

PUBLIC RECORD

Dates: 19/08/2024 - 27/08/2024

Medical Practitioner's name: Dr Fabrizio DE RITA
GMC reference number: 7384721
Primary medical qualification: Laurea 2007 Universita degli Studi di Brescia

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

Summary of outcome

Erasure
Immediate order imposed

Tribunal:

| | |
|--------------------------|--------------------|
| Legally Qualified Chair: | Miss Debi Gould |
| Lay Tribunal Member: | Mr James Riley |
| Medical Tribunal Member: | Mr Julian Williams |
| | |
| Tribunal Clerk: | Miss Emma Saunders |

Attendance and Representation:

| | |
|-----------------------|------------------------------|
| Medical Practitioner: | Not present, not represented |
| GMC Representative: | Ms Niamh Ingham, 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 - 23/08/2024

Hearing in Private

1. The Tribunal agreed, in accordance with Rule 41 of the General Medical Council (GMC) (Fitness to Practise Rules) 2004 as amended ('the Rules'), that parts of this hearing should be heard in private where the matters under consideration are confidential, XXX. As such, this determination will be read in private, but a redacted version will be published at the close of the hearing.

Background

2. Mr De Rita qualified in 2007. At the time of the events which are the subject of this Allegation, Mr De Rita was practising as a Consultant XXX Surgeon at the Freeman Hospital, Newcastle Upon Tyne NHS Foundation Trust ('the Trust'). He had been in this post from January 2016, and had previously worked at the Trust as a Surgical Registrar on XXX ('the Unit').

3. The allegations that have led to Mr De Rita's hearing relate to alleged conduct towards Person A, XXX. It is alleged by the GMC that, between May 2022 and January 2023, Mr De Rita behaved inappropriately towards Person A, including making inappropriate sexual gestures, 'pinging' her bra strap, and grabbing her left breast over her scrubs and bra. It is further alleged by the GMC that Mr De Rita's conduct was sexually motivated, constituted sexual harassment, and was an abuse of his position.

4. Person A has worked for the Trust for XXX. She first met Mr De Rita around XXX. No concerns arose until the latter part of 2022. The reported incidents allegedly occurred whilst both Mr De Rita and Person A were working at the Unit.

5. Dr C, Medical Director at the Trust made a referral to the GMC on 16 June 2023 following a local investigation. This investigation occurred as a result of Person A telling a colleague about an incident involving Mr De Rita which occurred on 5 January 2023. The colleague reported the incident to XXX on that day and she then escalated matters.

The Outcome of the Application made during the Facts Stage

6. On 19 August 2024 the Tribunal determined that service of the notice of this hearing had been effected in accordance with Rule 40 of the Rules, and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended. The Tribunal also determined to proceed with the hearing in Mr De Rita's absence in accordance with Rule 31 of the Rules. The Tribunal's full decision on these matters is included at Annex A.

The Allegation and the Doctor's Response

7. The Allegation made against Mr De Rita is as follows:

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

1. Between May 2022 and 5 January 2023, you behaved inappropriately towards your colleague, Person A, in that:

a. on one or more occasions, you made inappropriate gestures towards Person A, in that you:

i. pointed at Person A's breasts;

To be determined

ii. gestured your hands in the air as if to be pinching Person A's nipples;

To be determined

b. you told Person A that she was, 'going red', or words to that effect following your actions as set out at paragraph 1a;

To be determined

c. on a date in 2022, whilst in the MDT room, you pulled Person A's chair towards you on one or more occasions, despite Person A moving the chair away;

To be determined

d. on 25 October 2022, you sent WhatsApp messages to Person A’s personal mobile telephone number, as set out in Schedule One;

To be determined

e. on a date in or around November 2022 you pinged Person A’s bra strap by pulling it and letting it go;

To be determined

f. on 5 January 2023 you grabbed Person A’s left breast on top of her scrubs and bra.

To be determined

2. Your actions as set out at paragraph 1:

a. were sexually motivated;

To be determined

b. constituted sexual harassment as defined in Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of Person A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Person A;

To be determined

c. were an abuse of your position.

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

Witness Evidence

8. The Tribunal received oral evidence on behalf of the GMC from Person A on 19 August 2024. Person A’s GMC witness statement was dated 26 September 2023 and she had provided an initial statement to the Trust by email on 12 January 2023.

9. 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:

- Ms D, Director of Operations for the XXX Clinical Board at the Trust. Her GMC statement was dated 12 March 2024;

- Ms E, XXX for the Unit at Freeman’s Hospital at the time of the events. She is now XXX for the Unit as of June 2023. Her GMC statement was dated 13 March 2024. She provided a statement for the Trust’s investigation dated 11 January 2023;
- Ms F, XXX at Freeman’s Hospital. Her GMC witness statement was dated 2 April 2024. She provided a statement for the Trust’s investigation dated 17 February 2023;
- Person B, XXX on the Unit at Freeman’s Hospital. Her GMC statement was dated 8 April 2024. She provided a statement for the Trust’s investigation dated 11 January 2023;
- Ms G, XXX on the Unit at Freeman’s Hospital. Her GMC statement was dated 8 April 2024. She provided a statement for the Trust’s investigation dated 12 January 2023.

10. Mr De Rita provided his own witness statement, dated 15 May 2024. He made it clear that he denied the allegations made against him. Mr De Rita also referenced receiving a lack of support from the Trust, and referred to his resignation from the Trust effective 18 June 2023. Mr De Rita reiterated that he continued to deny the allegations, stated that he had withdrawn his GMC licence to practise, and that he meant no discourtesy to the GMC or Tribunal but had no intention of engaging with this process. Mr De Rita further stated that he had left the U.K. and was now practising overseas. The Tribunal was also provided with the transcripts of two interviews of Mr De Rita which occurred during the Trust’s investigation in which Mr De Rita maintained his denial.

Documentary Evidence

11. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included:

- Investigation Report by the Trust dated April 2023;
- Various meeting notes of the investigation interviews held by the Trust, including: Person A dated 19 January 2023, Ms G dated 24 January 2023, Ms D dated 31 January 2023, Person B dated 9 February 2023, and Mr De Rita dated 6 February 2023 and 3 April 2023.
- A screenshot of the WhatsApp messages between Mr De Rita and Person A, namely on 28 April 2022 and 25 October 2022;
- A handwritten sketch by Person A setting out the layout of the Unit.

The Tribunal's Approach

12. The Legally Qualified Chair (LQC) gave legal advice to the Tribunal.

13. In reaching its decision on facts, the Tribunal should bear in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Mr De Rita does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred. The Tribunal should not draw any adverse inference against Mr De Rita due to his absence.

14. The Tribunal must guard against drawing conclusions without reference to the evidence that it has heard, and it must not speculate about matters that do not form part of the evidence or are unrelated to the Allegation.

15. In this case there is a stark factual dispute between Mr De Rita and Person A. When assessing Person A's evidence, the focus should be on its content rather than Person A's demeanour while giving evidence. When assessing her credibility, the Tribunal should take account of the unreliability of memory and consider and test the evidence by reference to objective facts. The LQC referred to the words of Mr Justice MacDonald in *Cumbria County Council v R (Special Guardianship Order or Interim Care Order)* [2019] EWHC 2782 (Fam):

“Rather than attempting to assess whether testimony is truthful from the way it is given, the only objective and reliable approach is to focus on the content of the testimony and to consider whether it is consistent with other evidence {including evidence of what the witness has said on other occasions} and with known or probable facts.”

16. In this case there is no contemporaneous documentary evidence to assist the Tribunal. The evidence consists of conflicting oral accounts. The Tribunal is entitled to place substantial reliance upon the evidence of Person A in preference to Mr De Rita's account if it concludes that her evidence is credible and reliable. Mr De Rita has made flat denials of most of the conduct alleged or provided a different version of events in relation to other parts. The task of the Tribunal is to assess all the evidence, including the surrounding circumstances and the accounts of other witnesses and determine whether the core allegations are true.

17. The reliability of Person A should be assessed by factors such as the internal consistency of her account, whether it has been consistent over time, its quality, whether she has ulterior motive for making an allegation which may indicate lack of candour and/or any factors relating to her credibility. The Tribunal should also consider whether there is any evidence to support her account.

18. Although Mr De Rita did not give oral evidence, his witness statement and answers during the Trust investigation should be considered but the Tribunal can take into account, when assessing their weight, that Mr De Rita has not given oral evidence and his account has not been tested in cross examination.

19. The Tribunal should also consider the length of, and the reasons for, any delay in complaining about any of the conduct alleged and ask whether or not the delay makes Person A's evidence more difficult to believe. We must not assume that a late complaint is bound to be false, any more than an immediate complaint would definitely be truthful. We must therefore consider the circumstances and in particular any reason given why a complaint was not made earlier and weigh all these matters when deciding whether Person A's evidence is truthful and reliable.

20. Person A told two other people about what she said happened on 5 January 2023. When deciding whether that account was correct or not, we should look at all the surrounding circumstances, in particular:

- i. the time between the alleged incident and the complaint
- ii. whether or not Person A had time to invent the account she gave
- iii. the context in which the complaint was made
- iv. any consistency/inconsistency between that complaint and her account in evidence.

21. If, having looked at all the circumstances, we accept Person A's evidence about the incident itself, then her complaint can support her oral evidence.

22. The GMC has confirmed that there are no previous findings recorded against Mr De Rita. Mr De Rita is therefore a man of good character. This should be taken account of in Mr De Rita's favour when considering the Allegation and, in particular, when considering whether he would have behaved as alleged and, if so, whether that conduct was sexually motivated and/or amounted to sexual harassment.

23. The Tribunal should consider the inherent improbability of a man with an unblemished history and a long record of working in XXX surgery acting in the manner alleged by Person A. It would also be wrong to make any assumptions as to the reasons for Mr De Rita’s resignation as he made clear that in doing so he was not admitting any part of the Allegation.

24. The conduct is alleged to be sexually motivated. We have no direct evidence of this as it is a state of mind but we can draw inferences from the primary facts as we find them to be and the surrounding circumstances.

25. Conduct is sexually motivated when it was undertaken either in pursuit of sexual gratification or in pursuit of a future sexual relationship.

26. The LQC referred to the words of Mr Justice Mostyn in *Basson v GMC* [2018] EWHC 505 (Admin):

“the state of a person’s mind is not something that can be proved by direct observation. It can only be proved by inference or deduction from the surrounding evidence.”

27. The LQC also referred to the case of *Arunkalaivanan v GMC* [2014] EWHC 873 (Admin), in that behaviour may be inappropriate but that did not necessarily mean it was sexually motivated.

28. Section 26(2) of the Equality Act 2010 says that a person harasses another if they engage in unwanted conduct of a sexual nature, and (b) the conduct has the purpose or effect referred to in subsection (1)(b). This can include, but is not limited to, touching and can extend to words, gestures, and digital messaging. A person harasses another where their conduct has the purpose or effect of -

“(i) violating the other’s dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the other person.”

29. This requires us to consider subjective and objective elements: Person A’s perception of Mr De Rita’s conduct, the other circumstances of the case and whether it is reasonable for the conduct to have the effect felt by Person A. We must guard against hypersensitivity.

30. We will consider each paragraph of the Allegation separately and reach a separate decision in respect of each.

The Tribunal’s Analysis of the Evidence and Findings

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

Paragraph 1a(i) and (ii)

32. The Tribunal considered whether, between May 2022 and 5 January 2023, Mr De Rita behaved inappropriately towards his colleague, Person A, in that on one or more occasions, he made inappropriate gestures towards Person A, in that he:

- i. pointed at Person A’s breasts;
- ii. gestured his hands in the air as if to be pinching Person A’s nipples.

33. In reference to the timeframe, the Tribunal heard evidence from Person A that the inappropriate conduct started around August/September 2022. She said that the behaviour was happening once or twice a month, but it depended on the shifts that she and Mr De Rita were on.

34. The Tribunal had regard to Person A’s initial statement to the Trust dated 12 January 2023, in which she stated:

“We have had clashes over the years... regarding [XXX], nothing out of the ordinary [XXX].

However, the last few months of 2022, unsure when it started specifically, Mr De Rita had started to make inappropriate comments towards myself. This usually occurred when other members of staff or members of the public were not around.

