PUBLIC RECORD

Dates: 12/07/2021 - 30/07/2021
14/03/2022 - 15/03/2022

Medical Practitioner's name: Dr Colin WILSON

GMC reference number: 0848488

Primary medical qualification: MB BS 1963 University of London

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

Summary of outcome
Warning

Tribunal:

Legally Qualified Chair	Mr Jetinder Shergill
Lay Tribunal Member:	Mr John Ennis
Medical Tribunal Member:	Mrs Deborah McInerny

Tribunal Clerk:	Mr Michael Murphy 12/07/2021 – 30/07/2021 Mr Matthew Rowbotham 14/03/2022 – 15/03/2022

Attendance and Representation:

Medical Practitioner:	Not present and represented 12/07/2021 – 30/07/2021 Not present and not represented 14/03/2022 – 15/03/2022
Medical Practitioner's Representative:	Mr Andrew Coleman, Counsel 12/07/2021 – 30/07/2021
GMC Representative:	Ms Kathryn Johnson, Counsel 12/07/2021 – 30/07/2021

	Ms Katie Jones, Counsel 14/03/2022 – 15/03/2022

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 - 22/07/2021

1. This determination will be read in private. However, as this case concerns Dr Wilson's misconduct, a redacted version will be published at the close of the hearing XXX.

Background

2. Dr Wilson qualified with a MMBS from the University of London, St Thomas Hospital Medical School in 1963. He obtained his MRCPsych from the Royal College of Psychiatrists in 1972. Dr Wilson was a Consultant in Psychiatry at St Andrew's Hospital from 1977 to 1995 before becoming a Visiting Consultant until 2005. At the time of the events in the Allegation, Dr Wilson was registered with BUPA and was practising privately.

3. The Allegation that has led to this hearing relates to concerns about Dr Wilson's treatment of Patient A. It is alleged that Dr Wilson, during the three consultations he had with Patient A, behaved in a way which was sexually motivated. This consisted of sexualised comments and an incident of him touching his groin during the last session. The GMC alleged that at the time of these actions Dr Wilson knew Patient A was vulnerable due to her mental and physical health history. It was important to note the GMC has brought the case on the basis that there was grooming behaviour towards Patient A.

4. The initial concerns were raised with the GMC on 25 January 2019 in an online complaint lodged by Patient A. In this she detailed what she claims occurred in her three consultations with Dr Wilson on 27 October 2018, 8 December 2018 and 15 January 2019.

The Outcome of Applications Made during the Facts Stage

5. The Tribunal determined to hear parts of this case in private, in accordance with Rule 41 XXX.

6. The Tribunal was informed of the reasons why Dr Wilson was unable to attend in person and Mr Colman, on the doctor's behalf sought that the hearing should proceed in Dr Wilson's absence. XXX. Both parties submitted that the case should proceed. The Tribunal decided the case should proceed and also determined not to make an adverse inference from Dr Wilson's non-attendance at the hearing. The Tribunal's full decision on these matters is set out at Annex A.

7. The Tribunal was informed that Dr Wilson's wife wanted to attend the hearing as a member of the public, but that she was unable to do so in person. Mr Colman sought for her to be allowed to attend the hearing remotely. He submitted that she wanted to observe these proceedings like any member of the public and that she would attend via Dr Wilson's link and via telephone when necessary so she could not see any vulnerable witnesses. The GMC had no objection to this. The Tribunal agreed that this should be facilitated and sought clearance from the MPTS as to the administrative arrangements for this to done.

The Allegation and the Doctor's Response

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

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

1. On 27 October 2018 you had a first consultation with Patient A and you made inappropriate comments including:

a. saying Patient A could 'give herself a bit of a tickle and wank her husband off'; To be determined

b. asking 'who does all the hard work in the bedroom?'; To be determined

c. saying you had a client who reads a book and 'wanks off' her husband and that Patient A could do the same to please her husband; To be determined

d. referring to Patient A's husband's ex-partner as:

i. 'a bitch'; To be determined

ii. 'a slag'; To be determined

iii. 'a bitch who sleeps around'; To be determined

e. describing Patient A's brother as a 'waste of space'; To be determined

f. describing contestants on a television show by saying 'girls on the show don't have any makeup on and it shows their ugly personalities', To be determined

or words to that effect.

2. On 8 December 2018 you had a second consultation with Patient A and you made an inappropriate comment saying Patient A's husband would have an affair but it would only be an affair and then he would go back to Patient A, or words to that effect. To be determined

3. On 15 January 2019 you had a third consultation with Patient A and you:

a. made inappropriate comments including saying that:

i. Patient A checking the Instagram account of her husband's ex-partner was a form of masturbation; To be determined

ii. Patient A's husband's ex-partner probably puts photos on Instagram boasting that she's sleeping around and opening her legs to everyone and that part of Patient A probably wants that life too, To be determined

or words to that effect;

b. rubbed your right thumb slowly around your groin area in a stroking movement. To be determined

4. Your actions at paragraphs 1a to 1d, 2 and 3 were sexually motivated. To be determined

5. At the time of your actions as set out in paragraphs 1 to 4, you knew Patient A was vulnerable due to her:

a. mental health history; Admitted and found proved

b. physical health history. Admitted and found proved

The Admitted Facts

9. At the outset of these proceedings, through his Counsel Mr Colman, Dr Wilson, made admissions to paragraph 5 of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('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.

10. The Tribunal heard from Patient A by video link and also received evidence on behalf of the GMC in the form of witness statements from Patient A's husband who was not called to be cross-examined.

Expert Witness Evidence

11. An expert witness, Dr B Consultant Psychiatrist, was called to give evidence by the GMC and provided an expert report dated 25 November 2020 with an addendum dated 1 June 2021. This evidence was directed at assisting the Tribunal in understanding if Dr Wilson's use of language, and approach to dealing with Patient A, was appropriate.

Documentary Evidence

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

- Emails from Patient A to Dr Wilson, dated 7 and 21 January 2019;
- Letter from Dr Wilson to Patient A, dated 23 January 2019;
- Dr Wilson's schedule of admissions and witness statement;
- Rule 7 response from Dr Wilson;
- Patient A's medical records;
- Dr Wilson's handwritten notes in respect of Patient A;
- Photographs of the consultation rooms used;
- Evidence from BUPA about the complaint made to them by Patient A;
- GMC complaint made by Patient A; and
- Testimonials on behalf of Dr Wilson.

The Tribunal's Approach

13. 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 Wilson 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 LQC gave detailed legal advice in writing to the Tribunal which had been commented upon by both counsel. The LQC also endorsed the observations made by GMC counsel about complainants in sexual related cases. The Tribunal noted that this related both to 'first complaint' evidence and also the manner and timing of complaint, particularly that there is no right or wrong way to react. The Tribunal considered it was appropriate for a wider margin to be afforded to assessing Patient A's evidence in those circumstances. It also had to deal with Dr Wilson's witness statement evidence which, because of his absence, had not been tested in cross-examination. It was mindful to weigh the fact it had not been tested before the Tribunal in deciding what weight to give it.

Relevant background matters

14. Before moving on to consider the outstanding matters, it is worth setting out a background matter relating to a charge that is no longer live. The GMC had originally charged the reference to 'how's your sex life?' as part of the original Allegation. Dr Wilson accepted that he asked Patient A about her sex life. The GMC's expert witness, Dr B, confirmed that this was an appropriate question to ask given the nature of the first consultation. The GMC therefore no longer proceeded with this aspect of the Allegation.

15. The expert report indicated there was justification for seeking information about personal and physical relationships including about intimate matters. The Tribunal heard oral evidence from the expert about this aspect in context to the live issues before the Tribunal. The expert indicated that the use of language *'how's your sex life?'* was *'informal and could readily cause offence'*. Whilst not part of the Allegation now, the Tribunal noted the R7 response letter which included reference to this original charge. Dr Wilson accepted that original charge though he did not recall the precise words he would have used as that would depend on the *'mood and presentation of the patient'*. His usual practice included a formulation of those words as alleged originally. That indicated to the Tribunal that the opening question to this somewhat sensitive area, may have been executed in a somewhat insensitive manner. Patient A had sought psychological help to deal with the aftermath of a traumatic experience of ectopic pregnancy. She did not see the relevance of having been asked during this first consultation *'how's your sex life?'*. That was the prelude to the topic of her relationship with her husband being covered in the consultation and her statement says:

> *'We spent about half an hour of the session talking about why I was there. At this point we were talking about my husband and XXX then Dr Wilson asked me, 'How's your sex life?' I said 'we have one'. I was shocked by this as I thought that's not what I've come here to talk about and I didn't see how it was relevant. I never brought sex up and didn't mention it in our initial conversation as why I was there and it seemed unrelated to what we were talking about…'*

16. Her being *'shocked'* at this legitimate, albeit perhaps insensitively worded question sets the undertone to the sessions and a running theme through her evidence. It sets the scene for what the Tribunal considers to be a mismatch between Dr Wilson's approach, sometimes informal and/or inappropriate, and Patient A's expectations about the sessions, and her particular sensitivities. She was someone who was anxious, read too much into things and also overthought things as indicated in evidence before the Tribunal. She was prudish about sexual matters by her own admission and used a number of emotive words, sometimes visceral descriptors, to describe her negative emotions when certain subjects were raised in the consultations.

