toal, 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 - 01/06/2023

Background

1. Dr Danboyi qualified in Nigeria in 1989. At the time of the events in the Allegation Dr Danboyi was practising as a locum consultant XXX at XXX (the Trust), a position he had held since 2019.
2. The Allegation that has led to this hearing can be summarised as concerns relating to Dr Danboyi behaving inappropriately towards Ms A and also Ms B who were both XXX at the Trust. The GMC alleged that Dr Danboyi's actions amounted to unlawful sexual harassment and an abuse of his position, as both Ms A and Ms B were junior colleagues.
3. The initial concerns were raised with the GMC on 19 March 2021 by Dr C, a ST3 General Practitioner at XXX, via a GMC online complaint form. Dr C detailed that she spoke to a patient (Ms B) who said that she was inappropriately touched in a sexual way by Dr Danboyi on multiple occasions in February and March 2021. After the referral to the GMC, a local investigation was conducted by the Trust as a result of the complaint made by Ms B to her line manager about Dr Danboyi's conduct. During the investigation Ms A told the Trust that Dr Danboyi had behaved towards her in a similar manner, although she did not make a formal complaint. During the Trust investigation, Ms A and Ms B were interviewed as was Dr Danboyi.

The Outcome of Applications Made during the Facts Stage

4. The Tribunal granted the GMC's application, made pursuant to Rules 36(1) and 36(2) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), for both Ms A and Ms B to be treated as vulnerable witnesses, as they were the alleged victims in this case, and for Dr Danboyi's camera to be turned off while each gave her oral evidence. Mr Akinsanya on behalf of Dr Danboyi did not oppose this application.

5. The Tribunal granted Mr Akinsanya’s application, made pursuant to Rule 17(2)(g) of the Rules, that there was no case to answer for all of the paragraphs of the Allegation relating to Ms A. Its full reasoning is included in Annex A.

The Allegation and the Doctor’s Response

6. The Allegation made against Dr Danboyi is as follows:

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

- ~~1. Between March 2020 and August 2021, whilst working with Ms A, you behaved inappropriately towards Ms A in that without invitation:~~

- ~~a. on one or more occasion you:~~

- ~~i. hugged Ms A; **To be determined successful application under Rule 17(2)(g)**~~

- ~~ii. touched her back; **successful application under Rule 17(2)(g)**~~

- ~~b. you rubbed Ms A’s kneecap; **successful application under Rule 17(2)(g)**~~

- ~~c. you touched Ms A’s hips and shifted her to one side; **successful application under Rule 17(2)(g)**~~

- ~~d. you hugged Ms A and touched the back of her bra. **successful application under Rule 17(2)(g)**~~

2. On a date in January 2021, whilst working with Ms B, you behaved inappropriately in that you approached her and asked if you could touch her, or words to that effect. **To be determined**

3. Between January and March 2021, you behaved inappropriately towards Ms B, in that:

- a. on one or more occasion you touched Ms B, without invitation, on:

- i. her hands; **To be determined**
 - ii. her back; **To be determined**
 - iii. the back of her bra; **To be determined**
 - iv. her stomach; **To be determined**
 - b. on one or more occasion you stroked Ms B’s inner leg and rubbed her back, without invitation; **To be determined**
 - c. you continued to carry out the actions described at paragraph 3b despite Ms B asking you to stop; **To be determined**
 - d. you had a conversation with Ms B during which you:
 - i. discussed adultery sex before marriage; **To be determined**
 - ii. asked Ms B if she was “sexually active”, or words to that effect; **To be determined**
 - iii. told Ms B “don’t worry I will find out” or words to that effect, in reference to her being sexually active; **To be determined**
 - iv. grabbed Ms B by her uniform, near her bra; **To be determined**
 - v. pulled Ms B closer towards you as she tried to move away. **To be determined**
4. Your actions as set out in paragraphs 1-3 amounted to:
 - a. unlawful sexual harassment by virtue of section 26 of the Equality Act 2010, in that you engaged in unwanted conduct related to sex which had the purpose or effect of violating the dignity of, or creating an intimidating, hostile, degrading, humiliating or offensive environment for:
 - i. ~~Ms A (in respect of paragraph 1)~~; **successful application under Rule 17(2)(g)**

