

**PUBLIC RECORD**

Dates: 27/11/2023 – 13/12/2023

Medical Practitioner's name: Dr Christopher VALENTINE

GMC reference number: 3139477

Primary medical qualification: MB ChB 1986 University of Leeds

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Not Impaired

**Summary of outcome**

No action (warning not considered) – IOT order revoked

**Tribunal:**

Legally Qualified Chair	Mr Tanveer Rakhim
Lay Tribunal Member:	Miss Susan Hurds
Medical Tribunal Member:	Dr Candida Borsada
Tribunal Clerk:	Mr John Poole

**Attendance and Representation:**

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Andrew McGee, Counsel, instructed by Hempsons solicitors
GMC Representative:	Ms Chloe Fairley, 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 - 12/12/2023

#### Background

1. Dr Valentine qualified as a doctor in 1986 from the University of Leeds. He went on to train in General Medicine before specialising in Sexual Health Medicine and HIV Medicine in 1996. He started working in Occupational Medicine in 2005.
2. At the time of the events that form the subject of this hearing Dr Valentine was employed by the People Asset Management Group ('PAM') which had a contract to provide occupational health services to a Fire and Rescue Service in the North of England. This included pre-employment medical assessments of firefighter recruits which were undertaken by Dr Valentine.
3. In summary, it is alleged that between May 2017 and March 2018 Dr Valentine undertook a number of medical assessments of firefighter recruits (Patient B, Patient C, Patient D and Patient F) and did not offer them chaperones, made inappropriate comments and performed actions which were not clinically indicated. It is alleged that a number of Dr Valentine's actions were sexually motivated and dishonest.

#### The Outcome of Applications Made during the Facts Stage

4. The Tribunal granted the GMC's application to hear part of the hearing in private due to vulnerable witnesses, the nature of the allegations and to prevent 'jigsaw identification', made pursuant to Rule 41(2) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). The Tribunal's determination for that is attached at Annex A.
5. The Tribunal granted the GMC's application to amend the Allegation, made pursuant to Rule 17(6). This involved withdrawing the paragraphs of the Allegation relating to Patient A, withdrawing allegation 11(e) and amending the date in the stem of paragraph 22. The Tribunal's determination for that is attached at Annex B.
6. The Tribunal granted an application made by the GMC, on 5 December 2023, for Patient E to give evidence by video-link (see Annex C), made pursuant to Rule 34 (14). It subsequently granted an application made by the GMC, on 6 December 2023, to further amend the Allegation and withdraw the paragraphs of the Allegation relating to Patient E in accordance with Rule 17(6) (see Annex D).

## The Allegation and the Doctor's Response

7. The Allegation (reflecting the amendments made) against Dr Valentine is as follows:

### Patient A

- ~~1. On 8 May 2017 you consulted with Patient A and you:~~
  - ~~a. took photographs of Patient A's tattoos on his back and/or, arms and/or hands;~~
  - ~~b. told Patient A that the photographs you took would be used to identify him in the event of his death;~~
  - ~~c. failed to make an adequate record of the consultation in that you did not record that you had taken the photographs at paragraph 1.b.;~~
  - ~~d. failed to store the photographs you had taken within Patient A's clinical records.~~
- ~~2. You knew that the information you gave to Patient A as outlined at paragraph 1.b. was untrue.~~
- ~~3. Your actions as outlined at paragraph 1.b. were dishonest by reason of paragraph 2.~~
- ~~4. Your actions as outlined at paragraph 1.a. were not clinically indicated.~~
- ~~5. One or more of your actions as outlined at paragraph 1 were sexually motivated.~~

### Withdrawn in accordance with Rule 17(6) of the Rules

### Patient B

6. On 22 May 2017 you consulted with Patient B and you:
  - a. took photographs of Patient B's body; **To be determined**
  - b. told Patient B that the pictures you took of his body were for "identification purposes in the event that normal identification was not possible", or words to that effect; **To be determined**
  - c. said to Patient B, whilst taking photographs of his body, words to the effect of:
    - i. it was "a perk of the job getting to take pictures of young lads in their underwear"; **To be determined**

- ii. “oh I must not say things like that”; **To be determined**
  - d. stumbled towards Patient B whilst he was lay on a bed, placing your hand(s) on his hip(s), with your crotch close to Patient B’s face; **To be determined**
  - e. remained in the position described at paragraph 6.d. for an unnecessary period of time; **To be determined**
  - f. said to Patient B after stumbling onto him “I must not do that, we have to be manly around here”, or words to that effect; **To be determined**
  - g. failed to make an adequate record of the consultation in that you did not record that you had taken photographs of Patient B’s body; **To be determined**
  - h. failed to store the photographs you had taken within Patient B’s clinical records; **To be determined**
  - i. did not offer Patient B a chaperone. **Admitted and found proved**
7. You knew that the information you gave to Patient B as outlined at paragraph 6.b. was untrue. **To be determined**
8. Your actions, as described at paragraph 6.b. were dishonest by reason of paragraph 7. **To be determined**
9. One or more of your actions, as outlined at paragraphs 6.a, 6.d. and 6.e., were not clinically indicated. **To be determined**
10. One or more of your actions, as outlined at paragraph 6, were sexually motivated. **To be determined**

Patient C

11. On 7 June 2017 you consulted with Patient C and you:
- a. did not offer Patient C a chaperone. **Admitted and found proved**
  - b. inappropriately asked Patient C to undress down to his underwear so you could check his body for tattoos, despite Patient C informing you that he did not have any tattoos; **To be determined**
  - c. examined Patient C’s buttocks to check for tattoos and/or needle marks; **To be determined**
  - d. told Patient C that you needed to check his body for tattoos as “a means of identifying him if he was ever burnt in a fire” or words to that effect; **To be determined**

~~e. inappropriately performed an assessment of Patient C's vision whilst he was undressed.~~

**Withdrawn in accordance with Rule 17(6) of the Rules**

12. You knew that the information you gave to Patient C as outlined at paragraph 11.d. was untrue. **To be determined**
13. Your actions, as described at paragraph 11.d. were dishonest by reason of paragraph 12. **To be determined**
14. One or more of your actions, as outlined at paragraphs 11.b., 11.c. 11.d. and 11.e., were not clinically indicated. **To be determined**
15. One or more of your actions, as outlined at paragraph 11, were sexually motivated. **To be determined**

Patient D

16. On 22 February 2018 you consulted with Patient D and you:
  - a. said to Patient D “people like you are body beautiful”, or words to that effect; **To be determined**
  - b. examined Patient D's buttocks to check for needle marks; **Admitted and found proved**
  - c. did not offer Patient D a chaperone; **Admitted and found proved**
  - d. failed to make an adequate record of the consultation in that you did not record that you had carried out the examination at paragraph 16.b. **To be determined**
17. Your actions, as outlined at paragraph 16.b. were not clinically indicated. **To be determined**
18. One or more of your actions, as outlined at paragraph 16, were sexually motivated. **To be determined**

Patient E

- ~~19. On 22 February 2018 you consulted with Patient E and you:
  - a. inappropriately asked Patient E to remove all of his clothes; **To be determined**
  - b. positioned yourself on your hands and knees behind Patient E whilst he lowered his trousers; **To be determined**~~

- e. ~~asked Patient E to lower his underwear and bend over; **To be determined**~~
- d. ~~positioned yourself on your hands and knees behind Patient E whilst he lowered his underwear and bent over; **To be determined**~~
- e. ~~said to Patient E “I get all the best views today don’t I”, or words to that effect; **To be determined**~~
- f. ~~did not offer Patient E a chaperone. **Admitted and found proved**~~
20. ~~One or more of your actions, as outlined at paragraphs 19.a., 19.b., 19.c. and 19.d, were not clinically indicated. **To be determined**~~
21. ~~One or more of your actions, as outlined at paragraph 19, were sexually motivated. **To be determined**~~

Withdrawn by the GMC in accordance with Rule 17(6)

#### Patient F

22. On ~~14~~ 23 March 2018 you consulted with Patient F and you:

**Amended in accordance with Rule 17(6)**

- a. did not offer Patient F a chaperone; **Admitted and found proved**
- b. examined Patient F’s buttocks to check for needle marks; **Admitted and found proved**
- c. failed to make an adequate record of the consultation in that you did not record that you had carried out the examination at paragraph 22.b. **To be determined**
23. Your actions, as outlined at paragraph 22.b., were not clinically indicated. **To be determined**
24. One or more of your actions, as outlined at paragraph 22, were sexually motivated. **To be determined**

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

#### **The Admitted Facts**

8. At the outset of the hearing, through his counsel, Mr Andrew McGee, Dr Valentine made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules,

the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

### The Facts to be Determined

9. In light of Dr Valentine's response to the Allegation made against him the Tribunal is required to determine the remaining paragraphs and sub-paragraphs of the Allegation.