17. This is a pervasive theme in the Tribunal's assessment throughout the three sessions, although it remains unclear if her responses were as strong as claimed, why this was not picked up by Dr Wilson or expressly mentioned to him by Patient A during the sessions. It is

set out here because it forms part of the relevant background in dealing with the live issues before the Tribunal.

The Tribunal's Analysis of the Evidence and Findings

18. 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. Related paragraphs of the Allegation were considered together.

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

19. The relevant part of the Allegation states:

> *'On 27 October 2018 you had a first consultation with Patient A and you made inappropriate comments including:*
>
> *a. saying Patient A could 'give herself a bit of a tickle and wank her husband off';*
>
> *…*
>
> *c. saying you had a client who reads a book and 'wanks off' her husband and that Patient A could do the same to please her husband; …'*

20. The Tribunal first considered the GMC evidence about this namely the BUPA and GMC complaints, Patient A's evidence, and her husband's statement as a 'first complaint'. This evidence raised a prima facie case that something may have been said in this manner by Dr Wilson. The Tribunal then took account of Dr Wilson's witness statement in which he denied these paragraphs of the Allegation by stating:

> *'I do not recall discussing with Patient (A) how she should conduct herself sexually, and would never use the terms 'tickle' and / or 'wank' in any context, I do sometimes share with patients an anecdote from my time as the Capital Radio Host when a caller informed me, live on air, that she would satisfy her husband's sexual needs by masturbating him whilst she would read a book.'*

21. Having considered Dr Wilson's witness statement it was apparent he did not admit these paragraphs of the Allegation outright. However, there was some support to be drawn from his admission of sometimes using anecdotes that he did say something along these lines alleged or recounted some form of anecdote to Patient A. She denied this but remembered some other aspects of Dr Wilson's background, for example, being a consultant on EastEnders. The anecdote situation was a more probable explanation in the Tribunal's assessment. The probable use of such anecdotes in speaking with Patient A during this first consultation was likely to have been a clumsy attempt by the doctor to put this new patient at ease, and build rapport. Unfortunately, it followed on from the somewhat

informal/insensitive *'how's your sex life'* question and as such, likely amplified Patient A's negative reaction to this inappropriate anecdote in the Tribunal's assessment.

22. Dr Wilson's anecdote is likely to have been the opener to the topic of enquiring about Patient A's intimate relationships, and his words are likely to have been misinterpreted by Patient A. He may have ill-advisedly spoken to her in a manner she did not like but this does not mean that his words were sexually motivated; just clumsy in how they were spoken.

23. This led the Tribunal to conclude that there was sufficiently cogent evidence to show that the words alleged to have been said or 'to that effect' were likely to have been said to Patient A. However, this was said as part of a clumsy attempt to build rapport as opposed to being the start of *'grooming'* behaviour or in of themselves having been sexually motivated.

24. The Tribunal therefore found, on the balance of probabilities, paragraphs 1(a) and 1(c) of the Allegation proved; but it meant paragraph 4 as it relates to these charges was not proved.

Paragraph 1(b) of the Allegation

25. The relevant part of the Allegation states:

> *'On 27 October 2018 you had a first consultation with Patient A and you made inappropriate comments including:*
>
> *…*
>
> *b. asking 'who does all the hard work in the bedroom?'; […]'*

26. This issue arose after the earlier question of *'how's your sex life?'* but before the words alleged at paragraph 1(c) according to Patient A. The topic of sexual relations was a legitimate area to cover despite Patient A's lack of anticipation this would be done. It is likely that Dr Wilson's unpacking of issues in the *'bedroom'* made an already uncomfortable Patient A even more uncomfortable, as can be seen from her witness statement account at paragraph 11:

> *'…I don't like talking about sex and I was very shocked by this. My body language changed and I closed up. I felt very uncomfortable particularly because he had said about 'giving myself a tickle' which I took to mean touching myself. He then asked, 'Who does all the hard work in the bedroom?' I said it was a mutual effort and he went to say that he has a client who reads a book and wanks off her husband and said that I could do the same to please my husband. Dr Wilson said this in a very serious manner but it shocked me as I don't like talking about that kind of thing and never have done. These questions and comments about sex made me feel really shy and exposed. I wanted to stop talking about it so I told him that my husband and I are fine.'*

27. The relevance for this Tribunal is the impact that the earlier questions had upon Patient A in terms of her becoming upset as it was not what she was expecting. In the Tribunal's assessment, this formed the subtext of Dr Wilson and Patient A getting off on the wrong foot and resulted in Patient A becoming guarded when questioned as she insisted, though not to Dr Wilson, that she was not there to talk about sex.

28. It was not disputed that asking about sexual relations was *'justified'* (as per the expert report). The Tribunal noted the GP referral letter, dated 18 August 2018, specifically mentioned that Patient A's worsening stress and anxiety was affecting her relationship with her husband. The Tribunal was satisfied Dr Wilson was justified in enquiring about Patient A's sex life. He denies he would have asked the question as alleged. The expert criticised the use of *'inappropriately colloquial'* language rather than dealing with the topic itself. Patient A was sensitive about sex related matters being discussed. In the Tribunal's view this is likely to have overshadowed her interpretation of any sex related questions she was being asked. That undermined the weight to be attached to her evidence on this matter, because it was difficult to accept her understanding at the time or recollection after, as not having become tainted with the emotive reaction she has set out. The question about who initiates sex may have been asked but the Tribunal is not satisfied the words as alleged *'or words to that effect'* were. Overall, the Tribunal was not satisfied that the GMC evidence is sufficiently cogent to show on balance these words, or words to that effect, were mentioned by the doctor.

29. The Tribunal therefore found, on the balance of probabilities, paragraph 1(b) of the Allegation not proved, and that means that paragraph 4 in relation to paragraph 1(b) is also found not proved.

Paragraphs 1(d) to 1(f) of the Allegation

30. The relevant part of the Allegation states:

> *'On 27 October 2018 you had a first consultation with Patient A and you made inappropriate comments including:*
>
> *d. referring to Patient A's husband's ex-partner as:*
>
> *i. 'a bitch';*
> *ii. 'a slag';*
> *iii. 'a bitch who sleeps around';*
>
> *e. describing Patient A's brother as a 'waste of space';*
>
> *f. describing contestants on a television show by saying 'girls on the show don't have any makeup on and it shows their ugly personalities''*

Matters arising from Patient A's evidence

31. Before moving on to deal with the remainder of paragraph 1, the Tribunal considers it is necessary to set out a number of general matters about the weight to be attached to Patient A's evidence. That is because the remainder of paragraph 1 is a 'he said/she said' situation and to that extent matters of general credibility and the reliability of recall of witnesses are all the more important. That is particularly so: a) where there are serious allegations which require more cogent evidence; b) where the remaining parts of paragraph 1 did not form part of the original on-line GMC complaint; and c) the Tribunal has some general concerns about the evidence from Patient A.

32. In terms of first complaint evidence from Patient A's husband, the witness statement does not set out much in relation to this part of the Allegation in terms of content of the discussions, apart from that sex was discussed. The Tribunal notes the detailed letter dated 02/11/18 from Dr Wilson to the GP. It sets out a detailed background of Patient A's childhood amongst other biographical issues. Yet Patient A said in her witness statement that she had thought she would be asked about her childhood but that Dr Wilson did not. That is clearly wrong. She goes on to say not asking about that *'was strange'*. A reference that she makes on other occasions about other things, despite never having had a consultation with a psychiatrist in the past to compare matters to. The Tribunal notes this because it considers that this adds to the back drop of a likely ongoing mismatch of expectations of the sessions.

33. Patient A was cross examined about her statement on the issue of not discussing her childhood and whilst she accepted the various biographic propositions recorded in the letter put to her, she resisted conceding the point made in her statement. It was put to her that Dr Wilson asked a lot about her childhood and she said *'they're just facts'* and went on to say that what she meant was issues regarding her brother and father, and they were topics she wanted to talk about: *'he took facts down, me telling him as such'*. The Tribunal decided, at best, if this is what was meant in the statement then it was insufficient and it was misleading. At worst, Patient A was justifying her assertions about Dr Wilson's failings, having been confronted with a contemporaneous document. The Tribunal decided that whichever scenario was correct, the net effect was the same in that it added to concerns regarding the weight to be attached to her evidence.