- ii. Ms B (in respect of paragraphs 2-3); **To be determined**
- b. an abuse of your position, in that in respect of paragraph:
 - i. ~~1, Ms A was a junior colleague;~~ **successful application under Rule 17(2)(g)**
 - ii. 2-3, Ms B was a junior colleague. **To be determined**

Witness Evidence

7. The Tribunal received written and oral evidence on behalf of the GMC from the following witnesses:
 - Ms A, XXX at the Trust and subject of the Allegation;
 - Ms B, XXX at the Trust and subject of the Allegation;
 - Ms D, Junior Sister working in the XXX department at the Trust;
 - Ms E, Senior Sister in the XXX department at the Trust;
 - Ms F, Healthcare assistant at the Trust at the time of the Allegation.
8. The Tribunal also received evidence on behalf of the GMC in the form of a witness statement from Dr C, ST3 General Practitioner at XXX, who was not called to give oral evidence.
9. Dr Danboyi provided three witness statements dated 10 December 2022 and also gave oral evidence at the hearing.

Documentary Evidence

10. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:
 - Trust statement of Ms D, dated 26 May 2021;
 - Trust Investigation Interview Transcript with Ms A, dated 6 August 2021;
 - Trust Statement of Ms B, undated;
 - Trust Investigation Interview Transcript with Ms B, dated 29 July 2021;
 - Dr Danboyi Trust Statement, 16 March 2021;
 - Dr Danboyi Interview Transcript, dated 20 May 2021

The Tribunal's Approach

11. 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 Danboyi does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e., whether it is more likely than not that the events occurred.

The Tribunal's Analysis of the Evidence and Findings

12. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

Paragraph 2 of the Allegation

13. The Tribunal had regard to the various accounts that Ms B has given about Dr Danboyi's behaviour towards her. The Tribunal noted that there are a number of inconsistencies in those accounts.

14. In the statement Ms B gave to the Trust she stated:

'A couple of weeks ago I was setting up XXX clinic for the morning. I was sitting down on the chair logging into the computer and he came to see me. He asked me what cubical (sic) he was meant to be in. As he approached me he asked if he could touch me. I was so shocked by what he asked me. I just froze and said nothing. He started to touch me on my under breast and stomach. This made me feel sick to my stomach. After I processed everything, I got up and left the clinic. I focused on doing something else. I finished setting up the clinic and got the clinic list'

15. In the Trust investigations interview transcript with Ms B she stated:

'...when we were in the XXX clinic, he wasn't supposed to be there. He came down...and then he asked to touch me and everything, he had a phone call from Ms G...'

16. In her witness statement, Ms B said:

'I refer to an incident when Dr Danboyi asked me if he could touch me. This incident occurred at the beginning of January 2021, as I can recall it was after Christmas when I was working in the XXX clinic. I was working in one of the cubicles when out of the blue Dr Danboyi just approached me and asked me if he could touch me, as we were wearing face masks I thought I might have misheard him so I said pardon and he repeated it again asking if he could touch me. I was so shocked I actually said 'no'. Afterwards he got stroppy with me, I noticed that he definitely treated me differently. I didn't mention it to anyone at the time as I thought it was a one-off incident and that maybe I had read too much into it, so I just left it.'