These comments started off seemingly insignificant - pointing at my breasts and saying "I was going red". He would then start to make gestures towards my nipples - as if he was pinching them. I always laughed it off as I felt extremely uncomfortable about it. Always told him to "shut up" and "Go away".

35. Within Person A's GMC witness statement dated 26 September 2023, she stated:

"I wish to clarify that the 'unpleasant gestures' referred to[...] are when Mr De Rita would walk past me and gesture his hands in the air as if to be pinching my nipples. He would also point at my breasts. I don't think anyone was around to have seen these gestures and I think Mr De Rita was quite strategic as to when he did this. I found it uncomfortable and childish, not something a Consultant Surgeon would do."

36. The Tribunal took account of the meeting notes of the Trust's investigation interview with Person A on 19 January 2023, including:

"Interviewer: Anything pre-planned?"

Person A: I do not think so, think by chance

Interviewer: Were comments same type, seeming he would point to your breasts and say you were turning red

Person A: I was going Red, generally those type of comments yes."

37. The Tribunal noted the evidence of Ms G who said she had spoken with Person A about these matters on a few occasions, including:

"Person A described these to me as Mr De Rita moving his hands towards her breasts and making a tweaking type of gesture with his fingers and thumbs, like he was going to tweak her nipple. I can't recall if Person A demonstrated this to me or simply described it. She told me about this retrospectively during one of our conversations when I asked her if anything like this had happened before. I cannot recall which of our conversations this was and she did not tell me when this had occurred."

38. The Tribunal also had regard to Person A's oral evidence, in which she spoke about these allegations. She essentially stated that Mr De Rita's hand gesturing was to lift his hands to the level of her chest and point/gesture as if her were pinching her nipples. She demonstrated this action to the Tribunal when asked, which helped ensure that the Tribunal was clear about exactly what gesture was alleged. Person A did not, in her oral evidence,

separately describe Mr De Rita pointing at her chest. The Tribunal understood that any pointing was part and parcel of the pinching gesture rather than being separate and distinct conduct.

39. The Tribunal took account of the meeting notes of the Trust’s investigation interview with Mr De Rita on 6 February 2023, including:

“Interviewer: I can confirm that there is a complaint, just so I am certain you have not made any gestures to female members of staff about their breasts.

Mr De Rita: No, it could have been that I was tickling people

Interviewer: These are non-touching gestures

Mr De Rita: Like gesture to touch not touching

Interviewer: Yes

Mr De Rita: No way”

40. The Tribunal was clear that Mr De Rita continues to deny all of the allegations made against him and that he was specifically denying any gesture towards Person A’s breasts. The Tribunal noted Mr De Rita’s good character and took this into account in Mr De Rita’s favour when considering whether he would have behaved as alleged. The Tribunal also noted that Mr De Rita described his relationship with Person A as good.

41. The Tribunal considered whether there was any inconsistency in relation to Person A’s description of the frequency of the conduct alleged. The Tribunal noted the following recorded in the Trust’s investigation interview with Person A on 19 January 2023:

“Interviewer: You said last 8 months or so easter, before that or after. Hot period we had in the summer

Person A: Probably from the summer

Interviewer: How frequently estimate

Person A: Once or twice a week.

Interviewer: That often?

Person A: Yes, at times depends with how much we were at work.

Interviewer: Range at least once a week

Person A: Yes

Interviewer: Longest interval it did not happen?

Person A: Did not notice that

Interviewer: Always same format

Person A: Generally”

42. The Tribunal understood that Person A appeared to be referring to all of the behaviours by Mr De Rita that she was concerned about rather than the pinching gestures only. Although Person A told the Tribunal that the pinching gesture happened once every couple of weeks, the Tribunal did not consider this to be an inconsistency in Person A’s evidence. The Tribunal considered that the interviewer had not explored the frequency of each of the individual concerns, merely the conduct overall and considered that what might otherwise have been considered an inconsistency was in fact a lack of clarity. The Tribunal therefore concluded that this did not undermine Person A’s credibility.

43. The Tribunal considered that Person A had described quite fairly that she had had no problem with Mr De Rita as a surgeon and his treatment of her in that respect was no different to any of the other surgeons. What caused her concern was the gesturing, comments and actions directed towards her. Person A referred to rumours circulating in the Unit at the time about Mr De Rita’s personal relationships with other staff members but there was no suggestion that any of that conduct was unwanted, done without consent or was improper. Person A was also clear and specific about Mr De Rita’s gestures and comments and the incident of touching on 5 January 2023 and said she had not misconstrued any innocent action on his part. The Tribunal was unable to find any evidence of any motive on Person A’s part to make up these allegations.

44. The Tribunal was of the view that there was a reluctance on Person A’s part to complain including in relation to the incident of touching she described on 5 January 2023. The Tribunal considered whether this could be indicative of someone who did not want to complain because the allegations were false. The Tribunal rejected this explanation for a number of reasons.

i. Person A told the Tribunal she did not complain because she felt embarrassed. There was a degree of awkwardness at work already because of the tension XXX and she was in a junior position XXX compared to a consultant surgeon. She had not wanted to make a fuss of the conduct and was concerned that she would not be believed because of the relative status of herself and Mr De Rita.

ii. In her statement, Person B described that Person A later told her that *“she would feel really awkward about reporting it as she had to work with Mr De Rita [XXX]”*.

iii. Person A explained to the Tribunal that she had other, far more important matters on her mind relating to the health of a family member.

iv. XXX.

45. The Tribunal concluded that Person A's explanations were consistent with accounts given during the Trust's investigation, were given without exaggeration and were understandable. She gave her account candidly. The Tribunal did not consider that Person A was seeking to get Mr De Rita into trouble. In fact, Person A expressed feeling guilty about the potential impact of making a complaint on Mr De Rita. The Tribunal concluded that Person A had hoped that by ignoring Mr De Rita's behaviour, which she described as "childish" prior to 5 January 2023, it would stop. On 5 January 2023, however, matters escalated, Person A made an immediate, spontaneous complaint to several colleagues and matters were then taken out of her hands because Ms G reported her complaint to managerial staff. The Tribunal concluded that any delay in reporting the inappropriate behaviour which occurred before 5 January 2023 did not discredit Person A's account.

46. The Tribunal considered paragraphs 1(a)(i) and 1(a)(ii) of the Allegation separately. It was unable to clearly distinguish between these events. The Tribunal was clear that Person A's evidence about Mr De Rita gesturing with his hands as if pinching her nipples was consistent throughout each account she had given prior to her oral evidence and her oral evidence was also consistent with these. This was clearly the area of concern for Person A. The conduct was very distinct, and she demonstrated the action to the Tribunal when she was asked to do so. The Tribunal was of the view that this action was consistent with the pinching of the forefinger and thumb at chest height, as set out within the Trust interview notes with Person A.

47. The Tribunal considered Person A's evidence in respect of the pinching gesture to be factual, unexaggerated, and that she considered it to be embarrassing as she had at the time in question. The Tribunal heard from Person A that Mr De Rita's gesture caused her to go red, Mr De Rita found that amusing, laughed at her and commented that she was, "going red".

48. The Tribunal noted that Person A accepted that the ward area where incidents occurred was a busy ward. It was provided with the layout in a sketch. Person A said, however, that Mr De Rita only made these gestures when he would not be seen by others and that they only happened intermittently once or twice a month. The Tribunal again

considered that Person A was careful not to exaggerate and that she was describing opportunistic, rather than strategic, conduct.

49. In respect of paragraph 1(a)(i) of the Allegation, the Tribunal had little evidence about what happened or the context. It was not repeated in Person A's oral evidence. The Tribunal did not consider this to be an issue of credibility, rather that Person A's core concern was about Mr De Rita making the pinching gesture. It appeared to the Tribunal that this (pointing) was just part of that (lifting hands to chest height and making pinching gestures). Given the lack of clarity, the Tribunal could not be confident of a distinction between the pointing and the pinching gesture. The Tribunal therefore concluded that the GMC had not discharged the burden of proof as to this pointing at Person A's breasts. Accordingly, the Tribunal found paragraph 1(a)(i) of the Allegation not proved.

50. With regard to paragraph 1(a)(ii) of the Allegation, the Tribunal accepted Person A's description of what occurred. Further, the Tribunal was of the view that such conduct would be inappropriate. Person A and Mr De Rita were professional colleagues. They did not have a personal social relationship outside of work. Mr De Rita was in a senior position compared to Person A. The Tribunal were struck by Person A's mature response, which was to regard the behaviour as "*childish*". The Tribunal noted, however, that Person A was embarrassed, and felt ashamed, by the behaviour.

51. Having considered the evidence and the circumstances, the Tribunal determined that Person A's account of the pinching gesture was consistent through her written and oral accounts. It did not consider that the short delay in reporting had any impact on the reliability of her account. The Tribunal had regard to Mr De Rita's good character and the inherent probability of his engaging in such conduct. However, the Tribunal determined that the consistency in Person A's account, the description of her reaction and Mr De Rita's response and her decision about how to deal with it was supportive of her truthfulness. There was also no evidence of any motive that Person A might have to be making anything up. The Tribunal reminded itself that the demeanour of a witness should be approached with caution. However, the Tribunal considered that the manner in which Person A gave her evidence, particularly her reluctance and signs of embarrassment when demonstrating the pinching gesture, supported the credibility of her account.

52. In conclusion, the Tribunal concluded that it was more likely than not that Mr De Rita behaved inappropriately towards Person A in that he made an inappropriate gesture of his

hands in the air as if to be pinching her nipples. Accordingly, the Tribunal found paragraph 1(a)(ii) of the Allegation proved.

Paragraph 1(b)

53. The Tribunal considered whether, between May 2022 and 5 January 2023, Mr De Rita behaved inappropriately towards his colleague, Person A, in that he told Person A that she was, *'going red'*, or words to that effect following his actions as set out at paragraph 1(a).

54. The Tribunal had regard to the relevant evidence and conclusions referred to above in respect of paragraph 1(a) of the Allegation.

55. The Tribunal heard from Person A in her oral evidence about how the pinching gesture would happen, she would feel embarrassed and go red, Mr De Rita would then laugh and say something to her about her *'going red'*. Person A told the Tribunal that she felt that Mr De Rita understood that his actions were causing her embarrassment, that he would point it out to her, and then keep on doing the same thing again.

56. The Tribunal noted the evidence of Person B, a close friend of Person A, who described that Person A had stress reactions XXX.

57. When assessing the credibility and reliability of Person A's account, the Tribunal reminded itself of Mr De Rita's denial of this allegation, his good character and the improbability of his acting as described. The Tribunal noted that Mr De Rita flatly denied making the comments attributed to him.

58. Having considered the evidence and the circumstances, the Tribunal determined that Person A's account that Mr De Rita had told her she was *'going red'* following the pinching gesture was consistent throughout her written and oral accounts. The Tribunal considered that Person A had reacted to Mr De Rita's behaviour by going red in embarrassment, which was an understandable and reasonable reaction. The Tribunal found Person A's evidence to be persuasive and credible when she recounted this aspect and the consistency in her accounts was of assistance.

59. The Tribunal was of the view that a senior colleague making sexualised gestures to a junior staff member, seeing the embarrassment caused and then commenting on it, was wholly unprofessional. It was neither suitable nor proper in the circumstances. It was

exacerbated by the fact that the conduct was repeated on a number of occasions over a period of time in circumstances where Mr De Rita had seen the effect of his conduct on Person A but continued to engage in it.

60. In conclusion, the Tribunal concluded that it was more likely than not that Mr De Rita behaved inappropriately towards Person A in that he told her she was ‘going red’ or words to that effect following his actions in paragraph 1(a)(ii). Accordingly, the Tribunal found this paragraph of the Allegation proved.

Paragraph 1(c)

61. The Tribunal considered whether, between May 2022 and 5 January 2023, Mr De Rita behaved inappropriately towards his colleague, Person A, in that on a date in 2022, whilst in the MDT room, he pulled Person A’s chair towards him on one or more occasions, despite Person A moving the chair away.