34. Patient A was cross-examined about para 7 of her statement where it says: *'…I said that I feel I have an addictive personality…'*. She said that she *'did not recall using that, not at the time'*. It is difficult to reconcile an admission made about something important (in the Tribunal's view) set out in her GMC statement, with her not recalling it 'at the time'. That statement was produced some months after the third session with Dr Wilson. The admission that she told Dr Wilson she had 'an addictive personality' is an important factor for the Tribunal in triangulating and navigating other evidence. The first document to triangulate is the handwritten notes from Dr Wilson. These have not been contested by the GMC as being contemporaneous. However, it is somewhat unclear which parts are what Patient A said to the doctor either verbatim or summarised, and what was recorded as his analysis/observations about her. The reference to addictive personality is not mentioned expressly in the notes but other terms such as: *'she is irrational'* and that *'she almost stalks [the ex-partner]'* are recorded, and the Tribunal returns to that aspect later on. The first letter

to the GP does not mention *'addictive personality'* but again there are tangentially related terms in that letter and, in the letter of 23 January 2019 to the GP there is reference about Patient A checking the ex-partner's social media *'obsessively and [she] realised that this was becoming an addiction'*. When Dr Wilson wrote to the Patient A on the same date, when she had broken off from future sessions, he referenced that medication *'may help your obsessional patterns of behaviour'*. The Tribunal is satisfied that disclosure was made by Patient A that she thought she had *'an addictive personality'* and that lends support to the various references in contemporaneous documents, albeit tangentially, as recording matters correctly. The Tribunal preferred those recorded contemporaneous accounts to what appeared to be Patient A re-casting that evidence.

35. Patient A goes on to say in her statement that she *'didn't like my husband's ex-partner" and that Dr Wilson "called her a bitch and a slag'*. In cross-examination it was put to her that this was not said by Dr Wilson and she said *'yes he did and he said it on multiple occasions'*. That was the first time there had been reference to multiple occasions. The Tribunal considered this was a further elaboration of the contents of her statement. It is implausible that such a significant element of *'multiple occasions'* would have been missed out in preparing the statement with the GMC lawyer. The Tribunal further notes that there is no such mention of the phrases in this part of the allegation in the original GMC complaint. The various references to the animosity that Patient A had towards the ex-partner was referenced at various points. Whilst some of the specific language recorded by Dr Wilson in his notes/letters to describe the person and situation was not accepted by Patient A, the Tribunal considered the documentary evidence was of more probative weight than Patient A's accounts. This disclosed a significant degree of animosity between the two women, real or perceived. If those words were used in the session they were likely to have been instigated by Patient A, or otherwise had become part of her overthinking matters at a later stage.

36. The Tribunal observed some of the reactions by Patient A which it found to be disproportionate. She gave an example of this in paragraph 10 of her witness statement. She says Dr Wilson had said that she had become the family role model after her father's death and that everyone turned to her, such that she felt pressurised to look after everyone. She goes on to say: *'when I spoke to my mum about this later, she was shocked Dr Wilson had said that this and she didn't feel that was the case at all'*. The Tribunal notes that it was a fairly innocuous subject matter, and the words referenced did not strike the Tribunal as being unwarranted. It concerned the Tribunal that there was a degree of negative feedback from a third party on a relatively innocuous matter, when considering the sensitivities Patient A already had, and her tendency to overthink and worry about matters. The Tribunal also knew there were some discussions between her and her husband. The Tribunal had concerns as to how much feedback Patient A received when discussing her anxieties about the sessions with others, and how this may have affected her evidence.

37. A further example of Patient A's hypersensitivity to matters can be seen later in the statement where at the start of the third session she said that Dr Wilson: *'came across as friendly and said that I seemed well, a comment he'd never…made before in the other sessions. I thought this was a strange thing to say especially as I felt the complete opposite'*.

The Tribunal decided that this gave some insight into the subjectivity of Patient A's interpretations of what was, objectively, a relatively normal, innocuous thing a doctor might say to a patient at the start of an appointment.

38. There are other matters, including one specifically relating to credibility, discussed below, but insofar as general themes are concerned the matters above caused the Tribunal sufficient concern as to how much weight could be attached to Patient A's accounts.

39. Returning specifically to the charges 1(d) to (f), the Tribunal did not consider that sufficient cogent evidence had been presented by the GMC that Dr Wilson had spoken in this way. The Tribunal has set out concerns about Patient A's evidence, and it has considered that evidence mindful of weighing in the balance first complaint evidence and a wider margin to be afforded to complainants in sexual complaints. However, the concerns identified were significant and pervasive. The witness evidence sets the scene that Dr Wilson instigated the use of those terms/comments 1(d) to (f). The Tribunal rejects that claim due to concerns about the reliability and/or veracity of Patient A's evidence, and the reduced weight to be attached to it for multiple reasons. Dr Wilson denies the allegations. The Tribunal has decided on the balance of probabilities that paragraphs 1(d) to (f) of the Allegation are not proved; and therefore paragraph 4 as it relates to these subparagraphs as not proved.

Paragraph 2 of the Allegation

40. The Allegation reads:

> *'On 8 December 2018 you had a second consultation with Patient A and you made an inappropriate comment saying Patient A's husband would have an affair but it would only be an affair and then he would go back to Patient A, or words to that effect.'*

41. This matter formed part of Patient A's original GMC complaint and Patient A's husband also references it. That goes to consistency in assessing the witness evidence supporting the GMC case.

42. However, the Tribunal noted inconsistencies in how Patient A described her relationship with her husband both in her written and oral evidence. For example, on occasion she denied that there were any problems with it or suggested that the problems only arose after her consultations with Dr Wilson. Indeed, she appears to blame Dr Wilson for a deterioration in her general mental well-being despite a number of issues which led to the referral in the first place, but also occurring after the consultations as referenced in the medical records and the letter of the psychiatrist who next saw Patient A after Dr Wilson did.

43. There were a number of sources which suggested there were some strains in her relationship, not least the GP's referral letter dated 8 August 2018. Patient A herself refers to how in the first consultation she had discussed she *'didn't feel good enough for anyone'* and then as regards the second consultation she:

'…talked about my self-confidence and comparing myself to my husband's ex-partner and how I felt I didn't deserve to be with my husband…'

44. The Tribunal was satisfied that was a fairly significant aspect of concern as regards the relationship with her husband. It undermined the contrary evidence at various points that there was no issue with regards to the relationship. That is a further inconsistency which sets the tone for the topic of conversation in that second session. Patient A was already anxious about the second session according to her husband's statement. He reports that she rang him after the session and was upset:

'She said Dr Wilson mentioned things to do with me, telling her not to worry about me cheating on her, that it's going to happen. I had never cheated on [her] never done anything like that.'

45. The Tribunal noted that Patient A was anxious, uncomfortable about topics being raised and was somewhat 'hypersensitive' around matters to do with sex. She also had a number of insecurities about herself and her relationship. She was taken to the handwritten notes from the second session in cross-examination. The relevant references made to: 'her insecurities are back'; 'checking on [husband] she doesn't believe he won't leave her'; and 'her insecurity is 'why me?''. The Tribunal understood Patient A's responses to cross-examination questions that she stood by her witness statement.

46. The Tribunal also had regard to Dr Wilson's witness statement on this matter:

'Having reviewed my notes of the consultation, I recall Patent (A) informing me that her previous insecurities regarding her relationship with her husband had returned, and that she was checking on her husband. Patient (A) had a sincere belief that her husband would leave her. I would never make such a comment, as pleaded in this Head of Charge, to a patient, particularly as the likely outcome of making such a comment would only be to undermine Patient (A)'s already low self-confidence.'

47. Weight can be attached to Dr Wilson's account despite it having not been tested under cross-examination. The Tribunal was able to do so because: a) the contemporaneous notes correlate to the core aspects he refers to in the paragraph quoted above and were made before there was any complaint from Patient A; and b) the totality of the evidence before the Tribunal indicates a much more significant insecurity about the marriage than Patient A now admits to. The Tribunal concluded that Dr Wilson stating that Patient A had a sincere belief that her husband would leave her is more consistent rather than inconsistent with the rest of the evidence before the Tribunal. That sincere belief is likely to have been playing on her mind. The other concerns about her insecurities, over thinking, discussing matters with her mum and husband (as he says in his statement) and the likely reframing of events, lead the Tribunal to conclude the events alleged in this charge did not happen as claimed.

48. The Tribunal decided there was not sufficient cogent evidence to find that Dr Wilson did say the alleged phrase. Indeed, as a doctor of several decades good standing, it preferred the account put forward by Dr Wilson that he would not have said those words to Patient A for the reasons he sets out.