17. The Tribunal considered Ms B's accounts to be significantly different in their description of what occurred. The Tribunal noted that in her first account Ms B did not respond to the request and Dr Danboyi touched her. In her later account she responded negatively to the request and he did not touch her but afterwards was *'stroppy towards her'*. The Tribunal noted that this request to touch Ms B would seem contrary to Ms B's evidence generally that Dr Danboyi was *'always'* just touching her without her permission.
18. The Tribunal considered Dr Danboyi's evidence that this did not happen and that he has consistently denied that this event occurred.
19. The Tribunal took into account that witnesses can at times recall events in different ways and that inconsistencies in evidence are not always a sign of an untruthful witness, however it was of the view that the differences in Ms B's accounts were significant. Having considered all of the evidence, the Tribunal was not satisfied that Ms B's evidence was reliable enough for it to conclude that it was more likely than not that Dr Danboyi asked if he could touch her.
20. Accordingly, the Tribunal found paragraph 2 of the Allegation not proved.

Paragraphs 3(a)(i), 3(a)(ii), 3(a)(iii) and 3(a)(iv) of the Allegation

21. The Tribunal considered the nature of Ms B's working relationship with Dr Danboyi prior to the complaint. Ms B told the Tribunal that her relationship with Dr Danboyi was purely a professional one, but he would constantly approach her. It noted that in Ms B's initial complaint of matters to Ms D, she told her that Dr Danboyi was always buying her coffee. In her evidence to the Tribunal Ms B stated that Dr Danboyi bought her coffee on

two occasions. The Tribunal considered this to be an example of Ms B exaggerating matters to the Trust with regard to Dr Danboyi's behaviour towards her. Another example was Ms B's claim that Dr Danboyi offered to drive her home whereas Dr Danboyi's evidence, which was unchallenged, was that he never drove to work so would not have offered her a lift.

22. The Tribunal noted that Ms A in her evidence stated that Ms B used to say good things about Dr Danboyi to her, for example, she thought he was kind, nice and funny and she assumed they were good friends. In her Trust interview Ms A explained that her the general views amongst her colleagues was that Ms B was quite flirtatious towards Dr Danboyi and that they were quite close. Ms A also stated during her interview that she would see Ms B and Dr Danboyi talking and that Ms B would be *'like laughing and enjoying conversation'*. Ms A thought Ms B looked quite comfortable with him and she didn't notice anything untoward.
23. Ms F in her evidence stated that she observed a number of behaviours by Dr Danboyi towards Ms B that she considered to be inappropriate, including him asking to walk Ms B home, buying her coffees almost every shift and texting Ms B *'frequently on a daily basis'*. Ms F told the Tribunal that she had been shown one of the text messages sent by Dr Danboyi enquiring about Ms B's wellbeing. Ms A's evidence is more consistent with Dr Danboyi's account of his interactions with Ms B whilst Ms F is more consistent with Ms B's.
24. The Tribunal preferred the evidence of Ms A and Dr Danboyi. It considered there were a number of inconstancies in Ms F's evidence in particular in relation to the number of coffees that she saw Dr Danboyi buy for Ms B and the number of text messages that were sent by Dr Danboyi to Ms B. Given Ms B's and Dr Danboyi's evidence that only one text was sent which thanked Ms B for her assistance in clinic and was not inappropriate in content, Ms F's recollection of the number and content cannot be correct. The Tribunal therefore attached little weight to her evidence of what she said that she saw.
25. The Tribunal took into account Dr C's notes of her consultations with Ms B but noted that these recorded what Ms B had told her.
26. Dr Danboyi accepted in his evidence that he and Ms B would hug on occasion. He explained that these were consensual and not inappropriate or unwanted and took place in public areas. Dr Danboyi also accepted that he touched Ms B's hand on one occasion

when she was XXX and he examined her hands at her request. The Tribunal considered that as Dr Danboyi knew personal information about Ms B, such as her living situation, this was supportive of the fact that they talked on a more friendly and personal level as described by Ms A, and in contrast to Ms B's evidence that they only had a professional relationship.

27. The Tribunal considered the incidents that Ms B complained of that Dr Danboyi behaved inappropriately towards her in that he touched her without invitation on her hands, her back and the back of her bra. In doing so the Tribunal noted Ms B's witness statement in which she said:

'I felt that Dr Danboyi was constantly trying to touch me, quite often he touched me on my back and my hands. I felt he did this when he was passing me. Dr Danboyi was always trying to touch the back of my bra, where you hook it up and my stomach, underneath the bra.'