### Witness Evidence

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

- Patient B, in person.
- Patient C, in person.
- Patient D, by video link. The application for this had been agreed in advance of the hearing and Dr Valentine was seated outside the camera range so that Patient D was unable to see him.
- Patient F, in person.
- Mr G, in person.

At the time of the events Mr G was the acting Watch Manager for the Fire Station. Patient B had informed him of what had happened in the medical examination with Dr Valentine and Mr G raised this with the Station Manager. Prior to Mr G giving evidence, the GMC secured a supplementary witness statement from him, which was served upon Dr Valentine. Mr McGee confirmed no issue was taken in relation to the supplemental statement being relied upon.

- Mr H, in person.  
At the time of the events, he was a Watch Manager for the training of fire fighters.

11. 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; Mr I, CEO of the PAM Group, and Mr J, a Watch Manager at the Station at the time of the events. Mr McGee had confirmed that the evidence of both witnesses was not challenged.

12. Dr Valentine also gave evidence to the Tribunal. In addition, he provided a witness statement dated 15 September 2023, and a supplemental statement dated 20 October 2023.

### Expert Witness Evidence

13. The Tribunal received evidence from two expert witnesses, Dr K and Dr L, Consultant Physicians in Occupational Medicine, via video link.

14. Dr K was instructed by the GMC and provided an expert report dated 9 August 2021, as well as two supplementary reports dated 22 May 2022 and 10 October 2022.

15. Dr L was instructed on behalf of Dr Valentine and provided a report dated 7 September 2022

16. Both experts produced a joint report dated 15 October 2023 in which they set out areas of agreement and dispute. One area where there was a divergence of opinion was in respect to the provision of a chaperone. Regarding the alleged actions and comments, both considered that the extent to which Dr Valentine's conduct was inappropriate or seriously below the expected standard was dependent on the Tribunal's factual findings.

### Documentary Evidence

17. The Tribunal had regard to the documentary evidence provided by the parties. Each party provided their own bundle. This evidence included, but was not limited to, the following:

- Initial statements made by Patients C and D to the Fire Station
- Statements made by all Patients to the Police
- Dr Valentine's pre-prepared statement for the Police dated 2 April 2019 and 10 June 2020
- Dr Valentine's record of police interviews, dated 2 April 2019 and 11 June 2020
- Occupational health records relating to the Patient medical examinations
- Home Office guidelines for occupational health physicians undertaking recruitment medical for Police Officers
- PAM Group Guidance on Firefighter Medicals, 2018
- Police Forensic Report of Dr Valentine's devices, dated 28 July 2020
- Photographs of consultation room

### The Tribunal's Approach

18. 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 Valentine 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.

19. The LQC advised that the Tribunal should approach the assessment of each witness's reliability and credibility carefully. The veracity of a witness's account should be tested with reference to objective facts. He noted that the allegations date back to 2017 and 2018, and advised that memories can fade over time. It was advised that where there are inconsistencies between different witnesses, it is for the Tribunal to assess what impact, if any, this may have on the credibility of a witness. The Tribunal should be mindful that an honest witness can be mistaken, and a mistaken witness is not necessarily wrong about every fact. The Tribunal should consider all the evidence before coming to a conclusion about the credibility of a witness.



20. In relation to the allegations of dishonesty, the Tribunal had regard to the guidance in the case of *Ivey v Genting Casinos (UK) Limited [2017] UKSC 67*:

*“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”*

21. In regard to the allegations of sexual motivation, the LQC advised that the Tribunal must consider whether there are other plausible explanations for the conduct. Sexually motivated conduct is not the same as carelessness, recklessness, or negligence. The best evidence of sexual motivation can be the behaviour itself. If there is no plausible alternative explanation as to why the Doctor engaged in conduct or actions of a sexual nature, then the Tribunal is entitled to conclude that the motivation was sexual.

22. The parties agreed with the legal advice given by the LQC and also agreed the following advice in relation to cross-admissibility. Namely, if the Tribunal finds proved sexually motivated behaviour in relation to one of the patients, it should go on to consider whether the proven allegation is capable of establishing a propensity to act in that manner. If the Tribunal were to conclude that such a propensity was established, this is capable of giving some support to the GMC's case in relation to other such allegations, but a finding in relation to other allegations should not be based solely or mainly on it.

23. The Tribunal was also mindful that it had heard evidence about the nature of allegations made against Dr Valentine in proceedings in 2015. This evidence was adduced as part of the factual background and is not relied on by either party to establish the existence or absence of any type of propensity on the part of Dr Valentine and should not be used for that purpose.

### **The Tribunal’s Analysis of the Evidence and Findings**

24. 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.

#### **Patient B**

25. The Tribunal considered paragraphs 6 - 10 of the Allegation relating to a medical examination undertaken by Dr Valentine on Patient B on 22 May 2017.

**Paragraph 6.a**

26. The Tribunal considered whether Dr Valentine took photographs of Patient B's body as alleged at paragraph 6a of the Allegation.

27. In Patient B's GMC witness statement, dated 1 April 2021, he stated that during the appointment:

*'...Dr Valentine asked me to undress to my underwear and took pictures of me with a digital camera which he explained were for identification purposes. He stumbled on to me whilst I was laying on the bed and made an inappropriate comment, "I must not do that; we have to be manly around here" which made me feel uncomfortable. He did not obtain my consent to take these pictures and I did not challenge this at the time due to concerns that it may impact my chances of securing the role.'*

28. In Patient B's most contemporaneous account to the police, dated 29 May 2018, he stated that Dr Valentine told him that he needed to take some photographs of any marks on his body, such as tattoos. Patient B stated that Dr Valentine said:

*'... the photographs are taken incase of a normal identification was not possible, these pictures would be used to assist. I was told they also do this in the army. I did not object to him taking photographs and he took some of my body, but I can't recall where.'*

*As Dr VALENTINE is taking the photographs he said "A PERK OF THE JOB GETTING TO TAKE PICTURES OF YOUNG LADS IN THEIR UNDERWEAR." He then said "OH I MUST NOT SAY THINGS LIKE THAT." Dr VALENTINE laughed when he said the latter.'*

29. The Tribunal noted that the alleged comment regarding the 'perk of the job' was not mentioned in his GMC witness statement. The Tribunal considered this to be a significant inconsistency, considering the nature of the comment.

30. Within the same police statement, Patient B also said that 'I can confirm that the photographs taken of me by Dr VALENTINE were used with a digital camera he had.'

31. Patient B also stated that he was asked to remove any clothing save for his underwear and to lay on the bed on his back.

32. The Tribunal considered that Patient B was doing his best to assist the Tribunal and it noted that he was willing to make concessions which it considered went to his credibility. For example, he readily conceded that the stumble described (see below on Paragraph 6.d) may have been an innocent trip. Nevertheless, the Tribunal was mindful of the lapse of time since the events and that witnesses can be mistaken.

33. The Tribunal noted that none of the other remaining patients in the Allegation (Patient C, Patient D and Patient F) allege that Dr Valentine took photographs of them during

the consultation. However, the Tribunal noted that the allegations that pertained to Patient A which were withdrawn at the outset of the hearing were similar in nature to Patient B's, in that it was alleged photographs were taken by Dr Valentine and that he said the photographs would be used to identify him in the event of his death.

34. The Tribunal noted the submission made by Mr McGee that at the material time a cursory search on the internet, using the Google search engine, of Dr Valentine's name would have brought up stories from 2015 concerning him taking photos of patients on his mobile phone. Mr McGee also drew the Tribunal's attention to an email from a Fire Brigade Union Secretary to a senior figure in the Fire Service regarding Dr Valentine and these stories on 26 August 2016:

*'...I have been made aware of information on Google about a 'Dr Chris Valentine' which is very concerning regarding photo's on his personal mobile phone of naked patients.*

*... I may well be able to assist in any diplomacy with Staff members as I fear this information will run wild as many things unfortunately seem to do in our Brigade...'*

35. It was the case on behalf of Dr Valentine that rumours did 'run wild' and that Dr Valentine was the subject of gossip. The case was made that the Patients and other firefighters discussed their medical examinations with one another, and that rumours and gossip cross contaminated their accounts.