49. The Tribunal therefore found, on the balance of probabilities, paragraph 2 of the Allegation not proved.

Paragraph 3 of the Allegation

50. Before considering the next paragraphs of the Allegation, the Tribunal considered it was relevant to set out what happened between Patient A's second and third consultations with Dr Wilson. It noted Patient A's statement about what occurred at the end of her second consultation in her witness statement where she stated she:

> *'…felt angry and shocked and worse than when I went into the sessions because of what he'd said about my husband having an affair. I again felt that he'd spoken about things that weren't relevant and it felt like he was trying to get me to trust him more than I trust my husband…We didn't book in another session after the second session as Dr Wilson said he'd contact me and we'd sort one out.'*

51. The Tribunal noted Patient A's feelings towards Dr Wilson at the end of the second session and her statement that another session was not booked. Her husband says she avoided making a follow-up visit straightaway. In her witness statement, Patient A describes how she had various missed calls from Dr Wilson between 1 and 8 January 2019 and did not answer as she *'didn't feel comfortable talking to him.*'

52. However, her timeline is silent as to what happened between the second appointment on 8 December 2018 and the reference to phone calls on 1 January 2019. She made no reference at all to an appointment on 28 December 2018 which she did not attend because her mother had had an accident, and which she had failed to cancel in advance. It is a significant omission which calls into question the sequence of events. She also failed to mention the email she sent to Dr Wilson on 7 January 2019 clearly stating that she was free for another consultation on 15 January 2019. Indeed, the Tribunal noted she seemed somewhat surprised by this email when it was produced during cross-examination. She was asked about its content as it is rather cordial. Patient A stated in cross-examination that the content of the email was just her being polite to Dr Wilson. The Tribunal did not consider that to be a credible account but more likely to be her responding off the cuff to something she had not expected.

53. This tone of email was wholly inconsistent with the claims that Patient A had such significant concerns at the end of the second consultation. It was inconsistent with her evidence that she was avoiding Dr Wilson's phone calls as she did not wish to speak to him again when she excuses not having answered his calls due to her *'dealing with the kids'* or going on to suggest 11am on the 15 January 2019 for the next appointment. Her cordial sign

off: *'Thank you for calling I greatly appreciate it'* was wholly inconsistent with the tenor of her evidence about her feelings in relation to the second appointment and avoiding making a third one. Having considered the first complaint evidence and giving a wider margin in assessing her actions, nevertheless the Tribunal found that the email evidence significantly undermined her credibility.

54. The Tribunal did not consider Patient A's account of the events to be credible and it significantly undermined the claims being made by her about, in effect, being harangued by Dr Wilson to see him again. The Tribunal did not accept this account and it raised concerns about what the Tribunal was being told by the key GMC witness.

Paragraphs 3(a)(i) and 3(a)(ii) of the Allegation

55. The relevant part of the Allegation states:

> *'On 15 January 2019 you had a third consultation with Patient A and you:*
>
> *a. made inappropriate comments including saying that:*
>
> *i. Patient A checking the Instagram account of her husband's ex-partner was a form of masturbation;*
>
> *ii. Patient A's husband's ex-partner probably puts photos on Instagram boasting that she's sleeping around and opening her legs to everyone and that part of Patient A probably wants that life too,*
>
> *or words to that effect;'*

56. The Tribunal went on to consider if Dr Wilson made these alleged inappropriate comments to Patient A during their third consultation. It has already noted above that in her witness statement Patient A said:

> *'At the start of the third session Dr Wilson came across as friendly and said that I seemed well, a comment he'd never was made before in the other sessions. I thought this was strange as I felt the complete opposite'*

57. The Tribunal considered that a doctor commenting that a patient seemed well was perfectly reasonable and Patient A's feelings towards this comment suggest that she was hypersensitive and apprehensive about the session before it had begun. That frame of mind is relevant in the Tribunal's assessment as to what is likely to have occurred. The Tribunal also considered the matters mentioned above in *'matters arising from Patient A's evidence'* as well as the credibility issue referred to in paragraph 54 above are material in its consideration. Whilst it has been mindful not to allow a 'domino effect' in assessing Patient A's accounts, there was an increasingly significant amount of contradictory matters tending to undermine the weight to be attached to the claims by Patient A.

58. There was also the significant factor of animosity between Patient A and the ex-partner, and the checking of the latter's social media accounts. In the letter of 23 January 2019 to the GP, Dr Wilson made reference to Patient A checking the ex-partner's social media *'obsessively and [she] realised that this was becoming an addiction'*. The Tribunal has already noted above that there are handwritten entries that correspond to Patient A's self-confessed, but then denied, *'addictive personality'*.

59. The Tribunal had regard to Dr Wilson's witness statement in which he said:

> *'I recall that Patient (A) discussed the fact that she checked her husband's ex-partner's Instagram account. During this discussion I pointed out that this was a form of self-harm, especially as I discovered during our conversation that Patient (A) was checking the account at least hourly. I recall a discussion regarding this, however I categorically deny saying that this was a form of masturbation or using words to this effect. In response to Head of Charge 3(a)(ii), this is also denied in its entirety.'*

60. There were serious concerns about the consistency of the claimed events by Patient A. Neither the first complaint evidence nor the wider margin in assessing her accounts remedied those serious concerns. The GMC evidence was materially undermined. Accordingly, the Tribunal concluded that there was not sufficient cogent evidence to show that Dr Wilson made any inappropriate comments towards Patient A in their third consultation. It is more likely than not, the matter was discussed in the way Dr Wilson has set out in his statement, which is underpinned by other contemporaneous documents.

61. The Tribunal therefore found, on the balance of probabilities, paragraphs 3(a)(i) and 3(a)(ii) of the Allegation not proved.

Paragraph 3(b) of the Allegation

62. The Tribunal next considered if Dr Wilson rubbed his right thumb around his groin area. Patient A called BUPA to report matters relating to Dr Wilson. The evidence from BUPA is that she said: *'She reported that he 'was turning things into a sexualised manner' but did not expressly mention this incident.'*

63. In her witness statement, Patient A says that she *'initially spoke to Bupa and told them I'd had a bad experience with Dr Wilson and that he talked about sexual matters'.* That tends to accord with a natural reading of the BUPA note *'turning things into a sexualised manner'* as being the questions not the touching.

64. The Tribunal was satisfied that in these instances Patient A's complaints to BUPA were related only to the comments made by Dr Wilson as opposed to him touching his groin area. This was a significant omission in her first official complaint, namely to BUPA, despite their note stating she was asked if Dr Wilson was saying or doing anything so they could log it. The Tribunal was satisfied that there was a sufficiently relevant question put to her during that

phone call which should have prompted her to disclose information about the touching event.

65. She was cross-examined about this and she said her reference to *'sexualised manner'* encompassed the touching incident. She explained she found talking about this difficult and did not want to go into details with BUPA as *'I knew I was putting the GMC complaint in'*. However, her witness statement sets out that it was BUPA who suggested she complain to the GMC. Whilst she told the Tribunal that she had always intended to escalate the complaint further, before contacting BUPA, this was not what was said in her witness statement and the Tribunal did not accept her account about this. She also said to the Tribunal that she did not want to be on the phone going through every *'minute'* thing Dr Wilson did. The Tribunal considered this description was inconsistent with the nature of her alleged complaint.

66. The Tribunal was mindful to consider the first complaint, where the husband's account adds to consistency. It was also mindful as to the wider margin when considering a sexual complaint. However, the Tribunal was not satisfied Patient A had the GMC complaint in mind when she rang BUPA. It did not accept her account about this as credible. That undermined her explanation as to why she did not mention the touching to BUPA.

67. There is also a material consistency in the description set out in the witness statement putting the event as lasting two minutes, with her account in re-examination where she said that it was only a couple of seconds before she realised what the doctor was doing, and that it went on for about ten seconds, which was enough to make her uncomfortable and *'clam down'* (although she probably meant clam up).

68. The Tribunal considered Patient A's failure to mention this to BUPA to be a significant omission. The discrepancy in the evidence about duration is also marked. If there had been some form of touching in that area, it may have been an inadvertence, particularly if the re-examination account is closer to the truth. The Tribunal was concerned that in the days following this consultation and between the complaint to BUPA and contacting the GMC, Patient A had reflected on the events and overthought them. It materially undermined the weight to be attributed to this evidence. As such there was no cogent evidence to support that Dr Wilson acted in the manner alleged, or if he did that it was anything other than of inadvertence.

69. The Tribunal therefore found, on the balance of probabilities, paragraph 3(b) of the Allegation to be not proved.

Paragraph 4 of the Allegation

70. The Tribunal did not determine that any of Dr Wilson's actions were sexually motivated. As such, it could not find this paragraph of the Allegation proved.

71. The Tribunal therefore found, on the balance of probabilities, paragraph 4 of the Allegation not proved.

The Tribunal's Overall Determination on the Facts

72. The Tribunal has determined the facts as follows:

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

1. On 27 October 2018 you had a first consultation with Patient A and you made inappropriate comments including:

a. saying Patient A could 'give herself a bit of a tickle and wank her husband off; **Determined and found proved**

b. asking 'who does all the hard work in the bedroom?'; **Not proved**

c. saying you had a client who reads a book and 'wanks off' her husband and that Patient A could do the same to please her husband; **Determined and found proved**

d. referring to Patient A's husband's ex-partner as:

i. 'a bitch'; **Not proved**

ii. 'a slag'; **Not proved**

iii. 'a bitch who sleeps around'; **Not proved**

e. describing Patient A's brother as a 'waste of space'; **Not proved**

f. describing contestants on a television show by saying 'girls on the show don't have any makeup on and it shows their ugly personalities', **Not proved**

or words to that effect.