28. The Tribunal considered this statement to be inconsistent with Ms B's evidence in her Trust statement where she explained that Dr Danboyi would always try to touch her when he was sitting down. The Tribunal also noted the evidence it heard about the clinic layouts and how there is some privacy in the cubicles which were open fronted and had windows between them. The Tribunal took into account that anything happening within the cubicles would have been easily observable by others who were present, either other doctors, patients or other staff as they were not fully enclosed.
29. The Tribunal was not persuaded by Ms B's evidence that she was not on more friendly terms with Dr Danboyi than other doctors. The Tribunal accepted that hugging took place between Ms B and Dr Danboyi on occasions and that this was mutual, similar to Dr Danboyi's relationship with Ms A. Therefore, the Tribunal concluded that any inadvertent touching during these hugs of Ms B's stomach or back, including near her bra strap, was neither inappropriate nor without invitation.
30. The Tribunal was satisfied given its conclusion on the relationship between Ms B and Dr Danboyi, that Dr Danboyi's account is plausible and that it is more likely than not that Ms B showed Dr Danboyi her XXX and that he examined it. Accordingly, the Tribunal concluded that Dr Danboyi did not touch Ms B's hands inappropriately.

31. The Tribunal was not satisfied that Ms B's evidence was sufficiently reliable for it to conclude that there was any touching by Dr Danboyi that was inappropriate.
32. Accordingly, the Tribunal found paragraphs 3(a)(i), 3(a)(ii), 3(a)(iii) and 3(a)(iv) of the Allegation not proved.

Paragraph 3(b) of the Allegation

33. The Tribunal next considered if Dr Danboyi stroked Ms B's inner leg and rubbed her back, without invitation. The Trust interview transcript with Ms B shows that in relation to her complaint that Dr Danboyi stroked her leg she said:

'That was the first time he proper like stroked me in the thighs and started rubbing me, like he came over and like he asked, when I was sitting down in XXX Clinic again.'

34. Whilst in her statement to the Trust Ms B said 'When he was sitting down on the chair he would stroke my inner leg and rub my back'. The Tribunal noted that these two accounts differ as in the Trust interview she stated that she was sitting down whilst in the Trust statement she stated that Dr Danboyi was sitting down and she came into the room behind him.
35. The Tribunal was also satisfied that having considered all of Ms B's evidence that she has, over time, seemingly conflated a number of different alleged incidents and described them in the same scenario, for example in respect of Dr Danboyi touching both her stomach and her inner thigh. Ms B described these as two separate incidents but gave the same situation that they occurred in when Dr Danboyi entered the XXX Clinic and had a telephone conversation with Ms G, another colleague. The accounts are significantly different. In addition, the Tribunal noted that the cubicle in which Ms B alleged the events happened are open at the front so would be in view of the public and other staff. As such, the Tribunal took the view that Ms B's evidence was not reliable enough to persuade it that it was more likely than not Dr Danboyi stroked her inner leg and rubbed her thigh.
36. Accordingly, the Tribunal found paragraph 3(b) of the Allegation not proved.

Paragraph 3(c) of the Allegation

37. As the Tribunal has already found paragraph 3(b) of the Allegation not proved, Dr Danboyi could not have continued the actions complained of despite Ms B requesting him to stop, as such it follows that paragraph 3(c) is also not proved.
38. Accordingly, the Tribunal found paragraph 3(c) of the Allegation not proved.