36. The Tribunal also noted, in an email from July 2017, from the Occupational Health Advisor:

*'We are under the impression that these are just "silly comments" being passed around by individuals in a close knit community. I would not be surprised that Dr Valentine has been "Googled".'*

37. The Tribunal further noted Mr H's GMC witness statement, dated 22 May 2022, which stated:

*'Rumours regarding his examinations had circulated the brigade prior to the complaints raised in 2018, though no formal complaint had ever been raised. There were also rumours of his practice in Scotland prior to undertaking examinations for the brigade.'*

38. The Tribunal had regard to Dr Valentine's evidence. In his witness statement, dated 15 September 2022, Dr Valentine stated:

*'In around 2012-2013, I became the subject of allegations made by a former employing NHS Health Board in relation to me having taken and stored photographs of intimate examinations of patients on my mobile device. There was no supportive evidence that these photographs had been intimate. These allegations were considered at an MPTS hearing in 2015, at the conclusion of which my GMC registration was made subject to*

*conditions for a period of three years. However, the Tribunal found that the misconduct alleged, in taking the photographs in question, was not in any way sexually motivated. However, as a result of those proceedings, highly inaccurate reporting in the National Press, and my relatively uncommon surname, a simple search of my name on the internet immediately brings up information in relation to the 2015 MPTS proceedings. I believe that one or more of the complainants have reviewed the online materials and that these have influenced the nature of the allegations they have made against me. I emphasise again that at no stage during any of my assessments undertaken ..., did I ever take photographs, on any form of device, as supported by the police forensic report.*

*I vehemently deny any wrongdoing or misconduct of any kind and refute these allegations in the strongest of terms.'*

39. Dr Valentine stated in his witness statement of 15 September 2022:

*'I deny at any stage having taken photographs of any kind during the consultations in question – this was not part of my practice... In the course of the criminal procedures and with a view to rebutting this allegation, I willingly arranged with my defence team for my two and only mobile devices and associated SIM cards to be surrendered to the Forensic Crime Unit for inspection...'*

40. In his Police interview of 2 April 2019, Dr Valentine accepted he had a camera enabled smart phone and stated *'I HAD NEVER TAKEN A PHOTOGRAPH, WITH CONSENT OR WITHOUT, OF A FIRE FIGHTER... WHILST I'VE BEEN WORKING FOR PAM I HAVE NOT TAKEN ANY CLINICAL PHOTOGRAPHS OR NON CLINICAL PHOTOGRAPHS OR PHOTOGRAPHS IN THE CLINICAL SETTING.'*

41. The Tribunal also noted that in his pre-prepared statement to the Police of 10 June 2020, Dr Valentine stated *'I did not have a digital camera at the time of this consultation nor did I have an iPad. I owned a work phone and a personal phone, which I would have had with me XXX when attending to conduct medical examinations.'* The Tribunal noted this was in relation to Patient A and that the relevant part of the Allegation related to Patient A is now withdrawn, but Patient A had been examined on 8 May 2017 and Patient B on 22 May 2017, hence it was the same period so the evidence was relevant.

42. Dr Valentine provided the forensic report issued on 28 July 2020 which confirmed the absence of any such material. He also detailed, within his 15 September 2022 witness statement, that:

*'...at the time of my work... I owned a black Huawei work phone and a beige Samsung personal phone, which are the only items I would have had with me when attending to conduct medical examinations... I voluntarily tendered both these digital devices along with their SIM cards to the Police for forensic analysis in 2020. I should clarify that I did not have a digital camera with me at the time of any consultation I undertook for PAM. I have in my possession an old digital camera, although I have not used this since around*

*2003. I have never owned an iPad. I also have in my possession an old iPod, although again have not used this since 2013, and certainly would not have had this with me at the time of any of the consultations... Both these items are available to the GMC should they wish to conduct any form of forensic analysis...'*

43. The forensic analysis report dated 28 July 2020 related to two mobile phones and two sim cards. The forensic report confirmed no relevant images had been located. The Tribunal noted that there is no evidence that Dr Valentine's old digital camera and iPod were digitally analysed by the GMC, despite Dr Valentine making the items available.

44. Having considered all the evidence, the Tribunal was not satisfied on the balance of probabilities that Dr Valentine took photographs of Patient B. The Tribunal considered that it was plausible that Patient B may have misremembered aspects of the medical assessment.

45. Whilst he was consistent that photographs were taken with a digital camera of his body, he could not recall where. During the hearing, for the first time, Patient B stated that the camera had been taken out from a shopping bag. The Tribunal had concerns about the accuracy of such a recollection which had not been mentioned anywhere else in the 6.5 years that had passed since the incident.

46. The Tribunal acknowledged that Patient B had mentioned the digital camera to the Police in his statement to them on 29 May 2018. This was the only patient, still pursuing Allegations within this hearing, where the first account was given over a year later. Patient B's medical had taken place on 22 May 2017. Patient A (no longer pursuing any Allegations) and Patient B alleged that photos were taken, and both had been overheard discussing their examinations when more senior colleagues had overheard. Albeit these were separate conversations with different groups, the Tribunal was mindful that it was plausible that Patient B's account may have been contaminated by gossip and stories at the Station. The Tribunal was also mindful of the effect of delay on the accuracy of the recollection.

47. The Tribunal found Dr Valentine's evidence to be credible and was mindful that no photographs were found. The Tribunal acknowledged the limitations of the forensic analysis as only the two mobile phones were analysed. However, the Tribunal did note Dr Valentine had always been consistent on his evidence on this point, no other Patient was continuing to pursue Allegations in relation to photographs being taken, and had no cause to not believe Dr Valentine's account. On that basis, and in light of the concerns on Patient B's evidence on this issue, the Tribunal was not satisfied that the GMC had discharged the burden of proof.

48. Accordingly, the Tribunal found paragraph 6.a not proved.

### **Paragraphs 6.b and 6.c**

49. Given that the Tribunal did not find that Dr Valentine took photographs of Patient B's body, it follows that he could not have told Patient B why he was taking pictures. With regard to 6.c, the Tribunal found it highly unlikely that had these comments been made, Patient B

would have failed to recall them in his GMC statement, and that he would give Dr Valentine *'the benefit of the doubt'*. Similarly, he could not have made comments to Patient B whilst taking the photographs.

50. The Tribunal therefore found paragraphs 6.b and 6.c.i-ii of the Allegation not proved.

#### **Paragraphs 6.d, 6.e and 6.f**

51. The Tribunal considered whether Dr Valentine stumbled towards Patient B whilst he was lying on a bed, placing his hand(s) on his hip(s), with his crotch close to patient B's face.

52. In his GMC witness statement, Patient B stated that Dr Valentine:

*'stumbled on to me whilst I was laying on the bed and made an inappropriate comment, "I must not do that; we have to be manly around here" which made me feel uncomfortable'.*

53. And in his statement to the Police, Patient B stated that Dr Valentine:

*'did not move his crotch away from my face or remove his hand from my hip for at least five seconds. It felt a lot longer and I had to move my own face away from his crotch area. It seemed very odd for him to 'stumble' in that position and for him not to remove himself from my personal space...'*

Mr G, in his GMC statement, stated that:

*'I recall him saying that Dr Valentine had tried to do a 'comedy fall' on him.'*

54. In oral evidence Patient B accepted that the stumble could have been accidental.

55. The Tribunal had regard to Dr Valentine's evidence. In his GMC statement, Dr Valentine stated he had *'no particular recollection of ... any other of the consultations'*. Dr Valentine denied the allegations but accepted in oral evidence that it was possible he stumbled towards Patient B.

56. The Tribunal considered that it was more likely than not that Dr Valentine stumbled towards Patient B. However, it considered that it was unlikely that he placed his hand on Patient B's hip whilst also having his crotch close to Patient B's face. The Tribunal considered the photographs of the examination room, including the couch, as well as the demonstrations conducted within the hearing by both Patient B and Dr Valentine when they were giving evidence. It bore in mind the height of the bed and that Dr Valentine approached Patient B from the side. The Tribunal also bore in mind Dr Valentine's evidence of the position of the headrest. He said it was his routine practice to commence each examination with the headend of the couch raised to forty-five degrees. Whilst he may have stumbled, the Tribunal could not be satisfied on the balance of probabilities that he landed on Patient B as described.

57. Accordingly, the Tribunal found paragraph 6.d of the Allegation not proved.

58. As the Tribunal found paragraph 6.d not proved, it follows that paragraph 6.e is also not proved. Dr Valentine may have stumbled towards Patient B and Patient B may have felt uncomfortable which affected his perception; however, the Tribunal was not satisfied that Dr Valentine ended up in the position alleged at paragraph 6.d, consequently it cannot be found that he remained in that position for an unnecessary period of time as alleged. The Tribunal therefore found paragraph 6.e not proved.