2. On 8 December 2018 you had a second consultation with Patient A and you made an inappropriate comment saying Patient A's husband would have an affair but it would only be an affair and then he would go back to Patient A, or words to that effect. **Not proved**

3. On 15 January 2019 you had a third consultation with Patient A and you:

a. made inappropriate comments including saying that:

i. Patient A checking the Instagram account of her husband's ex-partner was a form of masturbation; **Not proved**

ii. Patient A's husband's ex-partner probably puts photos on Instagram boasting that she's sleeping around and opening her legs to everyone and that part of Patient A probably wants that life too, **Not proved**

or words to that effect;

b. rubbed your right thumb slowly around your groin area in a stroking movement. **Not proved**

4. Your actions at paragraphs 1a to 1d, 2 and 3 were sexually motivated. **Not proved**

5. At the time of your actions as set out in paragraphs 1 to 4, you knew Patient A was vulnerable due to her:

a. mental health history; **Admitted and found proved**

b. physical health history. **Admitted and found proved**

Determination on Impairment - 15/03/2022

73. The Tribunal granted the GMC's application to proceed in Dr Wilson's absence. Its full determination can be found at Annex C.

74. 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 Wilson's fitness to practise is impaired by reason of misconduct.

The Evidence

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

Submissions

On behalf of the GMC

76. Ms Jones initially submitted that Dr Wilson was impaired by reason of his serious misconduct. She submitted that Dr Wilson had misjudged his tone when addressing Patient A and did not pay attention to her needs during the consultation. Further, Ms Jones submitted that Dr Wilson had not reflected on his actions or provided evidence of

adequate remediation. Ms Jones relied on the expert report to support the submission that Dr Wilson's actions amounted to serious misconduct.

77. The Tribunal went into camera to consider impairment but reconvened the hearing to invite further submissions from the GMC. That was because the Tribunal was only concerned with two findings of fact at paragraphs 1(a) and 1(c) of the Allegation (and paragraph 5 which was admitted) rather than the significant number of charges, including 'sexual motivation' which had been found 'not proved'. The Tribunal noted that the expert report did not conclude that either paragraph 1(a) or 1(c) was 'seriously below' the standard to be expected. The Tribunal had not been addressed on this by the GMC, and it was necessary to raise the matter in fairness to both parties.

78. Ms Jones took further instructions after the GMC had reviewed its position, and then provided updated GMC submissions. She drew the Tribunal's attention to the ongoing GMC duty to review the cases and said the GMC had considered the authority of *Schodlok v The General Medical Council [2015] EWCA Civ 769 (21 July 2015)* which set out that in certain circumstances there may be an accumulation of 'below standard' misconduct which nevertheless would amount to 'serious misconduct'

79. Ms Jones submitted that the only facts found proved by the Tribunal arose at the same consultation between Dr Wilson and Patient A and was perhaps isolated though it may represent similar acts of misconduct. She submitted that taking this factor into account, and when considering the case of *Schodlok,* the GMC were now neutral on the matter of whether Dr Wilson's actions amounted to misconduct.

The Relevant Legal Principles

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

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

82. The Tribunal determined whether Dr Wilson's fitness to practise is impaired today, taking into account Dr Wilson's conduct at the time of the events and any relevant factors since

then, such as whether the matters are remediable, have been remedied and any likelihood of repetition.

83. The Tribunal must impose a finding of impairment on Dr Wilson's registration if the overarching objective required it. The Tribunal noted that if it did not make a finding of impairment, it may go on to consider issuing a warning to Dr Wilson.

84. The Tribunal was mindful of the test for impairment considered in the case of *CHRE v NMC and Paula Grant [2011] EWHC 927 Admin* which followed the recommendations of Dame Janet Smith in *The Fifth Shipman* report. It asks if the practitioner:

- *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*
- *Has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- *Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- *Has in the past acted dishonestly and/or is liable to act dishonestly in the future*

The Tribunal's Determination on Misconduct and Impairment

85. The Tribunal noted that it must consider if Dr Wilson's actions amounted to misconduct, and that this misconduct was serious. It noted there is no statutory definition of the term serious misconduct, but that it involves falling short by omission or commission of the standards of conduct expected among medical practitioners, and such falling short must be serious. The Tribunal was advised that the adjective *"serious"* must be given its proper weight.

86. The Tribunal had regard to its findings at the facts stage regarding Dr Wilson's conduct. Given the passage of some eight months since the facts stage concluded, the Tribunal decided it was all the more important to reflect on its fact finding rationale, as those conclusions were reached after considering live witness evidence in July 2021. In that facts determination, the Tribunal found at paragraphs 21 and 22 that:

> *'…The anecdote situation was a more probable explanation in the Tribunal's assessment. The probable use of such anecdotes in speaking with Patient A during this first consultation was likely to have been a clumsy attempt by the doctor to put*

this new patient at ease, and build rapport. Unfortunately, it followed on from the somewhat informal/insensitive 'how's your sex life' question and as such, likely amplified Patient A's negative reaction to this inappropriate anecdote in the Tribunal's assessment.

Dr Wilson's anecdote is likely to have been the opener to the topic of enquiring about Patient A's intimate relationships, and his words are likely to have been misinterpreted by Patient A. He may have ill-advisedly spoken to her in a manner she did not like but this does not mean that his words were sexually motivated; just clumsy in how they were spoken.'

87. It is important to note that the Tribunal found Dr Wilson's actions to have been "clumsy"; "informal/insensitive" and ill-advised. The Tribunal rejected the GMC case that these actions were sexually motivated. Clearly, the Tribunal was concerned by the language and approach taken by Dr Wilson in his first consultation with Patient A whom he accepted he knew was vulnerable. The Tribunal concluded that Dr Wilson's language was inappropriate and that it fell below the standards to be expected of a registered medical practitioner when dealing with a vulnerable patient.

88. The Tribunal took account of Dr B's assessment as regards the misconduct charged under paragraphs 1(a). He stated:

'In my opinion, this alleged comment is inappropriate and not consistent with prevailing guidance from the General Medical Council in 'Good Medical Practice'. In the section titled 'Establish and maintain partnerships with patients', the guidance clearly states:

46 You must be polite and considerate.
47 You must treat patients as individuals and respect their dignity and privacy.

In my opinion this aspect is below the standard expected of a reasonably competent Consultant Psychiatrist. The language allegedly used is crude. I am not satisfied that the alleged comments are polite, considerate or respectful.

Dr Wilson has stated that he 'does sometimes share an anecdote' which contains similar content and he 'believes he shared this anecdote' with Patient [A] as part of

his exploration of her presenting concerns. In my opinion this aspect is below the standard expected but not seriously.'

89. Dr B sets out similar concerns as regards the conduct relating to paragraph 1(c):

'In my opinion and consistent with the observations above, the anecdote allegedly employed is not consistent with prevailing General Medical Council guidance in relation to dignity and privacy.

Patient [A] described symptoms of anxiety which Dr Wilson had recognised and diagnosed as part of a mental illness, specifically an adjustment disorder. Dr Wilson identified treatment in the form of cognitive behavioural therapy as appropriate for Patient [A].

I am not satisfied that the anecdote allegedly employed by Dr Wilson conforms to any recognised model of effective psychotherapy. In my opinion this aspect is inappropriate and could readily cause offense.

In my opinion this aspect is below the standard expected of a reasonably competent Consultant Psychiatrist. The language allegedly used is crude. I am not satisfied that the alleged comments are polite, considerate or respectful.

Dr Wilson has stated that he 'does sometimes share an anecdote' which contains similar content and he 'believes he shared this anecdote' with Patient [A] as part of his exploration of her presenting concerns. In my opinion this aspect is below the standard expected but not seriously.'

90. Dr B's report deals with various allegations and he concluded his report as follows:

'In my opinion the individual aspects that were below the expected standard are mitigated by reasonable and acceptable record keeping by Dr Wilson. The individual aspects in my opinion remain below the standard but not seriously.'

91. The Tribunal noted that he then goes on to consider the overall standard of care provided by Dr Wilson across the three consultations (the facts found proved only relate to one consultation). Dr B had concerns about the lack of *"an adequately detailed care and treatment plan for [Patient A's] psychotherapy."* The Tribunal noted that this was not

a specified charge in the Allegation. Dr B's report concludes that *"the overall standard of care provided by Dr Wilson in respect of Patient [A] was seriously below the expected standard".*

92. However, he then provided a supplemental report which concluded as follows:

> *'I had initially concluded that the overall standard of care provided by Dr Wilson in respect of Patient [A] was seriously below the standard expected of a reasonably competent Consultant Psychiatrist.*
>
> *If the Tribunal were to prefer the version of events presented by Dr Wilson then the single remaining item about the technique employed by previous patient and the omission of an adequately detailed care and treatment plan for her psychotherapy would be of concern and in my opinion overall remain below the expected standard.*
>
> *However I would revise my earlier opinion and conclude that the overall standard of care provided by Dr Wilson in respect of Patient A was below the expected standard but not seriously.'*

93. The Tribunal might have expected to have been provided with a further supplemental report given the elapse of eight months and the narrow findings of fact; or for the GMC to have reflected on its position sooner. The findings of fact led to most of the Allegation being dismissed, and that situation was more closely aligned with Dr B's supplemental report view than his first report's conclusions.