Paragraph 3(d)(i) of the Allegation

39. Both Dr Danboyi and Ms B agree that a conversation about the Ten Commandments took place between them and that within the conversation there was a discussion about adultery.
40. The Tribunal was of the view that Dr Danboyi's account of this conversation was more plausible than Ms B's in that he was researching the Ten Commandments for a sermon he was preparing and Ms B asked him about what he was doing. There followed a discussion between the two of them about all Ten Commandments, including the one relating to adultery. Whilst the Tribunal was of the view it was perhaps unwise to have a discussion about religion in the workplace, in the context of a conversation between two colleagues about the Ten Commandments, the Tribunal did not consider it inappropriate for Dr Danboyi to have discussed adultery with Ms B.
41. Accordingly, the Tribunal found paragraph 3(d)(i) of the Allegation not proved.

Paragraphs 3(d)(ii) and 3(d)(iii) of the Allegation

42. The Tribunal then considered if Dr Danboyi had a conversation with Ms B and asked her if she was sexually active followed by 'don't worry I will find out'. In doing so, it took account of Ms B's statement to the Trust in which she stated that Dr Danboyi:

'...was on the computer researching about God. He asked me about if I was religious. He proceeded to talk about the 10 commandments. The topic of adultery sex before marriage was brought up. BD asked if I was sexually active. At this point I didn't answer. I was embarrassed that he asked me the question. Especially as there was another doctor (Mr H) at this point in the clinic, calling patients through. As I did not answer him, he asked me again. I still didn't reply as I didn't know how too. As I did not answer he said "don't worry I will find out".'

43. The Tribunal noted that this was in contrast to Ms B's evidence in her statement to the GMC where she stated:

'Dr Danboyi then started to talk about adultery sex before marriage and asked me if I was sexually active. I said that it was really inappropriate that he shouldn't be asking anyone that, Dr Danboyi said he was being curious, then said "don't worry I will find out". I didn't want to respond...'

44. The Tribunal noted that Dr Danboyi denies that he made any comment to Ms B about whether she was sexually active or that he would find out about it. The Tribunal preferred the consistent evidence of Dr Danboyi. It took into account the limitations with the privacy in the cubicles where this is said to have taken place and the close proximity of another doctor to the conversation. It has previously found that Ms B's recollections of events are not always reliable and therefore was not satisfied on the evidence that it is more likely than not that Dr Danboyi said the words as alleged.
45. Accordingly, the Tribunal found paragraphs 3(d)(ii) and 3(d)(iii) of the Allegation not proved.

Paragraphs 3(d)(iv) and 3(d)(v) of the Allegation

46. The Tribunal had regard to Ms B's evidence of what occurred after her discussion with Dr Danboyi about the Ten Commandments and the close proximity of another doctor throughout. It noted that Ms B has again given differing accounts over time as to what occurred. In her initial statement to the Trust Ms B makes no reference to Dr Danboyi grabbing her and pulling her towards him during this incident. In her medical notes her GP Dr C records that Ms B complained that Dr Danboyi had grabbed her clothes and pulled her towards him on more than one occasion. In contrast, Ms B told Ms D it occurred on only one occasion. Whilst in her interview with the Trust Ms B described Dr Danboyi grabbing her *'in like a jokey way'* as she tried to ease back. This made her feel ashamed and she *'just felt dirty'*.
47. The Tribunal also took into account that in her witness statement to the GMC Ms B described Dr Danboyi as sitting down and then goes on to state that:

'I didn't want to respond with anything because I was shocked, when I tried to get away from him he pulled me closer by grabbing my uniform, near my bra. As he

pulled me I moved closer to him then he released his grip and I walked away. It happened quickly, but in that moment I felt in danger as he was taller and bigger than me.'

48. Having considered Ms B's account and the apparent discrepancies in her evidence of what occurred, the Tribunal was not satisfied that Ms B's evidence was sufficiently reliable that it could conclude that it was more likely than not that Dr Danboyi behaved in the way alleged.

49. Accordingly, the Tribunal found paragraphs 3(d)(iv) and 3(d)(v) of the Allegation not proved.

Paragraphs 4(a)(ii) and 4(b)(ii) of the Allegation

50. Having found none on the alleged actions proved, it is unnecessary for the Tribunal to go on to consider whether the conduct amounted to sexual harassment or an abuse by Dr Danboyi of his position.