62. The Tribunal had regard to Person A’s initial statement to the Trust dated 12 January 2023, in which she stated:

“Another occasion during a ward round he kept moving my chair close to his. I would move away and he would pull it back again. This happened 2/3 times. I do not know if others in the room noticed.”

63. Within Person A’s GMC witness statement dated 26 September 2023, she stated:

“On another occasion during ward round, Mr De Rita repeatedly pulled my chair towards him. I don’t recall the date of the ward round however I remember it being a weekend shift, near the end of 2022, as there were only few staff members in the MDT room. I was sat on a wheelie computer chair at the back of the MDT room facing the patient detail screen, and Mr De Rita was sat on my left side on a similar chair. He leant over to pull my chair in, and I shuffled back, and he would do it again. Mr De Rita was smirking, so I think he found it funny. This happened around 2-3 times over 5 to 10 minutes. I believe that [XXX], Dr [H], sat on my right, may have given Mr De Rita a disapproving look and might have been why he stopped. My impression was that Mr De Rita was trying to be funny and flirt with me.”

64. The Tribunal took account of the meeting notes of the Trust’s investigation interview with Person A on 19 January 2023, including:

“Interviewer: Another occasion when he keeps moving his chair around

Person A: Yes, Desk chair in MDT room kept scooping my chair next to his closer or scooting his chair over. One of our doctors noticed and said will you stop moving that chair.

Interviewer: Was this the morning ward round.

Person A: Must’ve been Weekend

Interviewer: Before or after the pinged your bra strap?

Person A: Before

Interviewer: He is moving his chair towards you and you’re moving away. He is pulling your chair towards him and is chasing you around the room

Person A: Happened two times really. Was a bit of a push and pull

Interviewer: Why was he doing this?

Person A: Trying to be funny, tries to make me feel awkward

Interviewer: How does being funny make you feel awkward?

Person A: Knows that he has been talking to me and making gestures, I am possibly overthinking it.

Interviewer: Did it make you feel awkward?

Person A: A little bit, more people in the room a little annoying more than anything. Trying to sit and listen.

Interviewer: Do you think he was trying to get close to you to touch you again

Person A: I do not know

Interviewer: Have you seen him do this with anyone else. The chair situation

Person A: Not that I can think of.”

65. The Tribunal took account of the meeting notes of the Trust’s investigation interview with Mr De Rita on 6 February 2023, including:

“Interviewer: There is also a complaint that, in late October early November you were in MDT sitting down and one of our female colleagues was sat in the meeting and you manoeuvred your chair or you manoeuvred that colleagues chair to be next to you.

That colleague moved their chair away again and you manoeuvred your chair again

Mr De Rita: This is becoming ridiculous; we are doing MDT in a small room for the amount of people that there are. Surgeons are there all the time and most of the time I am sat outside of the room. MDT is like cubicle, there is a double door. I either stand

or sit by the bin to give seats to all people that are coming in. Again, I cannot believe people are saying something like this

Interviewer: Just to be clear you do not recall in an MDT sitting on a chair and moving your chair close to another female member of staff and that member of staff moving away

Mr De Rita: Not at all, what would be the reason be other than making space for people. We were initially restricted to 6 people in a room. Now we can sit more people there are no seats. Most of the time in MDT I sat on the floor to give people seats.”

66. The Tribunal was clear that Mr De Rita continues to deny all of the allegations made against him. The Tribunal noted his good character and referred to the comments and conclusions it has made as to improbability and motive, as set out above. It also had regard to his comments that the other reason or explanation would be for making space for people.

67. Having considered the evidence and the circumstances, the Tribunal determined that Person A’s account of the pulling of the chair was consistent throughout her written and oral accounts. It accepted, as more likely than not, that Mr De Rita pulled Person A’s chair towards him, she pulled away, he then pulled her chair towards him again before she then pulled away again.

68. Person A’s evidence was that she thought that Mr De Rita was trying to be funny. The Tribunal noted that Mr De Rita had flatly denied this allegation. The Tribunal also noted that although the other doctor present who was said to have indicated his disapproval, has been named, there is no statement from that doctor. The observer’s reaction, as described by Person A, was of irritation. The Tribunal further reminded itself, however, of Person A’s description of Mr De Rita’s conduct towards her generally as ‘childish’.

69. The Tribunal noted that this incident took place in a small room where quite a few people needed to fit in to hear what others were presenting at the MDT. It bore in mind Mr De Rita’s rhetorical question in interview, however, the Tribunal reminded itself that Person A explained that this happened on a weekend and so there were fewer people in the room than usual.

70. The Tribunal referred to its comments above as to motive and improbability. The Tribunal found Person A’s evidence to be persuasive and credible when she recounted this aspect and her accounts are mutually consistent.

71. For the reasons explained previously, the Tribunal considered Person A's categorisation of the behaviour as childish to be accurate. It occurred in the context of a ward round handover where Person A XXX, needed to know what was going on. Such behaviour, by a consultant XXX, has no place in a professional context where important information about patient care is being relayed. The behaviour in the pulling of Person A's chair was repeated by Mr De Rita despite the clear indication by Person A in moving away that this was unwanted. The apparent look of irritation from another member of staff in the room also suggested that this person did not see any reason to make space for other staff. The Tribunal found that as a result of the context in which the incident occurred, the nature of the relationship between the parties and the repetition of the behaviour it was unprofessional and therefore inappropriate.

72. In conclusion, the Tribunal concluded that it was more likely than not that Mr De Rita behaved inappropriately towards Person A whilst in the MDT room in that he pulled her chair towards him on one or more occasions despite Person A moving the chair away. Accordingly, the Tribunal found this paragraph of the Allegation proved.

Paragraph 1(d)

73. The Tribunal considered whether, between May 2022 and 5 January 2023, Mr De Rita behaved inappropriately to Person A, in that on 25 October 2022, he sent WhatsApp messages to Person A's personal mobile telephone number, as set out in Schedule One.

74. The Tribunal noted that there was no dispute as to the sending or content of the messages. The totality of the WhatsApp messages between Person A and Mr De Rita consisted of a sharing of contact details by Person A on 28 April 2022, with Mr De Rita saying "Thanks" and a thumbs up emoji, and the following messages on 25 October 2022:

Mr De Rita [06:09]: *Hi Person A Do you have [XXX] for today's case? Fab*

Person A [06:28]: *Not sure, [XXX]- it's [Ms I]. I'm not sure yet*

Mr De Rita [06:30]: *Be sure [heart exclamation emoji]*

Mr De Rita [06:30]: *That there is a [[XXX] emoji] [heart exclamation emoji]*

75. Person A made clear that the messages on 28 April 2022 were entirely acceptable to her and related to the sharing of details regarding a charity event that she and Mr De Rita, as well as others in the hospital, were attending.

76. In relation to the 25 October 2022 messages the Tribunal was told that an emergency on the ward at 5am affected XXX. Mr De Rita was due to operate that morning and was concerned about whether the operation would take place because of what had happened. Person A stated that she believed that Mr De Rita knew she was working on the ward as she thinks he saw her come into work the previous night.

77. In her GMC witness statement dated 26 September 2023, Person A said:

“On 25 October 2022, I received a WhatsApp message from Mr De Rita asking whether [XXX]....It wasn’t usual practice to message someone personally regarding [XXX]; usual practice would be for the surgeon to ring [XXX] or if not available, there are several phones to call such as the intensive unit, the registrar’s, or [XXX] office phone. It was common for a surgeon to ring from their own phone or their desk phone. For context, Mr De Rita’s message was at 6:09am. The Unit was in the middle of an emergency situation; I believe there was a cardiac arrest we were attending to. I understood Mr De Rita to have WhatsApp’d me to suggest that he expected [XXX] for his theatre case despite what was going on in the Unit. At the time I was too busy to notice the strange emojis in the message, but I since saw these and can only interpret them as Mr De Rita trying to flirt or be funny. I didn’t reply to Mr De Rita’s last message at 06:30am.’

78. The Tribunal took account of the meeting notes of the Trust’s investigation interview with Mr De Rita on 6 February 2023, including:

“Interviewer: ...we come to Tuesday the 25th of October 2022. So this message comes at 06:10 in the morning. Hi do you have [XXX] for today’s case Fab. Would you normally be texting people at 6 am in the morning?

Mr De Rita: I thought because she was on duty during the night. If I ask if there was [XXX] at 6 in the morning, it is because at that time, we wait to be told to go ahead with a case.

Interviewer: Understand that would it be normal to use social media to contact [XXX] to see if there is [XXX]?

Mr De Rita: If I have them on social media otherwise I ring the hospital

...

Interviewer: Wouldn’t it simpler to ring [XXX]

Mr De Rita: That’s probably what I do most of the time

...

Interviewer: ... why not use an exclamation symbol, does that mean more?

Mr De Rita: ... This is the language of the emoji where you use smiley face, you have smiley face with hearts on eyes, that means you are happy to see something

Interviewer: ... to be certain the emoji with a love heart you did not mean that to mean anything special.

Mr De Rita: No, it's the same with make there is [XXX] why I have not written [XXX], because you write [XXX] and automatically emoji comes up

...

Interviewer: To you the emoji does not mean anything?

Mr De Rita: For me it does not mean anything

Interviewer: So why put it on in the first place

Mr De Rita: It comes up automatically as emoji..."

79. The Tribunal had regard to Mr De Rita's explanation for sending the message, the fact of the emergency and his concern about availability of XXX for his patient, and the use of emojis. The Tribunal further noted that the GMC has not produced any expert examination or information regarding whether Mr De Rita's phone behaves as described but noted that it is consistent with members' own use of WhatsApp. The Tribunal also noted that, when asked what she thought the message was about, Person A said it was about the availability of XXX. The Tribunal noted Mr De Rita's explanation for the text and the emojis and their nature. The Tribunal considered that Mr De Rita's explanation was not implausible.

80. The Tribunal accepted Person A's evidence that other means of communication are routinely used to make the enquiry which Mr De Rita made. The Tribunal noted, however, that both messages were sent in short succession after Person A's reply at 6.28am and that this followed an emergency which could have affected XXX. The Tribunal also noted that Person A's evidence was that she had not found the messages to be problematic at the time. Her main query was why Mr De Rita was contacting her using WhatsApp not the emojis used. There were no other messages, no follow up by Mr De Rita and no other communication using social media. The Tribunal acknowledged that there were other ways of contacting the relevant individual regarding XXX, however, it also noted that in her oral evidence, Person A used WhatsApp to contact fellow staff in the department about rotas. Person A also told the Tribunal that it was not unheard of that a doctor would message XXX, or vice versa, on personal mobile phones about XXX. Finally, the Tribunal noted the innocuous communication between Mr De Rita and Person A in April 2022, which was an example of surgeons messaging XXX. Finally, the Tribunal noted Mr De Rita's explanation for why he messaged at all and the automatic nature of the emojis. The Tribunal determined that Person A's concern

about these messages has been understandably affected, with the benefit of hindsight, by later events.

81. Having considered all of the evidence and the circumstances, the Tribunal determined that there was a plausible explanation for the texts and the use of the emojis. Although the Tribunal considered Mr De Rita's actions to be ill-judged, it did not consider that the behaviour was inappropriate. The Tribunal determined that Mr De Rita had provided an alternative explanation for messaging Person A. It further concluded that the emoji use was unfortunate but also explainable.

82. The Tribunal therefore concluded that the GMC had not discharged the burden of proof as to the inappropriate nature of the messages on the evidence before it. Accordingly, the Tribunal found this paragraph of the Allegation not proved.

Paragraph 1(e)

83. The Tribunal considered whether, between May 2022 and 5 January 2023, Mr De Rita behaved inappropriately towards his colleague, Person A, in that on a date in or around November 2022 he pinged Person A's bra strap by pulling it and letting it go.

84. The Tribunal had regard to Person A's initial statement to the Trust dated 12 January 2023, in which she stated:

"During ward round approximately November 2022, I [XXX] was dipping in and out of ward round and so sat in the airlock of the MDT room. Mr De Rita sat behind me and pinged the back of my Bra, I moved away and ignored him."