59. Given the Tribunal's findings in relation to paragraph 6.d and 6.e, it also found paragraph 6.f not proved. The Tribunal was not satisfied on the evidence that Dr Valentine's stumble was deliberate with the intention of ending up in a certain position, and it considered it unlikely he used the words as alleged at paragraph 6.f. The Tribunal noted Dr Valentine's clear evidence, that was consistent throughout, that he would not have said anything to the effect of that being alleged. The Tribunal considered he was consistent and credible and was able to attach weight to his evidence. The Tribunal reminded itself that it was for the GMC to prove the allegation. The Tribunal therefore found paragraph 6.f of the Allegation not proved.

#### **Paragraphs 6.g and 6.h**

60. As the Tribunal found paragraph 6.a not proved, paragraphs 6.g and 6.h also fall away. The Tribunal was not satisfied that Dr Valentine took photographs of Patient B's body. Therefore, he could not have been under an obligation to record having taken photographs or to store any photographs within Patient B's clinical records.

61. The Tribunal therefore found paragraphs 6.g and 6.h not proved.

#### **Paragraphs 7 and 8**

62. As the Tribunal found paragraph 6.b of the Allegation not proved, paragraphs 7 and 8 fall away.

#### **Paragraph 9**

63. Given the Tribunal found paragraphs 6.a, 6.d. and 6.e. not proved it did not need to consider whether there was a clinical indication. It therefore found paragraph 9 not proved.

#### **Paragraph 10**

64. Only paragraph 6.i of the Allegation which was admitted has been found proved in respect of Patient B, namely, that Dr Valentine did not offer Patient B a chaperone. The Tribunal considered whether this was sexually motivated.

65. The Tribunal had regard to the joint expert report dated October 2023. Dr K:

*'was of the opinion that if proven, this was below the acceptable standard – on the basis of any intended intimate examination/ taking photographs. However, [Dr K] concedes that the provision of a chaperone was not the sole duty of Dr V but a policy matter within the department and that there existed signage offering a chaperone.'*

Dr L:

*'was of the opinion that there is no requirement for a chaperone in this situation. There is no stated requirement for a chaperone to be present within the relevant guidelines other than when an 'intimate' examination is taking place and there is no suggestion that any examination that meets the published guidance relating to 'intimate' examination took place. Photographs are not mentioned in the guidance relating to chaperones. It is recorded in the bundle that signage indicating that a chaperone could be requested is present in the waiting area...'*

66. The Tribunal had regard to the Home Office Guidance guidelines for occupational health physicians undertaking recruitment medical for Police Officers.

67. This had been adopted by Dr Valentine as an aide to his medical assessment as no formal guidelines were in place at the Station. These guidelines advised that:

*'During the examination it is essential that candidates should be stripped to their underwear to facilitate a full inspection and also to gain an overall impression of their physical demeanour. Any abnormality discovered by the examiner should be pursued to a level sufficient to make an objective assessment.*

*In particular cases the FMA should consider whether a chaperone is needed. However this is a decision for the FMA at the time of examination...'*

68. In Dr Valentine's witness statement of 15 September 2022, he stated that:

*'I did not have access to a chaperone... and nor was a chaperone required in the context of the OH [Occupation Health] examinations I was performing, as I was not conducting intimate examinations. The nurse employed at the time of my work... was male, and who would be undertaking his own assessments of the candidates concurrently with me. When examining female recruits, however, I would ask the nurse to be in attendance with the recruit's consent...'*

69. The Tribunal considered whether any part of the medical assessment was intimate in the sense that it related to an examination of an intimate body part, such as genitalia or the rectum. The Tribunal noted the difference of opinion between Dr K and Dr L. Dr K was of the view that inspecting the buttocks could be considered intimate; Dr L taking the view that an inspection of this type was not intimate. The Tribunal considered that the most intimate part of the examination would be the examination for hernias which would have involved Dr Valentine placing his hands on the lower abdomen of the patient. However, it did not



consider this to be intimate in the sense that there would have been an obligation on Dr Valentine to offer the patient a chaperone.

70. The Tribunal also had regard to PAM's policy for examination of firefighter recruits provided by Dr Valentine. This set out the brief of the medical assessment and advised that recruits would normally have to remove their tops for part of it such as the chest examination and be dressed in undergarments only for other parts of the assessment. It mentioned nothing in relation to chaperoning.

71. Taking everything into account, the Tribunal determined that there was not an obligation on Dr Valentine to offer Patient B or any of the other recruits a chaperone. It considered that it was a matter for Dr Valentine's judgement. The recruits were aware of what the medical assessment would consist and that they would likely have to undress to their underwear. More importantly, no part of the assessment was intimate, in that an examination of genitalia or the rectum was not necessary. The Tribunal also bore in mind that none of the patients complained about not getting a chaperone, with their supplementary statements simply stating that factually they were not offered chaperones.

72. The Tribunal concluded that Dr Valentine was not under a duty to provide a chaperone. Dr Valentine had plausible and persuasive reasons for not doing so and it cannot be inferred on any of the evidence that there was sexual motivation.

73. The Tribunal therefore found paragraph 10 not proved.

### Patient C

74. The Tribunal considered paragraphs 11 - 15 of the Allegation relating to Dr Valentine's consultation with Patient C on 7 June 2017.

#### **Paragraph 11.b**

75. In Patient C's GMC witness statement, dated 30 March 2021, he stated that:

*'During this appointment Dr Valentine asked me to get undress to my underwear. He explained this was because he needed to check if I had tattoos despite me informing him that I has no tattoos...' (sic)*

76. In Patient C's pre-prepared statement to the Fire Station, dated 23 May 2018, he stated:

*'I was instructed during the interview to strip down to my underwear. Doctor Valentine carried out a fully body examination which involved me lying on the bed; he checked the movements in my legs, bending knees etc. Doctor Valentine asked me during this time if I had any Tattoos which I replied that I didn't have, following this he said that he need to check my bum to visually confirm this , as this would be a means of identifying me if I*

*was burnt in a fire. At this point I was laid on my front on the bed, I showed Doctor Valentine my bum as requested following which I was instructed to stand up as I needed to carry out a Peripheral vision test. This was completed whilst I was still stood in my underwear and involved me touching Dr Valentines fingers with mine whilst his hands were outspread. Once this was completed I got dressed as the examination was over...'*

77. The Tribunal had regard to Patient C's police witness statement dated 29 May 2018. In this he stated:

*'... Dr Valentine asked me if I had any tattoos and I said that I had none. He checked my body for any. Dr Valentine has then asked me strip to my boxer shorts which I did so. I have had previous medical and I have not had to take my clothes off and I thought it was odd.*

*Dr Valentine has then said that he needed to check to see if I had any tattoo's and said that he needed to look at my bottom to see if I had any. At this point I was laid on the medical table and I turned to my front.*

*I then pulled my boxer shorts down to the point where the boxer strap band was level but under my buttocks.*

*Again I thought this was odd and I felt uncomfortable. It was even more odd due to the fact that I told him I had no tattoo's but yet he still wanted to check.'*

78. The Tribunal noted that Patient C was not clear in respect of the order of events. He stated that Dr Valentine checked his body for tattoos, then asked him to strip to his boxer shorts so he could check to see if he had any tattoos. However, if his body had already been checked for tattoos, as stated, then he would have already been in a state of undress.

79. The Tribunal also considered it unlikely that Dr Valentine would check Patient C's buttocks for tattoos whilst he was lying on the narrow examination couch, requiring him to turn onto his front. It would have been easier and more logical to do this whilst he was stood up. Given the confusing account given above by Patient C, the Tribunal considered that Patient C is unlikely to have recalled accurately.