51. Accordingly, the Tribunal found paragraphs 4(a)(ii) and 4(b)(ii) of the Allegation not proved.

The Tribunal's Overall Determination on the Facts

52. The Tribunal has determined the facts as follows:

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

~~1. Between March 2020 and August 2021, whilst working with Ms A, you behaved inappropriately towards Ms A in that without invitation:~~

~~a. on one or more occasion you:~~

~~i. hugged Ms A; successful application under Rule
17(2)(g)~~

~~ii. touched her back; successful application under Rule
17(2)(g)~~

~~b. you rubbed Ms A's kneecap; successful application under Rule 17(2)(g)~~

~~c. you touched Ms A's hips and shifted her to one side; successful application under Rule 17(2)(g)~~

~~d. you hugged Ms A and touched the back of her bra; successful application under Rule 17(2)(g)~~

2. On a date in January 2021, whilst working with Ms B, you behaved inappropriately in that you approached her and asked if you could touch her, or words to that effect. **Not proved**

3. Between January and March 2021, you behaved inappropriately towards Ms B, in that:

a. on one or more occasion you touched Ms B, without invitation, on:

i. her hands; **Not proved**

ii. her back; **Not proved**

iii. the back of her bra; **Not proved**

iv. her stomach; **Not proved**

b. on one or more occasion you stroked Ms B's inner leg and rubbed her back, without invitation; **Not proved**

c. you continued to carry out the actions described at paragraph 3b despite Ms B asking you to stop; **Not proved**

d. you had a conversation with Ms B during which you:

i. discussed adultery sex before marriage; **Not proved**

ii. asked Ms B if she was "sexually active", or words to that effect; **Not proved**

iii. told Ms B "don't worry I will find out" or words to that effect, in reference to her being sexually

active; **Not proved**

- iv. grabbed Ms B by her uniform, near her bra; **Not proved**
- v. pulled Ms B closer towards you as she tried to move away. **Not proved**

4. Your actions as set out in paragraphs 1-3 amounted to:

- a. unlawful sexual harassment by virtue of section 26 of the Equality Act 2010, in that you engaged in unwanted conduct related to sex which had the purpose or effect of violating the dignity of, or creating an intimidating, hostile, degrading, humiliating or offensive environment for:
 - i. ~~Ms A (in respect of paragraph 1);~~ **successful application under Rule 17(2)(g)**
 - ii. Ms B (in respect of paragraphs 2-3); **Not proved**
- b. an abuse of your position, in that in respect of paragraph:
 - i. ~~1, Ms A was a junior colleague;~~ **successful application under Rule 17(2)(g)**
 - ii. 2-3, Ms B was a junior colleague. **Not proved**

53. As the facts have not been found proved it therefore follows that Dr Danboyi's fitness to practise is not impaired.

ANNEX A – 26/05/2023

Application under Rule 17(2)(g)

1. Following the closing of the GMC's case, Mr Akinsanya, on behalf of Dr Danboyi, made an application under Rule 17(2)(g) of the Rules which states:

'17(2) The order of proceedings at the hearing before a Medical Practitioners Tribunal shall be as follows—

...

(g) the practitioner may make submissions as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed no further as a result, and the Medical Practitioners Tribunal shall consider any such submissions and announce its decision as to whether they should be upheld;'