85. Within Person A's GMC witness statement dated 26 September 2023, she stated:

*"In November 2022 Mr De Rita pinged my bra strap whilst we were in the airlock area of the MDT meeting room listening to a ward round...
... Mr De Rita was sat behind me, but I can't recall if Mr De Rita was stood. He was within arm's reach... Mr De Rita pinged the clasp area of my bra by pulling it and letting go. He did this over my scrubs... I found it irritating and turned around to look at him. Mr De Rita was smirking; I think he found it funny. I shuffled myself further towards the edge of the bin to be out of arms reach as I couldn't leave the ward round but still wanted to get away from Mr De Rita."*

86. The Tribunal took account of the meeting notes of the Trust’s investigation interview with Person A on 19 January 2023, including:

“Interviewer: All of a sudden you feel someone pulling your bra strap

Person A: Yes

Interviewer: How did you feel?

Person A: Really really uncomfortable, personal thing. Underwear. It is also childish.

Not nice

Interviewer: Difficult for you to say anything in that context

Person A: Absolutely, busy ward round. Lots of people, discussing patients

Interviewer: Did he stand by you or pinged bra strap and carried on walking in?

Person A: Stood by me until my phone rang again and I left.

Interviewer: Did you say anything

Person A: No... Turned around and gave him a look.”

87. The Tribunal took account of the meeting notes of the Trust’s investigation interview with Mr De Rita on 6 February 2023, including:

“Interviewer: Also, a complaint that during an MDT meeting... you pulled that members bra strap...

Mr De Rita: No way

...

Interviewer: Do you think there are gestures which were incorrectly interpreted

Mr De Rita: I have to believe my gestures were misinterpreted or [misconstrued] or whatever because I have respect for people, and I do not do these things.

Interviewer: What gestures might be interpreted. Can you show me?

Mr De Rita: If you get close to people you know on a daily basis, you put hands on their back or on the shoulder. I have not touched anybody deliberately with sexual intention.”

88. The Tribunal had regard to Person A’s evidence. It considered that the core elements of her account are consistent. She described the location where she had been sat and the opportunity that Mr De Rita had taken to ping her bra strap.

89. The Tribunal considered Mr De Rita’s response in the Trust interview that he might have just touched Person A on the back. The Tribunal was mindful that there was a significant

distinction between a touch on the back and a pinging of a bra strap. The Tribunal asked Person A about this. She was very clear that it was a pinging and not merely a touch to her back. She described moving away from Mr De Rita. The Tribunal understood that she did not shout or say anything to Mr De Rita as the meeting was going on, she was trying to act professionally and there were important matters with the ward round that were being discussed.

90. The Tribunal considered Mr De Rita's explanation. It noted that he had offered no reason why he might have touched Person A on the back in the situation that they were in. He did not suggest he was seeking to speak to her, asking her to move her head so he could see the presentation or any other reason.

91. The Tribunal found that Person A had given a description of this specific event consistently over a period of time to a number of people. Although she had not complained immediately, the Tribunal found this unsurprising given the context and Person A's wider situation at that time. The Tribunal also found Person A's evidence to be persuasive and credible when recounting what occurred.

92. The Tribunal was of the view that such behaviour was inappropriate and childish, especially given the professional context in which Mr De Rita and Person A were working, and their lack of any personal relationship outside of work. The behaviour in the pulling and letting go of the bra strap, an intimate piece of underwear, was an unwanted invasion of Person A's personal space.

93. Having considered the evidence and the circumstances, the Tribunal concluded that it was more likely than not that Mr De Rita behaved inappropriately towards Person A in that he pinged Person A's bra strap by pulling it and letting it go. Accordingly, the Tribunal found this paragraph of the Allegation proved.

Paragraph 1(f)

94. The Tribunal considered whether, between May 2022 and 5 January 2023, Mr De Rita behaved inappropriately towards his colleague, Person A, in that on 5 January 2023 he grabbed Person A's left breast on top of her scrubs and bra.

95. The Tribunal had regard to Person A's initial statement to the Trust dated 12 January 2023, in which she stated:

“On Thursday 5th January at approximately 1300-1330hrs- Mr De Rita had taken my patient to theatre. He was on the unit once he was finished in theatre. I was stood at the sluice doorway, with my foot keeping the door open and my back to the door. My Colleague... [Person B] was in the sluice and [Ms G] was further down the corridor.

I asked Mr De Rita how my patient was in theatre and if they were done. He told me to get back into my cubicle as she is back and was laughing throughout this, as if it was a joke. I laughed with him and told him I didn't believe him. He came closer to me, pointed through the sluice door window and said “what's that”. I looked to where he was pointing, at this point he grabbed [my] left breast.

I was in shock so threw my green gown at him and told him to “bugger off”. He left laughing.

I burst into the sluice where [Person B] still was (I was unsure if [Person B] had seen exactly what had occurred) and we both looked at each other in shock and started laughing in shock and disbelief. [Ms G] came and joined us. We all said “what the hell just happened”. I explained to them exactly what he did. We spoke about it as if it was a joke initially.

...

I subsequently went to the [XXX] office with [Ms E] and [Ms F] to discuss what had occurred between myself and Mr De Rita, I was extremely distressed and upset...”

96. Within Person A's GMC witness statement dated 26 September 2023, she stated:

“In the early afternoon of 5 January 2023, I was in the sluice door of the Unit, next to and facing the entrance of the Unit... [Person B], was in the sluice room itself to discard of dialysis fluid from a patient. I kept my foot in the door to keep it ajar.

...

[Mr De Rita] then came within arm's reach and grabbed my entire left breast, on top of my scrubs and bra. His hand and fingers were splayed out in what I would describe as a claw shape. He grabbed me for around 2-5 seconds before moving away. I threw my green gown at him and told him to ‘bugger off’. Mr De Rita left laughing.

I don't think [Person B] saw Mr De Rita grab me as she was inside the sluice room. I had my back to [Ms G] and so I don't think she saw either... I then told [Person B] and

[Ms G] what had happened whilst we were in the sluice room. Mr De Rita's actions made me feel uncomfortable and awkward for the rest of the day and my shift didn't finish until the evening. It felt as if Mr De Rita's hand was lingering on me for the rest of the day."

97. Person A also explained about speaking with Ms G, Ms E and Ms F in respect of reporting the incident.

98. The Tribunal took account of the meeting notes of the Trust's investigation interview with Person A on 19 January 2023, including:

"Person A: Sluice door has a window and he pointed at it and said what's that over there. Me being gullable me, looks through the window. He then goes to grab my boob.

... Interviewer: Does he hold on to your breast

Person A: No, just a definite grab

Interviewer: Could it be mistaken for anything else, falling over?

Person A: No, absolutely not

...

Interviewer: Then what did you say

Person A: Threw green theatre gown at him and told him to bugger off

Interviewer: Did Mr De [Rita] notice [Person B] was in the sluice

Person A: Do not know, have a feeling he did not

Interviewer: You tell him to bugger off, face to face, arm's length, you have a gown, he just stood there?

Person A: Walked away and laughed, towards theatre

Interviewer: Did you say anything as he walked away?

Person A: No just walked into sluice

Interviewer: How where you then

Person A: In shock, burst out laughing in shock. Never expect that to happen. [Ms G] came down to the sluice. We all started laughing. Kind of reenacted it for the girls."

99. The Tribunal took account of the meeting notes of the Trust's investigation interview with Mr De Rita on 6 February 2023, including:

"Interviewer: Then you say with one hand or another hand you used your second finger which finger is that?"

Mr De Rita: **Gestures*(index finger)*

Interviewer: *... Show me on yourself whereabouts you touched [XXX]?*

Mr De Rita: **Gestures/ points towards upper chest area**

Interviewer: *If we were to be anatomical is that at the level of the collar bone*

Mr De Rita: *I think if the question is was I intended to touch, I was not intended to touch her breast not intended to touch her in a sexual way at all. Soft touch as like a tickling or something like that. No intention no way I sexually touch people in a work environment or outside work environment.*

Interviewer: *So did you say you touched her breast?*

Mr De Rita: *I touched her chest. I suspect if we are here I either accidentally touched her breast without acknowledging.*

... Interviewer: *Is it possible you might have inadvertently touched her breast?*

Mr De Rita: *Possible that I inadvertently done it, otherwise I would not be here.*

... Interviewer: *What happened after you touched the member of staff?*

Mr De Rita: *We had a laugh and she looked, got caught by surprise. We made a laugh about it and then I leave... She got caught by surprised so she jumped like if you receive something unexpected, but she did not tell me anything aggressive. She did not shout at me. Remained in the joke type of conversation we were in before then I left and when I came back I said [XXX] and I leave.*

Interviewer: *Just going back, you touched this member of staff, you continued to joke and have a conversation can you tell me what you spoke about?*

Mr De Rita: *No, no further conversation. She reacted like something happened unexpectedly I had a laugh. She did not say anything like what are you doing, did not get the impression I did anything wrong as there was no reaction and no further discussion at that stage. [XXX]"*

100. The Tribunal also took account of the evidence of Person B and Ms G. They did not see a grabbing of the breast but they did hear that something had occurred and spoke with Person A directly after it happened. In her statement for the Trust's investigation dated 11 January 2023, Person B said that:

"I heard some movement, and felt the impression that something strange had occurred. Person A then told [Mr] De Rita something similar to 'buggar off'. I turned around and Person A burst into the sluice in shock stating that he had just grabbed her breast. We initially started laughing in disbelief, however, I know Person A very well and could see that [XXX] - therefore I knew she was distressed to some degree..."

Person A later on became tearful about the event, worrying that Mr De Rita is a Consultant Surgeon and that she works [XXX] with him and did not know how to manage the situation.”

101. In her statement for the Trust’s investigation dated 12 January 2023, Ms G said that:

“There was a short conversation between them that I couldn’t hear what was said, apart from I heard Mr de Rita say loudly several times 'get back in that cubicle' and [Person A] reply that she was 'tidying up'. I then heard a loud noise/commotion which made me look up in their direction. I did not see [Person A] but saw Mr de Rita stood outside the sluice, his head turned to face me. He was stood still; eyes were wide open and he had a facial expression that I would have described as 'rabbit in headlights'. We made eye contact for a few seconds before Mr de Rita turned and left the unit.

I turned back to continue with the task when a few seconds later I looked up to see [Person A] in the doorway of the sluice looking at me. She appeared shocked and upset. She said something to me which I didn't hear so went over to the sluice where she told me that Mr de Rita had just grabbed her breast...”

102. The Tribunal was clear that Ms G and Person B had been aware that something had happened but neither saw it. Person B recalls hearing the words ‘bugger off’ and, while it could be in a jokey manner, she was clear that something had happened that required an explanation on Person A’s return into the sluice. Their evidence assists in terms of the surrounding events directly after the incident took place.

103. The Tribunal noted that all four people present agreed where each was positioned at the time of the incident. Person A had her foot in the door to the sluice, Person B was in the sluice room, Ms G was further up the corridor but most likely facing to the side, and Mr De Rita was coming from theatre. Mr De Rita would have been able to see Ms G down the corridor past Person A. He would not be able to see Person B. The Tribunal noted that in his interview with the Trust, Mr De Rita referred to two people being present, Person A and Ms G. This accords with Person A’s impression. There is also agreement that there was a conversation between Mr De Rita and Person A about a patient and him saying that she should return to the patient’s cubicle.

104. The Tribunal noted that in Person A’s oral evidence she had not mentioned Mr De Rita distracting her by telling her to look through the sluice door window. However, Person A

did mention this in all of her previous accounts. The Tribunal took account of the fact that the incident occurred 18 months ago, Person A was recounting embarrassing information to a number of strangers and that Person A was otherwise clear and consistent about the core elements of what occurred.

105. Although the Tribunal has had no opportunity to see Mr De Rita's account be tested under cross-examination, it took account of the explanation he provided to the Trust. Specifically, the Tribunal considered whether contact with Person A's breast could have occurred accidentally. Mr De Rita had not explained why he touched Person A at all, nor why he would have used a *'tickling'* touch as he described. The Tribunal reminded itself that Mr De Rita confirmed Person A had *"reacted like something happened unexpectedly"*. The Tribunal noted, however, that the two other witnesses present stated that this was not Person A's only reaction: both confirmed that she also threw something at Mr De Rita and told him to *"bugger off"*. The Tribunal considered that Mr De Rita had downplayed Person A's response to an admitted touch and that Person A's reaction was not consistent with the touch he claimed had occurred. The Tribunal also noted that Person B had noticed an immediate physical stress reaction to Person A, who she knew well.