94. The Tribunal took into account its findings at paragraphs 21 and 22 of the facts determination. It took account of the revised submissions of the GMC who remained neutral on the issue of impairment. The Tribunal decided that the net effect of that was that there was no longer a positive assertion by the GMC of 'serious misconduct', being the prerequisite to a finding of impairment. The Tribunal also considered Dr B's expert reports. Dr B's expert opinion led the Tribunal to conclude that Dr Wilson's conduct did amount to misconduct as his behaviour was below the standard expected of a reasonably competent Consultant Psychiatrist. However, as Dr Wilson's actions were 'below' rather than 'seriously below' the standard expected and as such, tended towards a conclusion that the misconduct was not 'serious misconduct'.

95. The Tribunal was mindful that two facts were found proved in relation to one consultation. The admitted paragraph of the Allegation, relating to Patient A's vulnerability, was weighed into the consideration by the Tribunal. Dr Wilson had been provided with a good character direction at the facts stage as he had no prior relevant disciplinary history. The facts found proved were matters arising in relative isolation.

96. Taking all of the above matters into account the Tribunal determined that the facts found proved amounted to misconduct. The Tribunal was unimpressed with the lax approach taken by Dr Wilson in using anecdotes and crude references/ insensitive language with a vulnerable patient. It was unprofessional and fell below the standards to be expected. However, in the Tribunal's judgment, overall Dr Wilson's departure from professional standards did not amount to misconduct which was 'serious'. That meant that the prerequisite of 'serious misconduct' was not established and no finding of current impairment could be made.

97. Given its determination, the Tribunal did not go on to consider if Dr Wilson was impaired, and therefore found Dr Wilson not impaired.

Determination on Warning - 15/03/2022

98. This determination will be read in private. However, as this case concerns Dr Wilson's misconduct, a redacted version will be published at the close of the hearing XXX.

99. As the Tribunal determined that Dr Wilson's fitness to practise was not impaired, it considered whether in accordance with s35D(3) of the 1983 Act, a warning was required.

Submissions

On behalf of the GMC

100. Ms Jones drew the Tribunal's attention to the GMC's 'Guidance on Warnings' (March 2021). She submitted that the guidance set out the basis for a Tribunal to impose a warning in order to protect the public, which includes protecting patients, maintaining public confidence in the profession and declaring and upholding proper standards of conduct and behaviour. Ms Jones submitted that placing a warning on Dr Wilson's registration would be appropriate in this case.

101. Ms Jones submitted that a warning would allow this Tribunal to indicate that Dr Wilson's misconduct represented a departure from the standards expected of members of the medical profession, and his misconduct should not be repeated. She reminded the Tribunal that it had found that Dr Wilson's actions breached paragraphs 46 and 47 of Good Medical Practice (2013 edition) ('GMP'), and that his actions were clumsy, informal, ill-advised and inappropriate. She said Dr Wilson's actions fell below the standards expected of a doctor treating a patient, especially one who was vulnerable, and amounted to misconduct.

102. Ms Jones submitted that the Tribunal only had limited evidence from Dr Wilson in the form of a witness statement, and that this was a factor when considering his level of insight, remediation and likelihood of repetition.

103. Ms Jones submitted that there is no recent evidence for the Tribunal to assess how likely Dr Wilson is to return to practice, and noted that he had worked remotely as a psychiatrist as little as two years ago.

The Relevant Legal Principles

104. The Tribunal had regard to the GMC's Guidance on Warnings (March 2021). It noted that when considering placing a warning on Dr Wilson's registration, it must act in an appropriate and proportionate way, taking into account its findings at the facts and impairment stages, and the overarching objective.

105. The Tribunal must also have regard to Dr Wilson's interests, and any evidence of his insight, remediation and remorse.

The Tribunal's Determination on Warning

106. The Tribunal had regard to paragraph 20 of the Guidance on warnings, which states:

> *20 The decision makers should take account of the following factors to determine whether it is appropriate to issue a warning.*
>
> *a There has been a clear and specific breach of Good medical practice or our supplementary guidance.*

b The particular conduct…in a case before a tribunal, that the doctor's fitness to practise has not been found to be impaired.

c A warning will be appropriate when the concerns are sufficiently serious that, if there were a repetition, they would likely result in a finding of impaired fitness to practise...

d There is a need to record formally the particular concerns (because additional action may be required in the event of any repetition).

107. The Tribunal decided that Dr Wilson had breached paragraphs 46 and 47 of GMP and this had led to the Tribunal concluding this was below the standards expected of a doctor, and as such amounted to misconduct. The concerns were sufficiently serious because they involved inappropriate comments to a vulnerable patient. If he were to repeat this sort of misconduct, then a Tribunal would likely find his fitness to practise impaired. Despite Dr Wilson having retired, he had continued to work until relatively recently. The Tribunal was not satisfied that a return to practise was remote, and as such that there remained a potential risk of repetition. It was therefore necessary to formally record the Tribunal's concerns about his misconduct because, should they be repeated, additional action may be required. Therefore, the matters set out in paragraph 20 of the guidance on warnings applied to Dr Wilson's case.

108. The Tribunal also considered paragraph 32 of the guidance on warnings. It states:

If the decision makers are satisfied that the doctor's fitness to practise is not impaired or that the realistic prospect test is not met, they can take account of a range of factors to determine whether a warning is appropriate. These might include:

a the level of insight into the failings
b a genuine expression of regret/apology
c previous good history
d whether the incident was isolated or whether there has been any repetition
e any indicators as to the likelihood of the concerns being repeated
f any rehabilitative/corrective steps taken
g relevant and appropriate references and testimonials.

109. The Tribunal noted that Dr Wilson had expressed some insight into his failings in his witness statement, offering an *'unreserved apology'* to Patient A. However, as Dr Wilson had not been able to attend the hearing, this evidence had not been tested under cross-examination. That also affected the Tribunal's ability to assess the likelihood of repetition, and the level of rehabilitation that had occurred. Those concerns weighed in favour of a warning being required in the Tribunal's assessment.

110. However, the Tribunal noted that it had found the two findings of fact relating to inappropriate comments were 'isolated' because they only occurred during the first consultation with Patient A. There was no evidence Dr Wilson had repeated his misconduct since the incident. In addition, the Tribunal had regard to the positive testimonials it had received on Dr Wilson's behalf, and his previous good history.

111. When balancing the positive factors of this case against the Tribunal's need to uphold the overarching objective, the Tribunal found that Dr Wilson had not provided enough persuasive evidence regarding his insight or remediation. Whilst this did not lead to a finding of impairment, for reasons set out in that determination, the Tribunal had concluded that there had been misconduct. The Tribunal therefore decided that if a warning was not issued on Dr Wilson's registration this would undermine the public's confidence in the medical profession. It would fail to mark proper professional standards and therefore would not meet the overarching objective.

112. The Tribunal decided that issuing a warning would state to the wider profession that Dr Wilson's conduct fell below the standard expected and that doctors should not use inappropriate language, particularly when treating vulnerable patients. Issuing a warning struck a fair balance between Dr Wilson's interests and the wider public interest by upholding the overarching objective in a proportionate manner.

113. The Tribunal has therefore determined to issue a warning in accordance with Section 35D(3) of the Medical Act 1983 and Rule 17(2)(m) of the Rules. The warning the Tribunal imposes reads:

> "Dr Wilson
>
> On 23 July 2021, the Tribunal determined and found proved that you made inappropriate comments to Patient A on her first consultation with you. You accepted you knew she was vulnerable because of both her physical and mental health history.

The Tribunal was concerned by the language and approach you took in this first consultation with a vulnerable patient. The Tribunal was unimpressed with the lax approach taken by you in using anecdotes, crude references and insensitive language with a vulnerable patient. The Tribunal concluded that your language was inappropriate and unprofessional. Your conduct fell below the standards to be expected of a registered medical practitioner when dealing with a vulnerable patient.

This type of conduct does not meet with the standards required of a doctor. It risks bringing the profession into disrepute and it must not be repeated. The required standards are set out in *Good medical practice* and associated guidance. In this case, paragraphs: *46 You must be polite and considerate*; and *47 You must treat patients as individuals and respect their dignity and privacy,* are particularly relevant.

Whilst this failing in itself is not so serious as to require any restriction on your registration, the Tribunal decided it was necessary and proportionate to issue this formal warning to uphold proper professional standards and maintain public confidence."

114. This warning will be published on the medical register in line with the GMC/MPTS publication and disclosure policy, which can be found at www.gmc-uk.org/disclosurepolicy.

ANNEX A – 12/07/2021

Matters arising from Dr Wilson's absence

1. This determination will be read in private. However, as this case concerns Dr Wilson's misconduct, a redacted version will be published at the close of the hearing XXX.