Submissions on behalf of Dr Danboyi

2. Mr Akinsanya submitted that the GMC has provided insufficient evidence to support the paragraphs of the Allegation which related to Ms A and as such there is no case to answer for paragraphs 1(a)(i), 1(a)(ii), 1(b), 1(c), 1(d), 4(a)(i) and 4(b)(i) of the Allegation.
3. Mr Akinsanya stated that in order for behaviour to be classed as sexual harassment it has to be unwanted behaviour. He reminded the Tribunal that Ms A, in her oral evidence, said that she thought of Dr Danboyi as being friendly and that she considered him to be a colleague. Mr Akinsanya pointed out that when Ms A was asked if she was sexually harassed by Dr Danboyi she said no which is supported in writing in her supplemental witness statement in which she clarified that Dr Danboyi touched her over her clothing when exchanging a hug.
4. Mr Akinsanya submitted that by virtue of Ms A's evidence, the GMC's case is weak and there is no evidence to support the paragraphs of the Allegation relating to Ms A. Mr Akinsanya went on to state that Ms A said that the hugging was mutual, that Dr Danboyi was friendly and that she did not think of his actions as amounting to anything else.
5. In relation to the touching of Ms A's knee, Mr Akinsanya noted that Ms A said that she did not think anything of this and did not think that it was sexual in nature. Ms A also said

that she did not consider the touching of her hip to have been inappropriate either. Mr Akinsanya invited the Tribunal to accept the perceptions expressed by Ms A.

6. Mr Akinsanya stated that for Dr Danboyi's conduct to be considered unwanted conduct related to sex, it would have had to be undertaken for the purpose or effect of violating the dignity of, or creating an intimidating, hostile, degrading, humiliating or offensive environment, which is not the case here. As such, he submitted that there is no case to answer for paragraphs 1(a)(i), 1(a)(ii), 1(b), 1(c), 1(d), 4(a)(i) and 4(b)(i) of the Allegation.

Submissions on behalf of the GMC

7. Mr Toal submitted that there is sufficient evidence to support that the physical acts of touching referred to in paragraphs 1(a)(i), 1(a)(ii), 1(b), 1(c) and 1(d) of the Allegation happened. He stated that the GMC accepts Ms A's claims that she did not find Dr Danboyi's offensive, but that the Tribunal must take into account the other evidence presented in this case in order to consider if it is reasonable to assume Dr Danboyi's conduct was offensive. Mr Toal asserted that it is a different issue as to whether Ms A thought Dr Danboyi's behaviour was offensive.
8. Mr Toal went on to submit that it would be wrong for the Tribunal to approach the parts of the Allegation relating to Ms A and her evidence in isolation and that there is evidence to support paragraphs 1(a)(i), 1(a)(ii), 1(b), 1(c), 1(d), 4(a)(i) and 4(b)(i) of the Allegation. He referred the Tribunal to Ms A's oral evidence, in which she stated that no other doctor would have hugged a member of the XXX team, and to her written evidence in which she described Dr Danboyi's behaviour as '*unprofessional*' and '*kind of weird*'.
9. Mr Toal submitted that there is a similar thread of behaviour between Dr Danboyi's actions towards Ms A and his actions towards Ms B. Accordingly, he submitted that at this stage, there is sufficient evidence to support the paragraphs of the Allegation which relate to Ms A.

The Tribunal's decision

10. In considering each paragraph that Mr Akinsanya submitted there was no case to answer, the Tribunal had regard to the submissions made by both parties and the totality of the evidence.

11. The Tribunal took into account Ms. A's evidence. It noted that her evidence was not limited to her oral evidence, but included her witness statements and the record of her interview with the Trust. The Tribunal also had regard to the other evidence and that Ms B complains of similar behaviour by Dr Danboyi towards her, which Ms B considered to be sexually motivated.
12. The Tribunal noted that Ms A had herself had not considered it necessary to complain about Dr Danboyi's behaviour. During her evidence to the Tribunal, she accepted that she had not been sexually harassed by Dr Danboyi and did not consider any of his actions to have been sexual. When asked by Mr Toal during re-examination if now knowing of Ms B's complaint about Dr Danboyi's behaviour did she consider his behaviour towards her differently, she replied in the negative. Ms A also informed the Tribunal that the hugging that took place between her and Dr Danboyi had been mutual and that she had approved of the hugging.