106. The Tribunal also took into account Person A's actions after the incident. A short time later she returned to the cubicle XXX. She described Mr De Rita arriving and how she was short with him, which she described as unusual for her. That she reacted in this way and that this was unusual behaviour for Person A is confirmed by Person B and Ms G, who also witnessed this part of the events. The Tribunal noted that, by contrast, Mr De Rita made no reference to Person A behaving in an angry manner towards him when he visited the patient's cubicle. The Tribunal considered that Person A's behaviour in the cubicle, confirmed by her colleagues, was consistent with being distressed. A mere accidental brush of the chest would not, in the Tribunal's view, have resulted in such a reaction. By contrast, the Tribunal considered that Person A's reaction in the cubicle was consistent with, and explained by, her account of the touching.

107. Having considered the evidence and the circumstances, the Tribunal could not find Mr De Rita's description of events to be a plausible alternative explanation for what could have occurred. There is a significant difference between an accidental inadvertent brush of the chest and a grab of the breast. The Tribunal rejected the suggestion that Person A had misconstrued what occurred. It also found no evidence that Person A had made up her account. The Tribunal found Person A's evidence to be persuasive and credible. Person A's

demeanour when recounting events further supported her credibility as did the surrounding circumstances described by Person B and Ms G.

108. Finally, having concluded that Person A's account was more likely to be true than not, the Tribunal found further support for it in its conclusions regarding the other conduct described by Person A. The behaviour described occurred over a period of 5-6 months. It commenced with unpleasant gesturing and behaviour designed and recognised to embarrass. In January 2023 this escalated to physical touching. This was the culmination of a pattern of conduct towards Person A by Mr De Rita.

109. The Tribunal was clear that this behaviour was self-evidently inappropriate. Person A was working with Mr De Rita in a professional setting and involved a grabbing of an intimate and sexual part of Person A's body, her left breast.

110. Accordingly, the Tribunal found this paragraph of the Allegation proved.

Paragraph 2(a)

111. The Tribunal has found paragraphs 1(a)(i) and 1(d) to be not proved and so did not consider these in respect of paragraph 2(a). As such, it had regard to paragraphs 1(a)(ii), (b), (c), (e), and (f).

112. The Tribunal considered whether Mr De Rita's actions as set out at paragraph 1 of the Allegation were sexually motivated, in that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship.

113. The Tribunal noted that Mr De Rita denied the allegations against him, including that his actions were sexually motivated.

114. The Tribunal had regard to the relevant legal principles in terms of the definition of sexual motivation, including the case of *Basson* that was set out above. It also considered the guidance in *Arunkalaivanan* noting that inappropriate conduct should not be equated with sexually motivated conduct and that the Tribunal should consider whether there could be any other explanation for inappropriate conduct other than it being sexually motivated.

115. In respect of paragraphs 1(a)(ii) and (b) of the Allegation, the Tribunal considered that these were both part of behaviour that took place on a number of occasions. The Tribunal

determined that Mr De Rita had deliberately sought to embarrass Person A using sexualised gestures. It found it especially concerning that Mr De Rita could see he had embarrassed Person A as she went red, and he then laughed and pointed out to her that she was *'going red'*. He also repeated this behaviour on a number of occasions. It was clear that what Mr De Rita was gesturing was of a sexually inappropriate nature. Although childish, the Tribunal considered that the pinching gesture and comments were designed to secure a reaction and gain Person A's attention. The Tribunal further concluded that the proper inference to be made was that Mr De Rita sought to obtain sexual gratification from his actions. Consequently, the Tribunal considered his actions to be sexually motivated. Accordingly, the Tribunal found paragraph 2(a) of the Allegation proved in respect of paragraphs 1(a)(ii) and (b).

116. In respect of paragraph 1(c) of the Allegation, the Tribunal considered that while what occurred was inappropriate behaviour, unlike the other incidents it was done in front of a number of other people and was not accompanied by any words or touching. While Person A's interpretation was entirely understandable, the Tribunal could not be satisfied to the necessary standard that this part of Mr De Rita's behaviour was sexually motivated. This is particularly so given the evidence that XXX. Accordingly, the Tribunal found paragraph 2(a) of the Allegation not proved in respect of paragraph 1(c).

117. In respect of paragraph 1(e) of the Allegation, the Tribunal considered that the act of pinching Person A's bra strap was sexually motivated. It involved taking hold of an intimate piece of apparel through her covering clothing. That apparel covered sexual areas of Person A's body. It was invasive of Person A's personal space and proper boundaries. The Tribunal determined that it was reasonably able to infer, whether childish or not, that the pinching of the bra strap was done with the view to Mr De Rita obtaining sexual gratification and was therefore sexually motivated. Accordingly, the Tribunal found paragraph 2(a) of the Allegation proved in respect of paragraph 1(e).

118. In respect of paragraph 1(f) of the Allegation, the Tribunal could see no explanation for distracting a person and then surreptitiously grabbing her breast other than it being sexually motivated. This is a private and intimate part of Person A. The touching was opportunistic, unwanted and unexpected. The Tribunal concluded that it was done with the view to Mr De Rita obtaining sexual gratification and was therefore sexually motivated. Accordingly, the Tribunal found paragraph 2(a) of the Allegation proved in respect of paragraph 1(f).

119. The Tribunal was, however, of the view that Mr De Rita's actions were not demonstrative of sexual motivation in pursuit of a future sexual relationship. The Tribunal was unable to see any evidence, whether by message, comment or conduct, that suggested this was the case. It concluded that Mr De Rita's behaviour appeared to be focused upon Person A's breasts, was childish in its nature and form, and opportunistic. That made it no less unpleasant and inappropriate. The Tribunal accepted Person A's description of the behaviour as 'creepy'. The Tribunal was particularly concerned by the escalation in Mr De Rita's behaviour from gesturing and making comments to physical touching. It concluded, with no attribution of blame to Person A, that Mr De Rita was emboldened by Person A's professional response to his behaviour before the 5 January 2023 incident. Person A tried to ignore his behaviour while making it clear to Mr De Rita that it was unwanted.

Paragraph 2(b)

120. The Tribunal has found paragraphs 1(a)(i) and 1(d) to be not proved and so did not consider these in respect of paragraph 2(b). As such, it had regard to paragraphs 1(a)(ii), (b), (c), (e), and (f).

121. The Tribunal considered whether Mr De Rita's actions as set out at paragraph 1 of the Allegation constituted sexual harassment as defined in Section 26(2) of the Equality Act 2010, in that he engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of Person A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Person A. The Tribunal had regard to the relevant legal principles in terms of the definition and meaning of sexual harassment.

122. The Tribunal noted that Mr De Rita denied the allegations against him, including that his actions constituted sexual harassment.

123. In respect of paragraph 1(c) of the Allegation, the Tribunal has found that this behaviour was not sexually motivated. It was unwanted by Person A but it was unable to conclude that it constituted "*unwanted conduct of a sexual nature*". The Tribunal was of the view that there was a clear distinction between this and the other conduct which has been found in respect of paragraph 1 of the Allegation. The Tribunal determined that Mr De Rita's actions at paragraph 1(c) did not constitute sexual harassment. Accordingly, the Tribunal found paragraph 2(b) of the Allegation not proved in respect of paragraph 1(c).

124. In respect of paragraphs 1(a)(ii), (b), (d), (e) and (f), the Tribunal was clear from Person A's evidence that Mr De Rita's actions were unwanted. She coloured red, told Mr De Rita to "bugger off" and threw a gown at him on 5 January 2023, moved away from him when he pinged her bra strap, and felt embarrassed and awkward as a result of his actions.

125. The Tribunal determined that Mr De Rita's actions were "unwanted conduct of a sexual nature". The conduct was gestures in the air as if pinching Person A's nipples, pointing out that she would turn red as a result, the pinged of her bra strap and the grabbing of her left breast on top of her scrubs and bra. The Tribunal concluded that this conduct represented sexualised behaviour which escalated to sexual touching.

126. The Tribunal had regard to Person A's evidence of the impact of Mr De Rita's behaviour on her. She told the Tribunal that she felt uncomfortable and awkward. It also affected her behaviour at work in that she would look at the upcoming rota to see if Mr De Rita would be working that week and if he was this affected how she felt about going to, and being at, work. Person A said in oral evidence that Mr De Rita's actions were "childish" and "creepy" and made her feel "weirded out". Person A said she was aghast about Mr De Rita's actions on 5 January 2023. She described how she had felt his hand on her for the rest of the day and how it affected her usual professionalism because she shouted at him to, 'Go away', when he later came to the patient's cubicle. Person A referred to pushing Mr De Rita's behaviour away in her mind because her focus was on a family health issue but made clear how upsetting she had found his behaviour. Person A stated that the tipping point was the grabbing of her breast on 5 January 2023. The Tribunal noted the written evidence of Person A's colleagues who described her distress on that day, during which she was eventually reduced to tears.

127. The Tribunal did not find there to be any hypersensitivity and found Person A's descriptions of how she felt as a result of Mr De Rita's actions to be entirely reasonable. It objectively considered it reasonable for the conduct to have had the effect felt by Person A.

128. The Tribunal considered the definition of sexual harassment and concluded, on the facts found proved, that Mr De Rita's actions constituted sexual harassment as his course of conduct, on more than one occasion, had the effect of violating Person A's dignity and created an intimidating, hostile, degrading, humiliating or offensive environment for her. Accordingly, the Tribunal found paragraph 2(b) of the Allegation proved in respect of paragraphs 1(a)(ii), (b), (d), (e) and (f).

Paragraph 2(c)

129. The Tribunal has found paragraphs 1(a)(i) and 1(d) to be not proved and so did not consider these in respect of paragraph 2(c). As such, it had regard to paragraphs 1(a)(ii), (b), (c), (e), and (f).

130. The Tribunal considered whether Mr De Rita's actions as set out at paragraph 1 of the Allegation were an abuse of his position.

131. The Tribunal noted that Mr De Rita denied the allegations against him, including that his actions were an abuse of his position.

132. In respect of paragraph 1(c) of the Allegation, the Tribunal has found that this behaviour was not sexually motivated and that it did not constitute sexual harassment. The Tribunal was of the view that there was a clear distinction between this and the other conduct which has been found in respect of paragraph 1 of the Allegation. It was unprofessional and unwanted by Person A but the Tribunal was unable to conclude that Mr De Rita's actions at paragraph 1(c) were an abuse of his position. Accordingly, the Tribunal found paragraph 2(c) of the Allegation not proved in respect of paragraph 1(c).

133. In respect of paragraphs 1(a)(ii), (b), (d), (e) and (f), the Tribunal noted that Mr De Rita held a senior position to Person A as he was a consultant surgeon and Person A was XXX. The Tribunal considered that Mr De Rita was aware of the staff dynamic in the Unit, and it was reasonable to infer that he knew of the power imbalance between him and XXX in this situation. The Tribunal concluded that the power balance which existed enabled and facilitated Mr De Rita's conduct.

134. The Tribunal was of the view that the facts that have been found proved indicated opportunistic and impulsive actions by Mr De Rita that continued and escalated. The Tribunal has found that the pinching gestures and comments about making Person A feel embarrassed had been repeated despite this. It has also found that the pinching of the bra strap was inappropriate, and the grabbing of the left breast even more so.

135. The Tribunal concluded, on the facts found proved, that Mr De Rita's actions represented an abuse of his position. Accordingly, the Tribunal found paragraph 2(c) of the Allegation proved in respect of paragraphs 1(a)(ii), (b), (d), (e) and (f).