2. The Tribunal noted a number of matters of concern from the pre-reading material. In particular, the Case Management meetings had led to issues being raised about:

a) progress being limited XXX;
b) the solicitor having difficulty obtaining instructions;
c) XXX;
d) XXX;
e) a potential postponement application XXX;
f) XXX;
g) Dr Wilson would not be attending the hearing, but would be represented. XXX

3. In light of those matters of concern, the LQC enquired about what the current position was and the Tribunal was informed XXX.

4. Having considered XXX, the LQC gave advice that Rule 31 was not engaged in this case because it is directed towards those circumstances where a practitioner is 'neither present nor represented'. Mr Colman submitted that he agreed with that observation and stated that Dr Wilson's non-attendance was not out of disrespect to the Tribunal. XXX. He also stated that the case was ready to proceed and that further delay in concluding the case XXX and therefore Mr Colman was not seeking an adjournment on the doctor's behalf.

5. Ms Johnson for the GMC submitted that it was appropriate to proceed and that nothing would be gained by adjourning the proceedings. She indicated that witnesses were warned ready to give evidence tomorrow and that it was in the public interest to proceed with the case.

6. Whilst the circumstances of Dr Wilson's non-attendance did not fall within the ambit or Rule 31, the Tribunal noted that it retained a power to adjourn generally under Rule 29(2), and that could be exercised at any time and of its own motion. There were some residual concerns about matters set out above as raised in the case management directions.

7. XXX

8. XXX

9. XXX

10. The Tribunal noted the significance of matters arising in this case: XXX; and the charges are serious ones and may have a potentially serious outcome if found proved.

11. Dr Wilson has legal representation from a solicitor at MPS and Counsel. Both of them have a duty to act in the best interests of their client. The Tribunal is satisfied that they must have explained the full ramifications of Dr Wilson not attending to speak to his witness statement, particularly in a case such as this.

12. The Tribunal has been mindful to ensure that Dr Wilson has had an opportunity to attend in person but XXX that is not likely to happen, either in the time allocated or in the foreseeable future. The Tribunal is mindful that the Allegation goes back to events nearly 3 years ago. There is also a public interest in cases being dealt with at the earliest opportunity.

13. In conclusion, the Tribunal has made a considered decision that adjourning of its own volition for Dr Wilson to participate further in these proceedings would not be appropriate. There is a public law duty to act fairly and to that end careful consideration

has been given to all of these competing and significant factors, and in light of the submissions, the Tribunal considers it is fair and just to proceed to consider the case with Dr Wilson not attending but being represented by Counsel.

Adverse inferences

14. In considering whether to draw any adverse inference from Dr Wilson's non-attendance at this hearing, the Tribunal had regard to the submissions of parties.

15. Ms Johnson, on behalf of the GMC, submitted that the GMC are not inviting the Tribunal to draw any adverse inference from Dr Wilson's non-participation during these proceedings.

16. Mr Coleman, on behalf of Dr Wilson, submitted that it may be unfair to draw an adverse inference XXX.

17. In its deliberations, the Tribunal took the Guidance into account and was satisfied that a reasonable explanation has been given for Dr Wilson's non – attendance at this hearing. It determined that, in light of the matters set out in the decision to proceed in absence as above, it would also be unfair to draw an adverse inference.

ANNEX B – 30/07/2021

Application for Voluntary Erasure (VE)

1. This determination will be read in private. However, as this case concerns Dr Wilson's misconduct, a redacted version will be published at the close of the hearing XXX.

2. Following the conclusion of the facts stage of this hearing, Dr Wilson applied to the General Medical Council for VE of his name from the medical register.

Evidence

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

- Dr Wilson's VE application to the GMC, dated 28 July 2021;
- Dr Wilson's previous VE application to the GMC, dated 25 June 2021;
- XXX;
- XXX;
- Rule 7 bundle, including Dr Wilson's response, XXX;
- Dr Wilson's self-referral dated 28 April 2020, in respect of XXX;

- GMC's correspondence dated 6 May 2020, in respect of XXX;
- GMC's bundle served on 23 July 2021, in respect of XXX;
- Testimonials.

4. The Tribunal also had regard to the evidence it had received at the facts stage of the hearing and its determination on the facts.

Submissions

5. On behalf of Dr Wilson, Mr Colman submitted that Dr Wilson XXX. He reminded the Tribunal that on 5 July the Case Examiners at the GMC refused Dr Wilsons application for VE, dated 25 June 2021.

6. Mr Colman stated that this Tribunal found no sexual motivation in its facts determination with regard to the Allegation and that any concern of a continuing risk to the public must fall away. Mr Colman informed the Tribunal that the GMC expert, Dr B did not criticise Dr Wilson's conduct as being seriously below the expected standard and that there is no presumption of impairment to be a barrier for granting VE.

7. Mr Colman submitted that Dr Wilson is 80 years old and has now ceased practising medicine so there is no ongoing risk to patients. XXX. He stated that the prospect of Dr Wilson applying for restoration, given his age and XXX, is remote.

8. XXX.

9. Mr Colman went on to submit that Dr Wilson's ability to participate in fitness to practise proceedings is only likely to deteriorate with his increasing age XXX and that as such, it would be appropriate to grant VE in this case. He asserted that public safety would be immediately served by granting VE.

10. In summary, Mr Colman submitted that the public interest can be satisfied by the granting of VE given XXX and the very low likelihood of him returning to practice.

11. On behalf of the GMC, Ms Johnson submitted that in considering patient safety the Tribunal should consider whether Dr Wilson might practice again and whether XXX. However, there is no suggestion that Dr Wilson intends to work abroad. She stated that the seriousness of the Allegation needs to be assessed and balanced with the likelihood of Dr Wilson returning to medical practice. This would determine whether public confidence could be undermined if the matters were not fully investigated and determined in public, with the doctor possibly receiving a sanction.

12. Ms Johnson stated XXX.

13. Ms Johnson reminded the Tribunal that it is not bound by the previous decision of the Case Examiners not to grant Dr Wilson VE and that Dr Wilson XXX.

14. XXX. Ms Johnson submitted that XXX, Dr Wilson was able to return to work in his 70's XXX and that he has continued to see patients until recently.

15. In summary, Ms Johnson submitted that the presumption of impairment is not rebutted and, in the absence of exceptional circumstances, it is in the public interest that the outstanding Allegation, in this case, is fully investigated.

The Tribunal's Approach

16. The Tribunal having handed down its decision on facts was informed that a voluntary erasure application ('VEA') had been made by Dr Wilson. This was made pursuant to the General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004/2609. Regulation 8 provides that:

> *'(8) Where, on the date the Registrar receives an erasure application [during a live] hearing before the Medical Practitioners Tribunal … the Registrar shall refer the application to the MPTS for them to arrange for it to be determined by the Medical Practitioners Tribunal, and the application shall be determined by the Medical Practitioners Tribunal accordingly.'*

17. The Tribunal had been forewarned that a VEA was likely to be made at the end of stage 1, and an explanation was put forward by Mr Colman that the somewhat unusual timing of such an application was necessary so the Tribunal was aware of all material issues underlying Dr Wilson's history with the GMC. The referral of the VEA having been made, the Tribunal had to determine the application.

18. The Tribunal had noted that the determination of such an application is not referenced in the Fitness to Practise Rules 2004, and therefore there was no specific procedure that should be followed. The LQC set out a number of observations, proposals and enquires on behalf of the Tribunal and parties were invited to address the Tribunal on these matters. Both parties agreed that the VEA could be dealt with before moving to the impairment stage under Rule 17(2)(k). Both parties also agreed that if the VEA was granted then that would obviate the need to go onto either the impairment or sanction stages. If the VEA was refused, both parties agreed that the Tribunal would proceed to deal with issues of impairment and sanction in the usual way. Given the agreed position, the Tribunal accepted this approach to be appropriate.

19. The Tribunal was invited to apply the relevant guidance relating to a VEA. This was GMC guidance from March 2021 entitled 'Guidance on making decisions on voluntary erasure applications and advising on administrative erasure' ('VEA guidance'). It was directed at case examiners rather than decision making by a Tribunal. Submissions were sought as to its applicability to decision making by a Tribunal deciding a VEA. It was broadly agreed that

this guidance applied to the Tribunal's decision making and the LQC advised that it should be applied unless there were good reasons not to do so.

20. The Tribunal decided it was entitled to 'stand in the shoes' of case examiners given that the content of that guidance was directed to them. The Tribunal also decided it was entitled to look at matters as they relate to the public interest in charges going forward, and the 'reasonable prospects' test where this was appropriate. In particular, it was satisfied that case examiners in general had to ensure that a case stood a 'reasonable prospect of success'. That was relevant because in its consideration of the VEA, if matters arose that undermined those prospects of success, then this might be a valid reason as to why a particular allegation could not proceed. Likewise, the case examiners in applying the public interest test not only look at the overarching objective, but in dealing with their ongoing duty of fairness, may decide that an allegation should no longer proceed, for various reasons including 'compassionate' reasons. XXX.