Paragraphs 1(a)(i) and (ii), and (d)

13. The Tribunal had regard to the stem of paragraph 1 of the Allegation, that the factual matters were 'inappropriate' and 'without invitation'. It took into account Mr Toal's submission that whether the behaviour was inappropriate would be a matter for the Tribunal. The appropriateness or otherwise of the behaviour needs to be considered in context, including the complaint made by Ms B.
14. The Tribunal noted that in her interview to the Trust, Ms A explained that Dr Danboyi's behaviour had not made her feel uncomfortable, but she did consider it 'kind of weird' that when touching her back when hugging her he'd 'kind of' rub it. However, she did not consider anything of it and viewed him as affectionate and at the time like a friend. She explained that in hindsight when discussing with Ms B that 'maybe' Dr Danboyi 'was a bit unprofessional with his actions towards us'.
15. The Tribunal considered Ms A's evidence about the hugging between her and Dr Danboyi that she accepted was mutual and which she had approved of. The Tribunal noted that this took place in front of other people, including patients and that Dr Danboyi was a Locum Consultant whilst Ms A was a XXX. The Tribunal further noted that it was more common for XXX staff in the department to hug one another. The Tribunal took into account that behaviour which is appropriate between one set of colleagues maybe

inappropriate with another and that behaviour may be inappropriate even if the individual does not consider it to be so.

16. However, given Ms A's evidence of the circumstances and how she saw Dr Danboyi at the time, the Tribunal is not satisfied that, taking the GMC's case at its highest, a Tribunal, properly directed as to the burden and standard of proof, could find these allegations proven.

17. Accordingly, the Tribunal upheld the application of no case to answer in respect of these paragraphs.

Paragraph 1(b)

18. Ms A in her interview to the Trust described Dr Danboyi as, 'just really quickly just rubbed on my knee cap. I didn't think much of it at the time, and I didn't think of it weird or anything'. In her witness statement Ms A explained that, 'As he said this, he rubbed his hand on my kneecap very lightly. The touch was so light that I didn't take much notice at that time because I was busy with work and had only realised after he left me to continue to check my emails'. During her evidence to the Tribunal Ms A accepted that she had not seen Dr Danboyi touch her knee, and whilst he was the only person present, she acknowledged that it could have been inadvertent on the part of Dr Danboyi, who had been standing at the side of her whilst she was working on her laptop.

19. The evidence in support of this paragraph of the Allegation is Ms A's account of what happened. Given the concession by Ms A in her evidence, the Tribunal is not satisfied that, taking the evidence at its highest that a Tribunal, properly directed as to the burden and standard of proof, could find this allegation proven. Accordingly, the Tribunal upheld the application of no case to answer in respect of this paragraph.

Paragraph 1(c)

20. Ms A explained to the Tribunal that whilst walking down a narrow corridor, Dr Danboyi moved her to the side to walk past her. In doing so he put his hand on her hip. He did not say anything to her at the time and Ms A did not really consider it to be inappropriate.

21. The Tribunal is not satisfied that taking the GMC's case at its highest that a Tribunal, properly directed as to the burden and standard of proof, could find that Dr Danboyi's action in moving a colleague out of the way in a narrow space would be inappropriate.
22. Accordingly, the Tribunal upheld the application of no case to answer in respect of this paragraph.

Paragraph 4

23. Having concluded there is no case to answer in respect of paragraph 1, paragraph 4 of the Allegation falls away in respect of Ms A.
24. The Tribunal therefore determined that the evidence before it was insufficient to support paragraphs 1(a)(i), 1(a)(ii), 1(b), 1(c), 1(d), 4(a)(i) and 4(b)(i) of the Allegation and granted Mr Akinsanya's application that there was no case to answer.

ANNEX B – 01/06/2023

Determination on current Interim Order

1. The Tribunal was informed that there is currently an interim order on Dr Danboyi's registration. Having found none of the facts proven and in the absence of any objection from the GMC, the Tribunal revoked the interim order on Dr Danboyi's registration.
2. That concludes the case.