The Tribunal's Overall Determination on the Facts

136. The Tribunal has determined the facts as follows:

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

1. Between May 2022 and 5 January 2023, you behaved inappropriately towards your colleague, Person A, in that:
 - a. on one or more occasions, you made inappropriate gestures towards Person A, in that you:
 - i. pointed at Person A's breasts;
Not proved
 - ii. gestured your hands in the air as if to be pinching Person A's nipples;
Determined and found proved
 - b. you told Person A that she was, 'going red', or words to that effect following your actions as set out at paragraph 1a;
Determined and found proved
 - c. on a date in 2022, whilst in the MDT room, you pulled Person A's chair towards you on one or more occasions, despite Person A moving the chair away;
Determined and found proved
 - d. on 25 October 2022, you sent WhatsApp messages to Person A's personal mobile telephone number, as set out in Schedule One;
Not proved
 - e. on a date in or around November 2022 you pinged Person A's bra strap by pulling it and letting it go;
Determined and found proved
 - f. on 5 January 2023 you grabbed Person A's left breast on top of her scrubs and bra.
Determined and found proved
2. Your actions as set out at paragraph 1:
 - a. were sexually motivated;
Determined and found proved in respect of paragraphs 1(a)(ii), (b), (e) and (f)

Not proved in respect of paragraphs 1(a)(i), (c) and (d)

b. constituted sexual harassment as defined in Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of Person A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Person A;

Determined and found proved in respect of paragraphs 1(a)(ii), (b), (e) and (f)

Not proved in respect of paragraphs 1(a)(i), (c) and (d)

c. were an abuse of your position.

Determined and found proved in respect of paragraphs 1(a)(ii), (b), (e) and (f)

Not proved in respect of paragraphs 1(a)(i), (c) and (d)

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 - 27/08/2024

137. 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, Mr De Rita's fitness to practise is impaired by reason of misconduct.

The Evidence

138. The Tribunal has taken into account all the evidence received during the facts stage of the hearing.

139. This evidence included Mr De Rita's written statement dated 15 May 2024. Within this statement, Mr De Rita told the Tribunal that the Trust had not supported him through the full local suspension period, and that his *"working and personal life has been seriously compromised by these events"*. Mr De Rita stated that the workplace that he had *"served with outstanding clinical results, international recognition, and scientific contribution, has treated me without any respect"*. He stated that he had always denied, and still did deny, all of the allegations against him and that, while he meant no discourtesy, he had no intention of engaging with this process.

Submissions

140. Ms Ingham, Counsel on behalf of the GMC, submitted that Mr De Rita’s fitness to practise is currently impaired by reason of misconduct.

141. In respect of whether the facts found proved amount to misconduct, Ms Ingham reminded the Tribunal of its findings as to the parts of the Allegation found proved, that these were sexually motivated, amounted to sexual harassment, and were an abuse of position. Ms Ingham submitted that Mr De Rita engaged in inappropriate and opportunistic sexually motivated behaviour that had the consequence of causing Person A to feel embarrassed and ashamed on more than one occasion.

142. Ms Ingham drew the Tribunal’s attention to its comments at the Facts stage that a senior colleague making sexualised gestures to a junior staff member, seeing the embarrassment caused and then commenting on it, was wholly unprofessional. Further, that the conduct was exacerbated by the fact that it had been repeated on a number of occasions over a period of time in circumstances where Mr De Rita had seen the effect of his conduct on Person A but continued to engage in it. Ms Ingham submitted that the repeated nature of the behaviour was demonstrable of a pattern of behaviour that could properly be considered as serious.

143. Ms Ingham stated that the behaviour had occurred over five to six months, started with an inappropriate gesture, and escalated to physical touching. Ms Ingham drew the Tribunal’s attention to its comments at the Facts stage that this conduct has no place in a professional context particularly where important information about patient care is being relayed.

144. Ms Ingham submitted that this conduct fell seriously below the standard expected and that such behaviour was not merely trivial or inconsequential. She submitted that it was not a temporary lapse or something excusable or forgivable. Ms Ingham submitted that the sexually motivated allegations found proved amounted to serious misconduct that raised public confidence issues and was in support of a finding of misconduct.

145. Ms Ingham referred the Tribunal to the following paragraphs of Good Medical Practice (2013) (‘GMP’):

“36. You must treat colleagues fairly and with respect.

37. *You must be aware of how your behaviour may influence others within and outside the team.*

...

65. *You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession."*

146. Ms Ingham referred to the approach set out by Dame Janet Smith in the Fifth Shipman Report, as referred to in the case of *CHRE v NMC & Grant* [2011] EWHC 927 (Admin):

"Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

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

Ms Ingham submitted that subsections *b* and *c* were engaged in this case. She further submitted that Mr De Rita's behaviour was liable to bring the medical profession into disrepute, and that a member of the public would be disturbed to hear that a doctor had engaged in such behaviour.

147. In terms of future risk, Ms Ingham submitted that there was no evidence that the behaviour has been remediated and there is a real risk of repetition.

148. Ms Ingham noted that Mr De Rita has been out of work for some time now in the UK and made his intentions clear in earlier correspondence.

149. Ms Ingham submitted that the Tribunal should consider all three limbs of the overarching objective to protect the public. She submitted that the actions found proved

were a far cry from proper professional standards and conduct for someone in the medical profession. Ms Ingham referred to the seriousness of the concerns and referred the Tribunal to the need to consider Mr De Rita's insight, if any.

150. Ms Ingham submitted that the sexually motivated conduct found proved, particularly the grabbing of the breast and pinching of the bra strap, fell within the presumption of impaired fitness to practise. She submitted that a failure to find impairment would not meet the aims of the overarching objective.

151. No submissions on impairment were provided by Mr De Rita.

The Relevant Legal Principles

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

153. 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 serious misconduct resulted in a finding of impairment.

154. In terms of misconduct, the LQC referred to the case of *Nandi v GMC* [2004] EWHC 2317 (Admin) in which it was said that professional misconduct is "*a falling short by omission or commission of the standards of conduct expected among medical practitioners, and such falling short must be serious*".

155. In respect of the appropriate test for Tribunals considering impairment of a doctor's fitness to practise, the LQC referred to the comments of Dame Janet Smith as set out in *Grant*, quoted above.

156. The Tribunal must determine whether Mr De Rita's fitness to practise is impaired today, taking into account Mr De Rita'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.

157. Also with reference to the case of *Grant*, the LQC stated that the level of insight shown by the practitioner was central to the proper determination of this issue. (*CHRE v NMC and Grant* [2011] EWHC 927 (Admin)). For example, that they can:

- i. Review their own professional performance or conduct;
- ii. Recognize that they should have behaved differently in the circumstances;
- iii. Identify and put in place measures that will prevent a recurrence.

The LQC stated that the Tribunal should consider whether the practitioner continues to present a risk to the public and also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances of the case.

158. The LQC reminded the Tribunal that the purpose of fitness to practise hearings was not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise. Consequently, the test of current impairment must be gauged partly by the practitioner's past conduct or performance (*Meadow v GMC* [2006] EWCA Civ 1390) and partly by reference to how he is likely to behave or perform in the future (*Zygmunt v GMC* [2008] EWHC 2643 (Admin)).

159. Throughout the Tribunal's deliberations it must bear in mind the statutory overarching objective as set out in s.1 of the Medical Act 1983, which is to protect the public. To achieve the overarching objective, the Tribunal must pursue the following objectives:

- i. To protect, promote and maintain the health, safety and wellbeing of the public;
- ii. To promote and maintain public confidence in the medical profession;
- iii. To promote and maintain proper professional standards and conduct for members of that profession.

The Tribunal's Determination on Impairment

Misconduct

160. The Tribunal first considered whether Mr De Rita's actions amount to misconduct.

161. The Tribunal has found proved that Mr De Rita’s conduct included gestures in the air as if pinching Person A’s nipples, pointing out that she would turn red as a result, the pinching of her bra strap, and the grabbing of her left breast on top of her scrubs and bra. The Tribunal has found that Mr De Rita’s actions were sexually motivated, constituted sexual harassment, and were an abuse of his position.

162. The Tribunal determined that Mr De Rita’s actions represented a departure from the principles set out in GMP, namely paragraphs 36, 37 and 65 (which are quoted above) as well as paragraph 1:

“Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.”

163. The Tribunal noted that the grabbing of the breast could constitute a criminal offence under s.3 of the Sexual Offences Act 2003. Furthermore, the Tribunal did not consider Mr De Rita’s actions to have been demonstrative of treating his colleague with respect, and his conduct immediately affected Person A. The 5 January 2023 incident caused upset to Person B and Ms G as well as Person A.

164. The Tribunal noted that Mr De Rita’s actions spanned 4-5 months. They involved a number of different types of behaviour, principally focused on Person A’s breasts, and escalated to sexual touching in terms of the grabbing of the breast. The Tribunal had regard to Person A’s evidence that she had made it clear to Mr De Rita that the conduct was unwanted, that it upset her, but he carried on regardless. The Tribunal was of the view that Person A had clearly discouraged or told Mr De Rita to stop and that should have been enough. A member of staff should not touch another colleague inappropriately unless it is part of a consensual personal relationship, which was definitely not the case here.

165. The Tribunal has concluded that Mr De Rita’s conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct that was serious.

Impairment by reason of misconduct

166. The Tribunal, having found that the facts found proved amounted to misconduct, went on to consider whether Mr De Rita's fitness to practise is currently impaired by reason of his misconduct.

167. The Tribunal explored whether Mr De Rita's conduct was remediable, whether it had been remediated, and any likelihood of repetition. Whilst it appreciated that non-clinical matters are often harder to remediate, particularly sexual misconduct which relates to a state of mind, the Tribunal agreed that his actions were, in principle, remediable.

168. The Tribunal therefore considered whether it had any evidence of remediation undertaken by Mr De Rita or any evidence to suggest that he had insight into his actions.

169. In respect of insight, the Tribunal noted Mr De Rita's written statement of 15 May 2024 and the email correspondence that also confirmed that he denied the allegations against him. The Tribunal understood that Mr De Rita was perfectly entitled to deny the allegations against him and pursue a defence. The Tribunal noted, however, that while Mr De Rita mentioned in passing how actions such as those found proved could impact others, his essential position was that any behaviour complained of must have been misunderstood or misconstrued. The Tribunal concluded that Mr De Rita had shown very little insight into his misconduct. He had not reflected on the impact such actions would have had on Person A or appreciated their wider impact on public confidence. The Tribunal was mindful that there was no apology to Person A, no engagement in this process, and no consideration by Mr De Rita that he might need to modify his behaviour to address the concerns raised about him.

170. With regards to remediation, the Tribunal has received no evidence of any actions or steps taken by Mr De Rita to address his misconduct. There is no evidence of any relevant training courses or reflections. The Tribunal considered that Mr De Rita's written statement was primarily self-centred and focused on the impact of the regulatory proceedings on him. The Tribunal did not consider that Mr De Rita appreciated the impact of his actions on others. Moreover, he had not taken any steps to address the concerns.

171. The Tribunal was of the view, given the lack of insight or remediation, that the risk of repetition of similar conduct in the future remained high.

172. The Tribunal considered that limbs *b* and *c* of the test set out in *Grant*, as quoted above, were applicable in this case. Mr De Rita had brought the medical profession into disrepute and had breached one of the fundamental tenets of the medical profession.

173. The Tribunal concluded that, given the serious nature of Mr De Rita's actions, a finding of impaired fitness to practise was required and necessary to protect and promote the health, safety and wellbeing 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.

174. The Tribunal noted that it had determined that Person A had suffered direct harm. Mr De Rita had breached professional boundaries. Person A is XXX working in a stressful environment who had to deal with the impact of Mr De Rita's conduct whilst continuing to try and care for highly vulnerable patients. There was therefore harm caused to Person A, other members of XXX staff and there was a potential risk to patient safety as a result of XXX staff being distracted from their XXX responsibilities by the impact of Mr De Rita's behaviour. The Tribunal reminded itself that the misconduct involved a senior consultant abusing his position in respect of a junior member of staff.

175. The Tribunal also concluded that members of the public would have no confidence in a doctor who engaged in the sexually motivated conduct, and in particular in a doctor who had behaved in a way which could constitute the criminal offence of sexual touching.

176. Finally, the Tribunal concluded that the public would be shocked and appalled if such conduct was not determined by the profession's regulator to amount to impairment. This Tribunal has a responsibility to maintain and declare proper professional standards.