80. In Dr Valentine's witness statement, he denied that there was anything inappropriate about his request that Patient C undress down to his underwear. He stated:

*'The reason I asked him to strip to his underwear was not simply to look for tattoos but to perform a competent and adequate examination. Just because someone says they do not have tattoos/have never had an operation/do not use drugs that is not accepted as gospel and the thorough doctor will assess and confirm the absence of scars etc. Patients frequently "forget" to mention these...'*

81. In Dr Valentine's preprepared statement for the Police dated 2 April 2019, he described his general practice:

*'I ask the recruits to strip to their underwear or shorts if they have brought them. I undertake a detailed visual examination of the skin noting the presence of distinguishing marks such as tattoos and body piercings and for any scars or skin conditions which may be indicative of a condition incompatible with work as a fire fighter. I record the presence of identifying marks and tattoos for later forensic identification purposes should this be necessary.'*

82. The Tribunal was mindful that the medical examinations of the recruits consisted of a full medical. Moreover, as per the Home Office Guidance, provided to the Tribunal, a feature of the medical examination was that Dr Valentine had to look for distinguishing marks. The Guidance also stated that *'During the examination it is essential that candidates should be stripped to their underwear to facilitate a full inspection and also to gain an overall impression of the physical demeanour....Any abnormalities of skin should be noted including distinguishing marks, tattoos and body piercings.'*

83. Taking everything into account, the Tribunal was not satisfied that Dr Valentine asked Patient C to undress down to his underwear so that he could check his body for tattoos.

84. The Tribunal determined that Dr Valentine appropriately asked Patient C to undress down to his underwear in the context of the performing the medical examination. He also had to check for distinguishing features, which could include tattoos. The Tribunal considered that there was margin for misunderstanding on Patient C's part. It considered that it was more likely than not that Patient C got the false impression that Dr Valentine was only looking for tattoos.

85. The Tribunal therefore found paragraph 11b not proved.

### **Paragraph 11.c**

86. The Tribunal considered whether Dr Valentine examined Patient C's buttocks to check for tattoos and/or needle marks.

87. In Patient C's version of events, Dr Valentine did not mention looking for needle marks. He was asked in his oral evidence if Dr Valentine also mentioned looking for needle marks but stated that Dr Valentine had just been looking at his buttocks for tattoos.

88. Dr Valentine denied this allegation. He stated that he did not commence examining buttocks for intramuscular injection until 2018.

89. The Tribunal found that Dr Valentine did not ask Patient C to undress to his underwear for the purpose of checking his buttocks for tattoos. Rather, the request to

undress down to the underwear was appropriate in the context of the wider medical examination, a part of which required him to look for distinguishing marks.

90. Patient C stated that Dr Valentine checked his bottom for tattoos whilst he was lying down and that he turned onto his front to permit this. The Tribunal did not find this convincing. It considered that if Dr Valentine was checking Patient C's buttocks for distinguishing marks, it was more probable and logical that this would be done whilst Patient C was standing up.

91. The Tribunal was not satisfied that Dr Valentine looked at Patient C's buttocks just for tattoos. It was more probable he looked at the buttocks for distinguishing marks.

The Tribunal found paragraph 11c not proved.

#### **Paragraph 11.d**

92. The Tribunal considered whether Dr Valentine told Patient C that he needed to check his body for tattoos as *'a means of identifying him if he was ever burnt in a fire'* or words to that effect.

93. Dr Valentine did not recall saying these words to Patient C but admitted it insofar that *'wording to this effect would have an appropriate explanation for the purposes of consent'*.

94. In Dr Valentine's evidence he stated that all routine examinations *'were conducted properly, appropriately and within the bounds of accepted practice and guidance, particularly the Home Office Guidance'*.

95. The Tribunal had regard to the Home Office Guidance provided by Dr Valentine which stated that:

*'Any abnormalities of skin should be noted including distinguishing marks, tattoos and body piercings.'*

96. The Tribunal considered that it was more likely than not that in the context of the examination he was undertaking, Dr Valentine did use words to the effect that he was checking Patient C's body for tattoos as *"a means of identifying him if he was ever burnt in a fire."*

97. The Tribunal therefore found paragraph 11.d proved.

#### **Paragraphs 12 and 13**

98. Whilst the Tribunal found paragraph 11.d of the Allegation proved, the information was not untrue as Dr Valentine was appropriately following guidance. As such his actions could not be considered dishonest.

99. The Tribunal therefore found paragraphs 12 and 13 not proved.

#### **Paragraph 14**

100. The Tribunal considered whether Dr Valentine's actions as outlined at paragraph 11.d were clinically indicated.

101. Given the Tribunal's finding that Dr Valentine was appropriately following guidance, it was satisfied that there was a clinical indication for his actions.

102. The Tribunal therefore found paragraph 14 not proved.

#### **Paragraph 15**

103. The Tribunal considered whether Dr Valentine's actions as admitted and found proved at paragraph 11.a, and determined and found proved at paragraph 11.d, were sexually motivated.

104. Given the Tribunal's view that Dr Valentine was not under a duty to offer a chaperone during the medical assessments, and that there was a clinical indication for checking the patients for distinguishing marks, the Tribunal determined that Dr Valentine's actions were not sexually motivated.

105. The Tribunal therefore found paragraph 15 not proved.

#### **Patient D**

106. The Tribunal considered paragraphs 16 - 18 of the Allegation relating to Dr Valentine's consultation with Patient D on 22 February 2018.

#### **Paragraph 16.a**

107. The Tribunal had regard to Patient D's GMC witness statement, dated 26 March 2021. Patient D stated that Dr Valentine had asked him to take his shirt off and instructed him to lay on his back for the examination and examined him with stethoscope. He stated that:

*'After this I then got up and sat back in the chair. I still had my top off and Dr Valentine was making notes. Dr Valentine then said something like "people like you are body beautiful people who work out." I found this comment a little odd, but I do train and exercise and I watch what I eat so I assumed he was having a little joke with me. With hindsight I can see it was quite unusual for a doctor to comment like this...'*

108. Patient D was consistent in his evidence that Dr Valentine used the term 'body beautiful.' The Tribunal had regard to his first and most contemporaneous statement, to the

fire station dated 21 May 2018. It noted that the comment was qualified in respect of steroid abuse. Patient B stated that Dr Valentine said “*you body beautiful people often used steroids*” and so Dr Valentine ‘*needed to see my bum cheeks to check for steroid abuse...*’

109. In his statement to the police, dated 30 May 2018, Patient D again mentioned that Dr Valentine used the term ‘body beautiful’ but did not say it was qualified in relation to steroid use. Patient D stated that:

*‘...I still have my top off. Dr Valentine has then said that people like me who work out are ‘you body beautiful people’. When people say this to me, which I have had in the past, I take it as though he was having a little dig/ joke at me. I do work out and watch what I eat...’*

110. In Dr Valentine’s witness statement he denied the allegation as he had no recollection of the consultation or having used such words. However, he accepted that:

*‘...it is quite possible that I would have used words to this effect, simply as a lighthearted and benign cliché. I do use the term body beautiful. As far as I am aware it is a widely accepted shorthand to describe people who are image conscious and may have a propensity to take image enhancing drugs such as anabolic steroids...’*

111. The Tribunal considered that it was more likely than not that Dr Valentine used the phrase ‘body beautiful’ but that it was qualified in the context of steroid use.

112. The Tribunal noted the GMC expert Dr K originally provided an opinion that the use of the term ‘body beautiful’ to a patient would be seriously below the level expected of a reasonable competent occupational physician. However, he conceded in oral evidence that if the comment was made in the context of steroid abuse, as Dr Valentine states it would have been, and as Patient D stated in his first statement, then the comment would be below the standard but not seriously below.

113. Taking everything into account, the Tribunal found this allegation not proved. Whilst it considered Dr Valentine more likely than not used the words ‘body beautiful’, it considered that this was qualified in the context of exploring steroid abuse, and therefore it was not a compliment or an expression that Dr Valentine found Patient D’s body to be ‘beautiful’.

114. Accordingly, the Tribunal found paragraph 16.a not proved.

#### **Paragraph 16.d**

115. The Tribunal considered whether Dr Valentine failed to make an adequate record of the consultation with Patient D in that he did not record having examined Patient D’s buttocks to check for needle marks.

116. The Tribunal had regard to the occupational health record for Patient D, dated 22 February 2018. Ms Fairley, on behalf of the GMC, submitted that under the heading ‘Other pertinent observations’, Dr Valentine should have recorded his check for needle marks on Patient D’s buttocks. The Tribunal observed that nothing was recorded under this section.

117. However, the Tribunal noted another occupational health record from earlier on that day for another recruit, which included three further sheets on which next to a heading ‘Skin:’ Dr Valentine had recorded: *‘Normal. No tattoos/ distinguishing marks or injection sites’*.

118. The Tribunal inferred that it was Dr Valentine’s practice to record his observation for needle marks (or any distinguishing marks in general) next to ‘Skin:’ on the occupational health record form. The Tribunal was mindful that Patient D’s record was seemingly incomplete as it did not include the additional sheet which is where the Tribunal would have expected Dr Valentine to have recorded this observation given what he had done previously that day in relation to another patient.