21. The Tribunal sought disclosure of a number of internal GMC decision making documents, some of which the GMC had initially been resistant in disclosing but which were ultimately disclosed to the Tribunal. It has considered those documents in its decision making. The LQC sought clarification on a number of matters relating to the manner in which the GMC revived XXX.

22. The Tribunal has read the case examiners decision relating to the VEA made by Dr Wilson before the start of the live case before the Tribunal. However, the LQC made it clear the Tribunal was standing in the shoes of the case examiners making its decision 'de novo' on all relevant material as things stood before the Tribunal.

23. The Tribunal enquired of parties whether there were any observations that, if the VEA was to be refused, XXX.

24. The Tribunal considered Mr Colman's application with regard to the VEA guidance and reminded itself that it must balance the public interest and the requirements of the overarching objective, with the interests of Dr Wilson. It must also consider the likelihood of Dr Wilson returning to practice and the ability for the revival of the Allegation against him should he apply for restoration in the future. The Tribunal had regard to paragraph 11 of the VEA Guidance, which states:

> *'Case examiners should be satisfied that it is right in all the circumstances to grant VE […]. This will involve a careful balancing of the relevant factors to decide whether or not erasure is in the public interest. Case examiners will need to weigh the seriousness of the concerns against any additional information that is available regarding:*
>
> - *the doctor's health and the likelihood of the doctor returning to practice*

- *our ability to revive the Allegations should the doctor apply for restoration. '*

The Tribunal's Decision

Outstanding GMC matters against Dr Wilson

25. This VEA relates to XXX, the case which is live before the Tribunal ('current case'). The Tribunal has dismissed the majority of the Allegation, including that Dr Wilson's actions/comments were 'sexually motivated'. The Tribunal does not consider that this case is an impediment to granting the VEA. The findings of fact underpinned by the expert report indicate the misconduct is towards the lower end of the spectrum. The Tribunal has not yet decided whether this amounted to 'serious misconduct' and/or impairment. XXX.

26. XXX

27. XXX

28. XXX

29. XXX

30. XXX

31. XXX. Then in 2019, the complaint in the current case before this Tribunal was made.

GMC's referral to the case examiners and their decision

32. XXX

33. XXX

34. XXX

35. XXX

36. XXX

37. XXX

38. XXX

39. XXX

40. XXX

41. XXX

42. XXX

Relevance to the VEA matter

43. XXX

44. XXX

Exceptional circumstances

45. Paragraph 24 of the guidance set out enumerated exceptional circumstances:

> *'There may sometimes be exceptional circumstances when it is appropriate to allow voluntary or administrative erasure prior to the conclusion of the fitness to practise process, even if a case falls into one of the categories above. These may include cases:*
> *b where the Allegation […] is at the lower end of the spectrum of seriousness of conduct that attracts a presumption of impairment and the fact that the likelihood of the doctor ever returning to practice is extremely remote due to the stage of their career, their retirement status and/or the length of time they have been out of practice amounts to an exceptional circumstance that would make it appropriate for erasure to proceed. For example, an isolated incident of a doctor prescribing without a licence.*
> *c where the doctor does not have capacity to understand the Allegations or to seek/act on legal advice [see paragraphs 53 to 57 below]*
> *d where the doctor is suffering from a terminal or very serious illness and there is no prospect they will recover sufficiently to practise medicine again'*

46. We were invited to consider if Dr Wilson met those paragraphs, or that any elements of those paragraphs that are applicable in his case, albeit not entirely meeting the criteria, add up to exceptional circumstances in any event.

47. The Tribunal is not satisfied that the historic matter can be described 'at the lower end of the spectrum of seriousness'. An allegation of sexual motivation is one of the most serious that a doctor can face as it offends against multiple basic tenets of the medical profession. The presumption of impairment is a proper safeguard that such allegations should be ventilated and adjudicated upon at a hearing.

48. XXX

49. XXX

50. The VE guidance goes on to state:

> *'VE … should usually be refused or advised against if the Allegations against the doctor carry a presumption of impairment and the presumption is not rebutted because the Allegations are too serious and/or no exceptional circumstances apply. In these cases, the fitness to practise process should be allowed to proceed in the normal way.'*

51. The Tribunal is satisfied that the Allegation as it relates to the sexually motivated matters carries a presumption of impairment. They are serious matters and no exceptional circumstances apply. Furthermore, the public interest requires that the GMC be permitted an opportunity to continue with its investigations into the dishonesty matter. For all of those reasons, the Tribunal has decided to refuse the application for voluntary erasure, and this case will proceed to stage two.

ANNEX C – 15/03/2022

Service and Proceeding in Absence

1. This determination will be read in private. However, as this case concerns Dr Wilson's misconduct, a redacted version will be published at the close of the hearing XXX.

2. The case was heard in July 2021 and closed on day 15 with facts having been found proved, and an application for voluntary erasure having been refused. Annex A (relating to Dr Wilson not being present) and Annex B (voluntary erasure) recount the live issues as the case stood in July 2021. On Day 16 of this hearing, the first day following an adjournment of nearly 8 months, Dr Wilson was neither present nor legally represented.

Evidence

3. The Tribunal received a letter, dated 11 March 2022, from the Medical Protection Society (MPS), who had represented Dr Wilson at earlier stages of this hearing. The letter states that the MPS no longer represented Dr Wilson, XXX.

4. XXX

Submissions

5. Ms Katie Jones, on behalf of the GMC, submitted that XXX there is no new information XXX to assist the Tribunal XXX.

6. Ms Jones submitted that, as this hearing was being reconvened, there was no duty on the GMC to provide notice of it, and therefore no duty to prove service. Further, Ms Jones submitted that Dr Wilson's wife was present as an observer to this hearing and therefore Dr Wilson was aware of the hearing taking place.

7. Ms Jones submitted that Dr Wilson had not made an application to adjourn these proceedings. Dr Wilson had voluntarily absented himself XXX as he felt unable to engage with this hearing. Ms Jones submitted that there is therefore no evidence to suggest that adjourning today would mean Dr Wilson was likely to attend in the future.

8. Ms Jones submitted that there was also no unfairness in proceeding with the hearing, as it was in everyone's interest, and in the interests of justice, for this hearing to proceed.

The Relevant Legal Principles

9. The LQC ascertained that Dr Wilson's wife was only present as an observer and not as a representative. He indicated that she may seek to make representations if she wished and should inform the Tribunal if she decided to do so. The LQC advised it was not necessary to show service, but that the Tribunal should consider whether or not to proceed in the absence of Dr Wilson.

10. The Tribunal also noted that despite earlier correspondence relating to a reconsideration of voluntary erasure, there had not been a new application made by or on behalf of Dr Wilson. The Tribunal decided there was no live issue to consider as regards voluntary erasure.

11. The Tribunal bore in mind that Dr Wilson has a right to be present and represented, but that this can be withdrawn if the Tribunal find that he has deliberately or voluntarily absented himself.

12. In making its decision on whether or not to proceed with Dr Wilson's hearing, the Tribunal had regard to fairness, and the nature and circumstances of Dr Wilson's absence. It also had regard to: whether an adjournment today may mean Dr Wilson is likely to attend in future; the length of any such adjournment; any disadvantages that proceeding in absence may cause; the risk that the Tribunal may reach an improper conclusion; and the impact an adjournment may have on Dr Wilson, the GMC and the public interest in this hearing. In addition, The Tribunal noted that it should consider the time and resources used by the MPTS when adjourning and reconvening a hearing.

13. The Tribunal was mindful that if this hearing was to proceed in Dr Wilson's absence, then it should consider and explore any weaknesses in the GMC's case, and that the GMC had a professional duty to bring to the Tribunal's attention to any matters that go towards Dr Wilson's favour.

The Tribunal's Decision

14. The Tribunal was mindful that the GMC did not need to provide notification of this reconvened hearing. However, it noted that the letter from the MPS was written a few days before the start of the reconvened hearing, which included the dates of the hearing. In

addition, the Tribunal noted that Dr Wilson's wife was in attendance and indicated she had been in communication with Dr Wilson about the hearing. The Tribunal therefore found that Dr Wilson was likely to be aware of this reconvened hearing.

15. The Tribunal noted that Dr Wilson had not made an application to adjourn. It also considered that XXX, there was a diminishing likelihood of him being able to appear at any future hearing. The Tribunal considered that whilst Dr Wilson had not 'voluntarily' absented himself, XXX he was unable to attend at present or within a reasonable time in the future.

16. The Tribunal considered that there was a public interest in proceeding with this hearing, and that it was also in Dr Wilson's interest to conclude these matters. Given the circumstances, it therefore determined to proceed in Dr Wilson's absence.

17. The Tribunal was mindful that, throughout its deliberations, it would not draw an adverse inference from Dr Wilson's absence, as a reasonable explanation for it had been submitted and it would therefore be unfair for it to do so. That was for the full reasons which were previously given in Annex A.