177. In all the circumstances, the Tribunal determined that Mr De Rita's fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 27/08/2024

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

The Evidence

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

Submissions

180. Ms Ingham, Counsel on behalf of the GMC, submitted that the appropriate sanction in this case is erasure of Mr De Rita’s name from the medical register. She submitted that the sexually motivated misconduct in this case is very serious and a serious departure from the principles set out in GMP.

181. Ms Ingham stated that it is a fundamental tenet of the profession that doctors act with integrity and that their conduct justifies patients’ trust in them and their profession. She submitted that Mr De Rita has breached this core principle. Ms Ingham submitted that, as such, the conduct is fundamentally incompatible with being a doctor. She reminded the Tribunal of its duty to uphold the overarching objective.

182. Ms Ingham submitted that, given the seriousness of the Tribunal’s findings and particularly the serious nature of the allegations relating to sexual misconduct, taking no action would not be sufficient, proportionate or in the public interest.

183. In respect of conditions, Ms Ingham submitted that it was difficult to identify any conditions that would be appropriate, proportionate, workable and measurable in the circumstances. Ms Ingham stated that Mr De Rita has shown no insight into his misconduct and there is no specific area of practice in respect of which a period of retraining or supervision would address the concerns identified. Ms Ingham submitted that, in those circumstances, the Tribunal could not make an order that Mr De Rita comply with conditions. Ms Ingham submitted that, in any event, imposing conditions would not sufficiently mark the seriousness of the misconduct in this case.

184. Ms Ingham referred to a number of paragraphs from the Sanctions Guidance (5 February 2024) (‘the SG’), including paragraph 150 under the section headed ‘*Sexual misconduct*’:

“Sexual misconduct seriously undermines public trust in the profession. The misconduct is particularly serious where there is an abuse of the special position of

trust a doctor occupies [...]. More serious action, such as erasure, is likely to be appropriate in such cases.”

185. Ms Ingham also referred to paragraph 92 of the SG:

“Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).”

186. Ms Ingham submitted that the GMC’s case is that paragraph 92 did not apply because the conduct found proven was completely incompatible with continued registration.

187. Ms Ingham referred to a number of factors set out within paragraph 97 of the SG. This paragraph states that where some or all of the factors listed are present, suspension may be appropriate. She submitted that this case demonstrated a serious departure from GMP and the GMC case is that the misconduct is difficult to remediate. Therefore, Ms Ingham submitted, complete removal from the medical register is the more appropriate sanction.

188. Ms Ingham also stated that, whilst there was no evidence of repetition since this investigation began, there had been a clear progression in the seriousness of Mr De Rita’s behaviour over a period of time culminating in the final action which led to the complaint being reported. Ms Ingham submitted that the Tribunal could not be satisfied that Mr De Rita has insight. She further submitted that, in the absence of evidence of insight, the Tribunal could not be satisfied that Mr De Rita did not pose a significant risk of repeating the behaviour, particularly given that he ceased to practice in the UK shortly after the matters were reported.

189. Ms Ingham submitted that it is a relevant consideration that Mr De Rita has not engaged in the regulatory proceedings and in particular in the substantive hearing. She stated that this means the Tribunal has been unable to assess whether there is an ongoing risk, particularly in respect of public safety. Ms Ingham referred The Tribunal to paragraph 93 of the SG:

“Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions...”

190. She stated that there was no evidence of continued work to address the motivations underpinning Mr De Rita’s sexual misconduct, and no evidence of remedial work undertaken by Mr De Rita.

191. Ms Ingham therefore submitted that a period of suspension would not sufficiently protect the public interest, nor would it be sufficient to maintain public confidence or uphold proper professional standards.

192. In terms of erasure, Ms Ingham referred to a number of the factors within paragraph 109 of the SG, which if present may indicate erasure is appropriate, namely:

*“a. A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.
b. A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.*

...

d. Abuse of position/trust (see Good medical practice, paragraph 65: ‘You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession’).

...

f. Offences of a sexual nature [...]

...

j. Persistent lack of insight into the seriousness of their actions or the consequences.”

193. Ms Ingham submitted that there had been a serious departure from the principles set out in GMP, the behaviour was difficult to remediate, and there had been a deliberate disregard for those principles in GMP. Ms Ingham stated that Mr De Rita’s misconduct involved behaviour of a sexual nature and represented an abuse of his senior position towards a junior colleague. She also submitted that there had been a persistent lack of insight in that, even in not accepting Person A’s account, Mr De Rita had neither

acknowledged how the behaviour described could have been perceived by Person A nor how it could have impacted on her.

194. Ms Ingham submitted that erasure of Mr De Rita's name from the medical register is the most appropriate sanction in this case.

195. No submissions on sanction were provided by Mr De Rita.

The Tribunal's Determination on Sanction

196. The decision as to the appropriate sanction to impose in this case, if any action is required at all, is a matter for this Tribunal exercising its own judgement.

197. In reaching its decision, the Tribunal has taken account of the SG, the overarching objective, and the principle of proportionality. It has borne in mind that the purpose of the sanctions is not to be punitive, but to protect patients and the wider public interest, although they may have a punitive effect. The LQC reminded the Tribunal that the public interest encompasses work colleagues (see: *Alberts v General Dental Council* [2022] EWHC 2192 (Admin)).

198. The LQC drew the Tribunal's attention to the recent case of *Higgins v GMC* [2024] EWHC 1906 (Admin), in which Mrs Justice Williams referred to *Arunachalam v GMC* [2018] EWHC 758 (Admin) where Mr Justice Kerr had summarised a number of propositions drawn from the authorities relating to cases of sexual misconduct. Mrs Justice Williams set out:

"91. In Arunachalam v GMC [2018] EWHC 758 (Admin) ("Arunachalam") Kerr J summarised a number of propositions that he drew from the authorities relating to cases of sexual misconduct, including:

"34. First, sexual misconduct is self-evidently always serious and often likely to lead to erasure, even for a first time offender. ...Third, lack of what is called 'insight' tends to increase the severity of the sanction and, conversely, proof of insight tends to mitigate it. 'Insight' roughly translates as owning up, saying sorry and convincing the panel that offending behaviour will not be repeated. This is obviously more difficult if the charges are denied.

...

37. ...Eighth, personal mitigation counts for less than in other contexts because of the imperative need to preserve and uphold public confidence in the profession and to preserve and uphold standards of behaviour...

38. Ninth as Mr Justice Collins said in *Giele v GMC* [2006] 1 WLR 942 at paragraph 33, it is not the law that in sexual misconduct cases erasure should follow unless the circumstances are exceptional. The severity of the sanction required to maintain and preserve public confidence in the profession 'must reflect the views of an informed and reasonable member of the public'."

92. Kerr J also addressed the situation where the sexual misconduct involved a colleague:

"59. Where the victim is a colleague rather than a patient, severe sanctions in such cases are generally necessary, in addition, to protect and uphold the dignity of the workplace in the profession and to protect their freedom to work without being molested."

93. In *Yusuff v GMC* [2018] EWHC 13 (Admin) ("*Yusuff*") Yip J made a number of observations regarding the relevance of insight. Whilst she was focused on a subsequent review hearing, the parties were agreed that her remarks are of wider import:

"18. It would be wrong to equate maintenance of innocence with a lack of insight. However, continued denial of the misconduct found proved will be relevant to the Tribunal's consideration on review. As...the Sanctions Guidance makes clear, refusal to accept the misconduct and failure to tell the truth during the hearing will be very relevant to the initial sanction..."

Aggravating and mitigating factors

199. The Tribunal identified the following aggravating factors in this case:

- Save for comments made at the time of the Trust investigation in February and May 2023, the Tribunal has not been provided with any evidence of insight, regret or apology on the part of Mr De Rita. The Tribunal took into account Mr De Rita's comments at that time, including that he would not have intended to cause any upset and, if he had, then he would apologise. The Tribunal was clear, however,

that this did not amount to any acknowledgment of the conduct which it has now found proved. While Mr De Rita at that time suggested that some of his actions may have been misunderstood or misconstrued, was as far as his acceptance went. As set out in the Tribunal’s determination on impairment, it considered Mr De Rita’s written statement to be primarily self-centred and focused on the impact of the regulatory proceedings on himself. The Tribunal did not consider that Mr De Rita appreciated the impact of his actions on others. Moreover, he had not taken any steps to address the concerns.

- The misconduct arose as a result of a failure to work collaboratively with colleagues and in particular a failure to respect the dignity of another colleague in the workplace, to the point of sexual harassment of that colleague. The Tribunal had regard to paragraphs 55(b) and 138 of the SG, that:

“55. Aggravating factors that are likely to lead the tribunal to consider taking more serious action include:

...

b. a failure to work collaboratively with colleagues (see paragraphs 136–138)

...

138. More serious outcomes are likely to be appropriate if there are serious findings that involve:

...

b. sexual harassment”

- The Tribunal reminded itself that the final act of misconduct, grabbing Person A’s breast, was capable (subject to being proved to the criminal standard), of amounting to the criminal offence of sexual assault contrary to s3 of the Sexual Offences Act 2003. It had regard to paragraphs 55(e) and 150 (quoted above) of the SG, that:

“55. Aggravating factors that are likely to lead the tribunal to consider taking more serious action include:

...

e. sexual misconduct (see paragraphs 149–150)”

The Tribunal considered it to be an aggravating factor that the misconduct involved sexual misconduct towards a colleague and an abuse by Mr De Rita of

his more senior position. The Tribunal noted that professional colleagues have the right to expect that they will be treated with dignity at work. Mr De Rita was in a more senior role, should have led by example, was an experienced and long serving doctor and should have known better. The Tribunal was careful, however, not to double count the sexual harassment and sexual misconduct.

200. The Tribunal considered whether Mr De Rita's misconduct amounted to predatory behaviour but determined that it did not. The Tribunal noted that the behaviour was targeted at a single individual, Person A. The Tribunal further noted that it represented repeated behaviour towards Person A over a 5-6 month period. The Tribunal considered, however, that Mr De Rita's actions were impulsive and opportunistic rather than planned or specifically sought out. There were a number of instances of deeply unpleasant and sexualised behaviour before the act of sexual touching occurred, but thankfully the behaviour stopped following that incident because a complaint was made. The Tribunal further noted that Mr De Rita did not pursue Person A outside of, or away from, the workplace or through any digital means.

201. The Tribunal identified the following mitigating factors in this case:

- No previous fitness to practise history; and
- Mr De Rita seems to have been recognised as a highly skilled surgeon. He was practising as a Consultant XXX Surgeon at the time of the events. He stated, and there is no evidence to the contrary, that his clinical skills were well regarded nationally and internationally. The Tribunal noted that Mr De Rita has left the UK, has said he no longer wishes to practise in this country, and has relinquished his GMC licence to practise.

202. The Tribunal did not consider the stage of Mr De Rita's medical career to be a mitigating factor. In fact the Tribunal was of the view that he should have been well aware of the standards required of him. Mr De Rita was in a leadership role where he should have been setting an appropriate example to junior colleagues as to the relevant standards, not breaching them.

203. The Tribunal was conscious of the need to consider and balance the relevant aggravating and mitigating factors. It was mindful throughout of the central aim of sanctions in terms of the overarching objective. The Tribunal was unable to find any elements of mitigation that it should give particular weight to in its deliberations.

No action

204. In coming to its decision as to the appropriate sanction, if any, to impose in Mr De Rita's case, the Tribunal first considered whether to conclude the case by taking no action.

205. The Tribunal determined, in view of the serious nature of its findings on impairment including the departure from the principles set out in GMP, that it would be neither sufficient, proportionate nor in the public interest to conclude this case by taking no action. The Tribunal was unable to identify any exceptional circumstances that would justify taking no action.

Conditions

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

207. The Tribunal noted that, with reference to paragraph 81 of the SG, conditions might be most appropriate in cases involving the doctor's health, where there is a lack of necessary knowledge of English or involving issues around the doctor's performance. The Tribunal determined that these factors were not relevant in Mr De Rita's case.