119. In the absence of the other pages of the record for Patient D, the Tribunal could not be satisfied that he failed to make an adequate record of the consultation by failing to record his examination of Patient D’s buttocks for needle marks.

120. The Tribunal therefore found paragraph 16.d not proved.

### **Paragraph 17**

121. The Tribunal considered whether Dr Valentine’s actions as outlined at paragraph 16.b, namely the examination of Patient D’s buttocks to check for needle marks, was clinically indicated.

122. The Tribunal had regard to the expert evidence which was that it would be clinically indicated for Dr Valentine to check the patient’s buttocks for needle marks, if he had a degree of suspicion that the patient was using steroids. Dr K, in terms stated that to check a patient’s buttocks for needle marks the doctor would need a high degree of suspicion whereas Dr L said, in terms, that any degree of suspicion would be sufficient justification. Neither expert said that the doctor should never do it at all. The Tribunal was cognisant that it had no guidance before it defining what degree of suspicion would be necessary in order for a doctor to check a patient’s buttocks for needle marks. Accordingly the Tribunal considered it would be a matter for the examining doctor’s judgment.

123. In Dr K’s first report of 9 August 2021, he opined that if there was a strong suspicion of drug and alcohol use (including steroids) these could be screened by blood or urine tests. However, the Tribunal heard the standard urine tests did not cover steroids which would require separate tests that would involve cost (of circa £400 compared to other routine tests at £10) and logistical issues.

124. The Tribunal noted that Dr Valentine had developed an interest in steroid use by this time in 2018. In March 2018 he had presented to a national conference on this topic, specifically aimed at the fire service. The Tribunal considered the presentation slides provided for this slide, which evidenced Dr Valentine's concern in steroid use amongst fire fighters. The Tribunal was also mindful that amongst firefighters and similar professions where physical ability and performance was important, there was a higher prevalence of steroid use than in the general population.

125. In Dr Valentine's witness statement he stated that early into his time at the Fire Service:

*'I became aware that substance abuse generally, and the use of anabolic steroids specifically, was an issue within the Fire Service. With regards to the use of anabolic steroids, I had noticed that many of the recruits were very muscular, and a number of firefighters had disclosed to me over time, although never at the recruitment stage, that they used anabolic steroids. My concerns were such that, in early 2018, I made an appointment with the Chief Fire Officer to discuss my concerns in relation to substance abuse... On the issue of anabolic steroids in particular, the Chief Fire Officer told me that this had been a topic of discussion at the Association of Chief Fire Officers conference. I asked the Chief Fire Officer whether the specific concern in relation to steroid abuse was an issue that he would prefer me not to pursue. We went on to discuss some of the issues that may contribute to firefighters being reluctant to raise the issue of substance misuse and how we could address this, and how we might encourage firefighters with substance misuse issues to admit this and seek help and support. At the conclusion of the discussion, I was left with the clear understanding that the exclusion of anabolic steroid abuse, along with other substance abuse, was an appropriate and relevant component of the recruitment medical. I further believed that senior management were aware that I was actively looking for signs of anabolic steroid use and that they supported this approach.*

*Because of the discussions I had in respect of steroid use, I looked for warning signs on candidates, for example, excess muscle, callouses on their hands. When any suspicions were raised, I would inspect the candidate for injection marks on their body. I cannot remember how many candidates this involved. I did explain to them what I was doing and why. As I already had the candidate stripped to his underpants I conducted a detailed visual inspection of appropriate sites – shoulder muscle and thighs. I specifically asked some to show me that there were no injection sites on their buttocks.'*

126. The Tribunal considered that it was not unreasonable for Dr Valentine to be exploring possible steroid use and that it was a matter for his discretion in relation to each recruit. The Tribunal concluded that Dr Valentine had a reasonable suspicion of steroid use to investigate further and therefore that his actions had a clinical justification.

127. The Tribunal therefore found paragraph 17 not proved.



### **Paragraph 18**

128. The Tribunal considered whether one or more of Dr Valentine’s actions as admitted and found proved at paragraphs 16.b and 16.c, were sexually motivated.

129. Given the Tribunal’s view that Dr Valentine was not under a duty to offer a chaperone during the medical assessments, and that there was a clinical indication for checking the patients for needle marks, the Tribunal determined that Dr Valentine’s actions were not sexually motivated.

130. The Tribunal therefore found paragraph 18 not proved.

### **Patient F**

131. The Tribunal considered paragraphs 22 - 24 of the Allegation relating to Dr Valentine’s consultation with Patient F on 23 March 2018.

### **Paragraph 22.c**

132. The Tribunal considered whether Dr Valentine failed to make an adequate record of the consultation with Patient F in that he did not record that he had examined Patient F’s buttocks to check for needle marks.

133. The Tribunal was mindful that it did not have the complete record for Patient F, specifically the pro-forma sheet that Dr Valentine had used for other patients undergoing the medical examination. It considered that Dr Valentine had made adequate records of other consultations and recorded checking for needle marks and other distinguishing features. It had no reason to conclude that he would not have made an adequate record on the pro-forma sheet on this occasion. In the absence of a complete record and the pro-forma sheet, the Tribunal determined that it could not be established, on the balance of probabilities, that he failed to make an adequate record.

134. The Tribunal therefore found paragraph 22.c not proved.

### **Paragraph 23**

135. The Tribunal considered whether Dr Valentine’s actions in examining Patient F’s buttocks for needle marks, were clinically indicated.

136. Given the Tribunal’s reasoning elsewhere, the Tribunal was satisfied that Dr Valentine’s actions were clinically indicated.

137. Accordingly, the Tribunal found paragraph 23 not proved.

### **Paragraph 24**

138. The Tribunal considered whether one or more of Dr Valentine’s actions as admitted and found proved at paragraphs 22.a and 22.b, were sexually motivated.

139. Given the Tribunal’s reasoning in relation to why not offering a chaperone was not a failure on Dr Valentine’s part, and that there was a clinical indication for examining Patient F’s buttocks to check for needle marks, the Tribunal concluded that neither of these actions were sexually motivated.

140. The Tribunal therefore found paragraph 24 not proved

### The Tribunal’s Overall Determination on the Facts

141. The Tribunal has determined the facts as follows:

#### Patient A

- ~~1. On 8 May 2017 you consulted with Patient A and you:
  - ~~a. took photographs of Patient A’s tattoos on his back and/or, arms and/or hands;~~
  - ~~b. told Patient A that the photographs you took would be used to identify him in the event of his death;~~
  - ~~c. failed to make an adequate record of the consultation in that you did not record that you had taken the photographs at paragraph 1.b.;~~
  - ~~d. failed to store the photographs you had taken within Patient A’s clinical records.~~~~
- ~~2. You knew that the information you gave to Patient A as outlined at paragraph 1.b. was untrue.~~
- ~~3. Your actions as outlined at paragraph 1.b. were dishonest by reason of paragraph 2.~~
- ~~4. Your actions as outlined at paragraph 1.a. were not clinically indicated.~~
- ~~5. One or more of your actions as outlined at paragraph 1 were sexually motivated.~~

### Withdrawn in accordance with Rule 17(6) of the Rules

#### Patient B

6. On 22 May 2017 you consulted with Patient B and you:
  - a. took photographs of Patient B’s body; **Not proved**

- b. told Patient B that the pictures you took of his body were for "identification purposes in the event that normal identification was not possible", or words to that effect; **Not proved**
  - c. said to Patient B, whilst taking photographs of his body, words to the effect of:
    - i. it was "a perk of the job getting to take pictures of young lads in their underwear"; **Not proved**
    - ii. "oh I must not say things like that"; **Not proved**
  - d. stumbled towards Patient B whilst he was lay on a bed, placing your hand(s) on his hip(s), with your crotch close to Patient B's face; **Not proved**
  - e. remained in the position described at paragraph 6.d. for an unnecessary period of time; **Not proved**
  - f. said to Patient B after stumbling onto him "I must not do that, we have to be manly around here", or words to that effect; **Not proved**
  - g. failed to make an adequate record of the consultation in that you did not record that you had taken photographs of Patient B's body; **Not proved**
  - h. failed to store the photographs you had taken within Patient B's clinical records; **Not proved**
  - i. did not offer Patient B a chaperone. **Admitted and found proved**
7. You knew that the information you gave to Patient B as outlined at paragraph 6.b. was untrue. **Not proved**
8. Your actions, as described at paragraph 6.b. were dishonest by reason of paragraph 7. **Not proved**
9. One or more of your actions, as outlined at paragraphs 6.a, 6.d. and 6.e., were not clinically indicated. **Not proved**
10. One or more of your actions, as outlined at paragraph 6, were sexually motivated. **Not proved**