208. The Tribunal noted that, with reference to paragraph 82 of the SG, conditions are "*likely to be workable*" in circumstances where the doctor has insight, has the potential to respond positively to remediation, and where a period of retraining and/or supervision was likely to be the most appropriate way to address the findings. The Tribunal was unable to formulate any workable conditions to address Mr De Rita's misconduct that would ensure the relevant reassurances and safeguards were in place. The Tribunal has concluded that Mr De Rita's misconduct amounted to a significant departure from the principles set out in GMP and his lack of engagement meant that the Tribunal had no evidence of his insight or as to the likelihood of him responding positively to remediation.

209. In the circumstances, the Tribunal determined that it would be neither sufficient nor appropriate to direct the imposition of conditions on Mr De Rita's registration given the serious nature of the misconduct. It also concluded that, even if it had been possible to formulate conditions that would safely protect colleagues, they are unworkable due to Mr De Rita's lack of engagement with the regulatory process.

Suspension

210. The Tribunal then went on to consider whether suspending Mr De Rita’s registration would be appropriate and proportionate.

211. The Tribunal had regard to its findings in respect of misconduct and impairment, as well as the aggravating and mitigating factors listed above. It considered the paragraphs of the SG in relation to suspension, including:

“91. Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.

92. Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).

93. Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions.”

212. The Tribunal had regard to the following sections of paragraph 97 of the SG:

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

a. A serious breach of Good medical practice, but where the doctor’s misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not

be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.

...

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

f. No evidence of repetition of similar behaviour since incident.

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

213. The Tribunal determined that Mr De Rita's actions did amount to a serious breach of GMP and was clear that any sanction lower than suspension would not have been sufficient. The Tribunal reiterated its previous comments that Mr De Rita's actions had spanned 4-5 months. They involved a number of different types of behaviour, principally focused on Person A's breasts, and escalated to sexual touching in terms of the grabbing of the breast. The Tribunal had regard to Person A's evidence that she had made it clear to Mr De Rita that the conduct was unwanted, that it upset her, but he carried on regardless.

214. The Tribunal has no information before it in terms of Mr De Rita's position as to insight or remediation, apart from the fact that he has not engaged with this hearing. The Tribunal appreciated that there had been no repetition within UK practice, however, this was unsurprising given that Mr De Rita was suspended from practise by the Trust the day after the complaint was lodged with the Trust. The Tribunal had no information about Mr De Rita's practise or conduct in whatever role he now works in outside of the UK. The Tribunal reiterated that, given the lack of insight or remediation, the risk of repetition of similar conduct in the future remained high.

215. The Tribunal did not consider that a sanction of suspension, even for a period of 12 months, would sufficiently protect patients, maintain public confidence in the profession, or promote and maintain proper professional standards and conduct for the members of the profession. The Tribunal concluded that the seriousness of Mr De Rita's misconduct, the lack of evidence of any development of insight, the absence of any remediation, and the importance of maintaining and declaring proper standards of behaviour and conduct within

the profession, is such that his conduct is fundamentally incompatible with continued registration. The Tribunal expanded on this below.

Erasure

216. The Tribunal therefore went on to consider the sanction of erasure. It considered that the following two paragraphs of the SG were relevant in this case:

“107. The tribunal may erase a doctor from the medical register in any case - except one that relates solely to the doctor’s health and/or knowledge of English - where this is the only means of protecting the public.

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

217. The Tribunal had regard to the nature and seriousness of the misconduct found, to the aggravating and mitigating factors that it had identified, and to its comments in respect of remediation and why suspension was inappropriate and insufficient. The Tribunal reminded itself that a doctor’s professional colleagues are entitled to be treated with dignity and respect in their shared workplace and to conduct their own work without fearing they will be sexually harassed or subjected to sexually motivated touching. The Tribunal also took account of the section within the SG on sexual misconduct, including paragraphs 150 which is quoted above.

218. The Tribunal then went on to consider paragraph 109 of the SG, which states *“Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive)”*. The Tribunal determined that the following factors were present:

“a. A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.

b. A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.

...

d. Abuse of position/trust (see Good medical practice, paragraph 81: ‘You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession’).

...

f. Offences of a sexual nature, including involvement in child sex abuse materials (see further guidance below at paragraphs 151 - 159).

...

j. Persistent lack of insight into the seriousness of their actions or the consequences.”

219. In all the circumstances, the Tribunal determined that Mr De Rita’s conduct was fundamentally incompatible with his continued registration. It concluded that erasure was the only necessary, appropriate, and proportionate sanction that it could impose given the seriousness of the misconduct, the lack of insight and remediation shown and the high risk of repetition that remained. The Tribunal appreciated that Mr De Rita appears to be a highly skilled surgeon and as such represents a significant resource, however, the nature of the misconduct found in this case against a background of no explanation, insight or remediation and indicative of a significant attitudinal issue, made erasure necessary, appropriate, and proportionate.

220. The Tribunal therefore directs that Mr De Rita’s name be erased from the medical register. It concluded that erasure was the only necessary and proportionate sanction which would sufficiently and adequately meet the overarching objective, namely: to protect and promote the health, safety and wellbeing 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 Immediate Order - 27/08/2024

221. Having determined to erase Mr De Rita’s name from the medical register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Mr De Rita’s registration should be subject to an immediate order.

Submissions

Submissions on behalf of the GMC

222. Ms Ingham, Counsel on behalf of the GMC, submitted that an immediate order was necessary in order to protect the public and maintain public confidence in the profession.

223. Ms Ingham confirmed that there was an interim order of conditions in place on Mr De Rita's registration and asked for this to be revoked.

224. No submissions on an immediate order were provided by Mr De Rita.

The Tribunal's Determination

225. In making its decision the Tribunal had regard to the relevant paragraphs of the SG, including:

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

173. An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.

...

178. Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect."

226. The Tribunal had regard to the seriousness of its findings, which it has outlined in detail in its previous determinations.

227. In all the circumstances, the Tribunal determined to impose an immediate order of suspension on Mr De Rita's registration. The Tribunal was of the view that, due to the seriousness of the misconduct, it would be inappropriate to allow Mr De Rita to continue in unrestricted practice before the substantive order takes effect. The Tribunal concluded that this was appropriate and necessary to protect members of the public and in the public interest.

228. This means that Mr De Rita's registration will be suspended from the date on which notification of this decision is deemed to have been served upon him. The substantive direction, as already announced, will take effect 28 days from that date, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

229. The interim order will be revoked when the immediate order takes effect.

230. That concludes this case.

ANNEX A - 19/08/2024

Service and Proceeding in Absence

Service

231. Mr De Rita is neither present nor represented at this hearing. The GMC is represented by Ms Niamh Ingham of Counsel, instructed by GMC Legal.

232. The Tribunal was provided with a copy of a Service bundle from the General Medical Council (GMC). This included a screenshot of the contact information held for Mr De Rita on the GMC system, namely his registered postal address and email address.

233. Mr Clayton Williams, BMA Law, contacted the GMC on behalf of Mr De Rita on 7 February 2024. He stated that Mr De Rita had no intention of practising again in the UK and would not engage with the GMC/MPTS process save to say that the allegations were all denied. Mr Williams stated that Mr De Rita meant no discourtesy to the Tribunal or the GMC and was content for papers to be sent to Mr Williams on his behalf. Mr Williams stated that Mr De Rita had also advised that he would not be renewing his GMC membership this year.

234. The MPTS sent the minutes from an initial case management meeting to Mr Williams on 15 February 2024. Mr Williams reiterated his previous comments regarding Mr De Rita. He confirmed that he was not instructed to act on Mr De Rita's behalf at this hearing.

235. In response to a query from the GMC on 15 March 2024, Mr Williams confirmed to the GMC that he was content to receive papers from the GMC in respect of Mr De Rita.

236. The Service bundle also included the GMC information letter dated 4 July 2024, which included the Allegation and confirmed the documents that the GMC would rely on at this hearing. This letter was sent by email to Mr De Rita care of Mr Williams. Mr Williams responded to the email on 8 July 2024 confirming that he had received the correspondence.

237. The Medical Practitioners Tribunal Service (MPTS) notice of hearing letter dated 4 July 2024 was also provided to the Tribunal. It was also sent by email to Mr De Rita care of Mr Williams. Mr Williams responded to the email on 4 July 2024 confirming that he had received the correspondence. Mr Williams sent a further email dated 5 July 2024 to confirm that Mr De Rita was aware of the contents of the notice.

238. Ms Ingham, Counsel on behalf of the GMC, submitted that service had been effected in accordance with the GMC's (Fitness to Practise) Rules 2004, as amended, ('the Rules'). She submitted that notice had been served by proper means, namely service on Mr Williams, Mr De Rita's named legal representative.

239. The Tribunal determined that notice of this hearing had been served on Mr De Rita in accordance with Rule 40 of the Rules, and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended. The Tribunal reviewed the contents of the Notice of Service bundle and were satisfied that the correspondence sent to Mr De Rita and to Mr Williams, acting on his behalf in relation to receipt of correspondence, contained the necessary information and had been provided in good time prior to the hearing.

Proceeding in Absence

240. The Tribunal then went on to consider whether it would be appropriate to proceed with this hearing in Mr De Rita's absence pursuant to Rule 31 of the Rules. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with the appropriate care and caution, balancing the interests of the doctor against the wider public interest. The Tribunal took into account the factors listed in *R v Jones* [2002] UKHL 5.

241. The Tribunal had regard to the various emails from Mr De Rita's representative, Mr Williams, which clearly indicated that Mr De Rita does not intend to engage with the hearing process. In particular, it noted the email from Mr Williams dated 19 February 2024 in which he states that:

"[Mr De Rita] means no discourtesy to the MPTS or GMC but he will not be engaging with the process (and I am not instructed to act on his behalf at the hearing) save to say that the allegations are denied. Mr De Rita will no longer practice in the UK and will not renew his GMC registration/membership."

242. Ms Ingham stated that Mr De Rita was aware of this hearing, had not requested an adjournment, and had made it clear that he would not be in attendance. Ms Ingham submitted that the fair, economical and expeditious disposal of matters must be at the forefront of the Tribunal's mind and, in these circumstances, invited the Tribunal to proceed with this hearing in Mr De Rita's absence. Ms Ingham stated that Mr De Rita had not provided a reason why he wished not to engage with this process, and it was not suggested that this failure could be remedied by way of an adjournment.

243. In deciding whether to proceed with this hearing in Mr De Rita's absence, the Tribunal carefully considered all the information before it.

244. The Tribunal determined that Mr De Rita was aware that this hearing was commencing today and that he has voluntarily absented himself. It noted that Mr De Rita has had legal representation for the pre-hearing section of these proceedings, but that Mr Williams is not instructed for the hearing itself. The Tribunal also noted that Mr De Rita has left the UK and does not wish to practise here any longer.

245. The Tribunal noted that no application for an adjournment of this hearing had been made. It was of the view that any such adjournment would be unlikely to result in Mr De Rita's attendance at a future hearing date given the clear indication about non-engagement outlined in the emails from Mr Williams.

246. The Tribunal noted that the allegations against Mr De Rita are serious and that a witness is due to give evidence at this hearing on behalf of the GMC. The Tribunal considered that the witness would be inconvenienced and unnecessarily distressed by an adjournment in circumstances where there was no reason to believe that Mr De Rita would engage even if the matter was to be adjourned.

247. The Tribunal was mindful that fairness relates not merely to the Registrant but also to any witnesses and the wider public. The nature of disciplinary proceedings is to protect, promote and maintain the health and safety of the public and in this respect the fair, economical, expeditious and efficient disposal of allegations against medical practitioners without delay is of real importance.

248. Finally, the Tribunal noted that it did have an account from Mr De Rita as he had been interviewed as part of the investigation into this Allegation. The Tribunal is also aware, and will take into account, that Mr De Rita has denied the Allegation from the outset and, through his legal representative, maintains that denial.

249. In all the circumstances, the Tribunal determined that it was appropriate to proceed in Mr De Rita's absence. It concluded that it was fair and in the public interest for this hearing to proceed today.

Record of Determinations –
Medical Practitioners Tribunal

Schedule 1

| Date | Time | Message |
|-----------------|-------|---|
| 25 October 2022 | 06.30 | Be sure [heart exclamation emoji] |
| 25 October 2022 | 06.30 | That there is a [[XXX] emoji] [heart exclamation emoji] |