#### Patient C

11. On 7 June 2017 you consulted with Patient C and you:
- a. did not offer Patient C a chaperone. **Admitted and found proved**

- b. inappropriately asked Patient C to undress down to his underwear so you could check his body for tattoos, despite Patient C informing you that he did not have any tattoos; **Not proved**
- c. examined Patient C's buttocks to check for tattoos and/or needle marks; **Not proved**
- d. told Patient C that you needed to check his body for tattoos as "a means of identifying him if he was ever burnt in a fire" or words to that effect; **Determined and found proved**
- e. ~~inappropriately performed an assessment of Patient C's vision whilst he was undressed.~~

**Withdrawn in accordance with Rule 17(6) of the Rules**

- 12. You knew that the information you gave to Patient C as outlined at paragraph 11.d. was untrue. **Not proved**
- 13. Your actions, as described at paragraph 11.d. were dishonest by reason of paragraph 12. **Not proved**
- 14. One or more of your actions, as outlined at paragraphs 11.b., 11.c. 11.d. and 11.e., were not clinically indicated. **Not proved**
- 15. One or more of your actions, as outlined at paragraph 11, were sexually motivated. **Not proved**

Patient D

- 16. On 22 February 2018 you consulted with Patient D and you:
  - a. said to Patient D "people like you are body beautiful", or words to that effect; **Not proved**
  - b. examined Patient D's buttocks to check for needle marks; **Admitted and found proved**
  - c. did not offer Patient D a chaperone; **Admitted and found proved**
  - d. failed to make an adequate record of the consultation in that you did not record that you had carried out the examination at paragraph 16.b.. **Not proved**
- 17. Your actions, as outlined at paragraph 16.b. were not clinically indicated. **Not proved**

18. One or more of your actions, as outlined at paragraph 16, were sexually motivated.  
**Not proved**

Patient E

- ~~19. On 22 February 2018 you consulted with Patient E and you:~~
- ~~a. inappropriately asked Patient E to remove all of his clothes; **To be determined**~~
  - ~~b. positioned yourself on your hands and knees behind Patient E whilst he lowered his trousers; **To be determined**~~
  - ~~c. asked Patient E to lower his underwear and bend over; **To be determined**~~
  - ~~d. positioned yourself on your hands and knees behind Patient E whilst he lowered his underwear and bent over; **To be determined**~~
  - ~~e. said to Patient E “I get all the best views today don’t I”, or words to that effect; **To be determined**~~
  - ~~f. did not offer Patient E a chaperone. **Admitted and found proved**~~
- ~~20. One or more of your actions, as outlined at paragraphs 19.a., 19.b., 19.c. and 19.d, were not clinically indicated. **To be determined**~~
- ~~21. One or more of your actions, as outlined at paragraph 19, were sexually motivated. **To be determined**~~

**Withdrawn in accordance with Rule 17(6) of the Rules**

Patient F

22. On ~~14~~ 23 March 2018 you consulted with Patient F and you:
- Amended in accordance with Rule 17(6)**
- a. did not offer Patient F a chaperone; **Admitted and found proved**
  - b. examined Patient F’s buttocks to check for needle marks; **Admitted and found proved**
  - c. failed to make an adequate record of the consultation in that you did not record that you had carried out the examination at paragraph 22.b.. **Not proved**
23. Your actions, as outlined at paragraph 22.b., were not clinically indicated. **Not proved**

24. One or more of your actions, as outlined at paragraph 22, were sexually motivated.  
**Not proved**

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

#### **Determination on Impairment - 13/12/2023**

142. 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 Valentine's fitness to practise is impaired by reason of misconduct.

#### **The Evidence**

143. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. It received no further evidence at this stage.

#### **Submissions**

##### GMC submissions

144. Ms Fairley submitted that whether or not Dr Valentine's fitness to practise is impaired is a matter for the Tribunal's professional judgement. She reminded the Tribunal of the two-stage approach to adopt; first, the Tribunal must consider whether there has been misconduct which is sufficiently serious, and secondly, whether as result of that misconduct Dr Valentine's fitness to practise is impaired.

##### Submissions on behalf of Dr Valentine

145. On behalf of Dr Valentine, Mr McGee submitted agreed that the Tribunal must adopt the two-stage process and first consider whether the facts found proved amount to misconduct.

146. Mr McGee submitted that the findings that Dr Valentine did not offer the patients a chaperone, as admitted and found proved at paragraphs 6.i, 11.a, 16.c and 22.a of the Allegation, are not capable of amounting to misconduct. He observed that the GMC's expert, Dr K, was of the view that Dr Valentine's actions fell below the expected standard but not seriously below. He also noted that the Tribunal had found that Dr Valentine was not under a duty to offer a chaperone during the medical assessments and had plausible and persuasive reasons for not doing so. Mr McGee submitted that this was not conduct that fell seriously below the expected standard, and it would not be regarded as deplorable or egregious.

147. In respect of paragraph 11.d of the Allegation, where the Tribunal found that Dr Valentine told Patient C that he needed to check his body for tattoos as “*a means of identifying him if he was ever burnt in a fire*” or words to that effect, Mr McGee submitted that this does not amount to misconduct. He noted that the Tribunal found that it was more likely than not used in the context of the examination he was undertaking which was clinically indicated. Mr McGee submitted that it would only be seriously below the expected standard if it had been used as an insincere stratagem in order to advance a sexually motivated piece of inappropriate behaviour. He submitted that it comes nowhere near the threshold for a finding of misconduct.

148. In respect of paragraph 16.b of the Allegation regarding Dr Valentine examining Patient D’s buttocks to check for needle marks, Mr McGee submitted that this had been entirely acceptable and appropriate. He submitted that both experts agreed that looking for needle marks was acceptable. He submitted that Dr Valentine’s actions were clinically indicated and come nowhere near the threshold for misconduct.

149. Mr McGee submitted that even if the Tribunal were to consider that Dr Valentine’s actions did cross the threshold to be considered as misconduct, there is no evidence of current impairment of Dr Valentine’s fitness to practise, and that a finding of impairment would not be required in the interests of patients, maintaining confidence in the profession or to maintain proper professional standards.

### The Relevant Legal Principles

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

151. In approaching the decision, the Tribunal must be mindful of the two-stage process to be adopted: firstly, whether the facts found proved amounted to misconduct which was serious; and secondly, whether the finding of serious misconduct should lead to a finding of impairment.

152. The Tribunal must determine whether Dr Valentine’s fitness to practise is impaired today, taking into account his 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. It should also consider whether a finding of impairment is warranted taking into account the wider public interest.

153. Throughout its deliberations, the Tribunal must be 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:

- a. to protect, promote and maintain the health, safety and wellbeing of the public;

- b. to maintain public confidence in the profession;
- c. to promote and maintain proper professional standards and conduct for members of the profession.

154. Whilst there is no statutory definition of impairment, the Tribunal is assisted by the guidance provided by Dame Janet Smith in the Fifth Shipman Report, as adopted by the High Court in *CHRE v NMC and Paula Grant [2011] EWHC 297 Admin*. The Tribunal noted that any of the following features are likely to be present when a doctor's fitness to practise is found to be impaired:

- 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 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

155. In determining whether Dr Valentine's fitness to practise is impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amount to serious misconduct.

156. The Tribunal first considered the paragraphs of the Allegation regarding Dr Valentine not having offered the patients a chaperone (paragraphs 6.i, 11.a, 16.c and 22.a).

157. The Tribunal agreed with the submissions made by Mr McGee. It noted that neither expert considered Dr Valentine's actions to be seriously below the standard expected. The Tribunal also found that no part of the medical assessments involved an intimate examination and that Dr Valentine was not under an obligation to offer a chaperone, and had plausible and persuasive reasons for not doing so.

158. The Tribunal was satisfied that that Dr Valentine's actions would not be considered deplorable by fellow practitioners, and found that they do not amount to misconduct.

159. The Tribunal then considered paragraph 11.d of the Allegation. It had found that it was more likely than not that Dr Valentine had said to Patient C that he needed to check his body for tattoos as *"a means of identifying him if he was ever burnt in a fire"*. However, given the Tribunal's findings in relation to Patient C, namely that Dr Valentine's examination had a clinical indication and was not sexually motivated and the explanation he provided was



neither untrue nor dishonest, the Tribunal considered that his comments do not amount to misconduct.

160. The Tribunal next considered whether the paragraphs of the Allegation as admitted and found proved relating to Dr Valentine having examined Patient D's and Patient F's buttocks for needle marks (paragraphs 16.b and 22.b) amount to misconduct.

161. The Tribunal accepted Dr Valentine's evidence in relation to his concerns surrounding steroid abuse and checking for needle marks. The Tribunal reminded itself of its reasoning at paragraph 122 of the facts stage. In summary, the only disagreement between the experts was the degree of suspicion which Dr Valentine would require in order to look for needle marks. However, neither expert said that the doctor should never have checked for the needle marks. The Tribunal found that it was a matter for Dr Valentine's discretion and that he had reasonable suspicion and therefore a clinical justification to look for needle marks. Accordingly, the Tribunal considered that his actions could not amount to misconduct.

162. In summary, the Tribunal concluded that Dr Valentine's conduct did not fall so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.

163. The Tribunal has therefore determined that Dr Valentine's fitness to practise is not impaired.

164. The Tribunal determined to revoke the interim order of conditions with immediate effect.

165. That concludes the case.

ANNEX A – 27/11/2023

**Application for parts of the hearing to be heard in private**

166. On behalf of the GMC, Ms Fairley, Counsel, made an application for parts of the hearing to be heard in private. She submitted that there was a concern about the risk of witnesses being identified by way of jigsaw identification during the course of their evidence. She submitted that the specifics of the allegations could be in public, but any reference to the patient's employment history should be heard in private.

167. In her submissions, Ms Fairley drew the Tribunal's attention to Rule 36 of the Rules:

**36.**

*(1) In proceedings before the Committee or a Tribunal, the following may, if the quality of their evidence is likely to be adversely affected as a result, be treated as a vulnerable witness-*

...

*(e) any witness, where the allegation against the practitioner is of a sexual nature and the witness was the alleged victim;*

*(2) Upon hearing representations from the parties, the Committee or Tribunal shall adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness.*

*(3) Measures adopted by the Committee or Tribunal may include, but shall not be limited to-*

*(e) the hearing of evidence by the Committee or Tribunal in private.*

168. Mr McGee, Counsel, on behalf of Dr Valentine, did not oppose the application.

**Tribunal decision**

169. The Tribunal reminded itself of its powers under Rule 36 of the Rules and considered that it was appropriate for parts of the hearing to be heard in private to avoid any risk that the patients could be identified via jigsaw identification. As such, the Tribunal determined that parts of the hearing relating to their employment history would be heard in private. Both parties also agreed that they would bring it to the Tribunal's attention if their line of questioning was likely to stray into private so that members of the public could be excluded.

## ANNEX B – 27/11/2023

### Application to amend the Allegation

170. On behalf of the GMC, Ms Fairley, Counsel, made an application to amend the Allegation.

171. Ms Fairley submitted that paragraphs 1 – 5 of the Allegation in respect of Patient A should be withdrawn in the entirety. She also submitted that paragraph 11e relating to Patient C should also be withdrawn. In addition, she submitted that the date in paragraph 22 of the Allegation, relating to Patient F, was incorrect and should be amended to 23 March 2018.

172. Ms Fairley submitted that the amendments could be made without injustice to Dr Valentine as the substance of the allegations remain the same.

173. Mr McGee, Counsel, on behalf of Dr Valentine, did not oppose the application.

### Tribunal decision

174. The Tribunal had regard to Rule 17(6) of the Rules which provides:

*‘17(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.’*

175. The Tribunal was satisfied that the amendments could be made without injustice. Accordingly, it determined to grant the application and amend the Allegation.

## Annex C – 05/12/2023

### Application for Patient E to give evidence via video-link

176. Patient E was originally due to give evidence, in person, on the morning of Thursday, 30 November 2023 but did not arrive at the hearing centre. XXX

177. Ms Fairley advised that Patient E would not be able to give evidence on 30 November 2023. She advised that if Patient E was required to give evidence in person, then he would need some time XXX in order for him to be able to make the journey, and as such, would not be available until Tuesday the following week, namely on 5 December 2023.

178. Mr McGee, Counsel, on behalf of Dr Valentine, submitted that it would be preferable for Patient E to give evidence in person on 5 December 2023. He submitted that at this stage he would not consider agreeing to the witness giving evidence remotely.

179. On the morning of 5 December 2023, Ms Fairley advised that Patient E had indicated the day prior that XXX. He indicated to the GMC that he would not be able to travel but anticipated that he would be able to give evidence remotely on the afternoon of 6 December 2023.

180. Ms Fairley advised that the GMC had had some difficulty contacting Patient E on the morning of 5 December 2023, XXX. She submitted that it was anticipated he would be available in the afternoon on 6 December 2023 and that this should not affect the timetable too much.

181. Ms Fairley made an application for Patient E to give evidence via video link.

182. Ms Fairley referred the Tribunal to Rule 36 of the Rules and submitted that Patient E could be considered vulnerable by reason of having a physical disability and the Special Measures, by way of a video link, should be utilised in order to receive his evidence.

183. Ms Fairley submitted that if Patient E was not available the following afternoon to give evidence, then the GMC would have to take a view as to whether they continue to rely on him as a witness in the case. She acknowledged that the Tribunal had been very accommodating so far and submitted that this was one last opportunity for the GMC to put Patient E's evidence to the Tribunal.

184. Mr McGee accepted that if Patient E were to give evidence the following afternoon, it would not affect the timetable too much. In regard to the application for Special Measures, he observed that no medical evidence of an objective nature had been provided regarding Patient E's medication and how it affects him. He submitted that it was quite right that there would come a time when the GMC has to take a view about whether the protracted accommodations for Patient E were necessary, or fair.

### The Tribunal's decision

185. The Tribunal had regard to Rule 36 which provides that:

*(1) In proceedings before the Tribunal, the following may, if the quality of their evidence is likely to be adversely affected as a result, be treated as a vulnerable witness-*

...

*(d) any witness with physical disabilities who requires assistance to give evidence;*

*(2) Upon hearing representations from the parties, the Tribunal shall adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness.*

*(3) Measures adopted by the Tribunal may include:*

*(a) use of video links...*

186. The Tribunal also had regard to Rule 34(13) and (14) which provides:

*(13) A party may, at any time during a hearing, make an application to the Committee or Tribunal for the oral evidence of a witness to be given by means of a video link or a telephone link.*

*(14) When considering whether to grant an application by a party under paragraph (13), the Committee or Tribunal must—*

*(a) give the other party an opportunity to make representations; (b) have regard to—*

*(i) any agreement between the parties, or*

*(ii) in the case of a Tribunal hearing, any relevant direction given by a Case Manager; and*

*(c) only grant the application if the Committee or Tribunal consider that it is in the interests of justice to do so.*

187. The Tribunal was mindful that it had received no medical evidence from Patient E regarding the effect of his injury and the medication he was taking. As such it could not consider him a vulnerable witness requiring special measures. Notwithstanding this, the Tribunal considered that it was in the interest of justice to hear his evidence and that a video link would be appropriate and expeditious. However, whilst the Tribunal granted the application for Patient E to give evidence via video link, it was on the basis that if Patient E was not ready to give evidence by video link at 1pm on 6 December 2023, a further extension would not be granted. The Tribunal also requested that the GMC update the Tribunal by 11am on 6 December 2023 to confirm whether Patient E would be able to give evidence via video link that day.

## Annex D – 06/12/2023

### Application to amend the Allegation

188. As per Annex C, it was hoped that Patient E would be able to give evidence via video link at 1pm on 6 December 2023. However, on the morning of 6 December 2023 the GMC advised via email that *'Patient E will not be attending the hearing today to give evidence'* and that it was the intention of the GMC to apply to withdraw the allegations that relate to Patient E's witness evidence.

189. Ms Fairley, on behalf of the GMC, subsequently made an application in accordance with Rule 17(6) of the Rules for paragraphs 19 – 21 of the Allegation, relating to Patient E, to be withdrawn.

190. Mr McGee, on behalf of Dr Valentine, did not oppose the application.

### Tribunal decision

191. The Tribunal had regard to Rule 17(6) of the Rules and was satisfied that the withdrawal of paragraphs 19 – 21 could be made without injustice. The Tribunal was satisfied that it had been accommodating of the amendments to the timetable to allow for Patient E to give evidence, but the GMC had now confirmed that he would not be giving evidence. Accordingly, the Tribunal determined to grant the application for the withdrawal of paragraphs 19-21.