

PUBLIC RECORD

Dates: 31/10/2022 - 14/11/2022

Medical Practitioner's name: Dr Humair Nasim
GMC reference number: 7028593
Primary medical qualification: MB BS 1991 University of Punjab (Pakistan)

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

Summary of outcome

Suspension, 12 months.
Review hearing directed

Tribunal:

Legally Qualified Chair	Mr Gerry Wareham
Lay Tribunal Member:	Mr Peter Scofield
Medical Tribunal Member:	Dr Nagarajah Theva
Tribunal Clerk:	Miss Hinna Safdar

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Ms Laura Stephenson, Counsel, instructed by Ms Phoebe Julian
GMC Representative:	Mr Paul Williams, Counsel

Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held in public.

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 - 09/11/2022

Background

1. Dr Nasim qualified in 1991 from the University of Punjab and prior to the events which are the subject of the hearing he was working as a Locum Specialist Registrar in Leeds. At the time of the events Dr Nasim was practising as a Locum Associate Specialist in General & Colorectal Surgery at Noble's Hospital in the Isle of Man (the Hospital).

2. The allegation that has led to Dr Nasim's hearing can be summarised as follows: between August 2018 and November 2019, Dr Nasim behaved inappropriately and/or unprofessionally towards three female colleagues whilst at work with them, on more than one occasion. It is alleged that Dr Nasim's conduct was sexually motivated and amounted to sexual harassment pursuant to s.26 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 Ms A, Ms B and Ms C, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

3. The initial concerns were raised with the hospital by way of complaint from Ms A, Ms B, and Ms C.

The Allegation and the Doctor's Response

4. The Allegation made against Dr Nasim is as follows:

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

Ms A

1. On one or more occasion during 2019 you behaved inappropriately and/or unprofessionally towards a colleague Ms A whilst at work with her, in that you said to her that:
 - a. you were available to fulfil any sexual needs that Ms A may have, or words to that effect; **To be determined**

- b. it was ok in your culture to be with another woman when married, or words to that effect. **To be determined**

Ms B

2. Between September 2019 and 27 November 2019 you behaved inappropriately and/or unprofessionally towards a colleague Ms B whilst at work with her, in that:
- a. on one or more occasion, you asked to take Ms B out on a date; **To be determined**
- b. on or around the 11 November 2019 you said to Ms B words to the effect of:
- i. 'how long have you been with her for?' with reference to Ms B's partner; **To be determined**
- ii. 'have you always known that you are attracted to women?'; **Admitted and found proved**
- iii. 'would you ever be with a man again?'; **Admitted and found proved**
- iv. 'you wouldn't be interested in an older man anyway.'; **To be determined**
- v. 'not penetration' with reference to you having an extra marital affair; **To be determined**
- vi. 'you must be flattered'; **To be determined**
- vii. asking Ms B about you having a threesome with her and her partner; **To be determined**
- viii. suggesting to Ms B that she should go with you to your office to train you; **To be determined**
- ix. telling Ms B that you had used the XXX training as an excuse to come and see her. **To be determined**
- c. on or around the 12 November 2019 you said that Ms B should not tell anyone about your conversation of 11 November 2019 as described at paragraph 2b, or words to that effect; **To be determined**
- d. on or around 26 November 2019 you said to Ms B that she looked pretty, or words to that effect; **To be determined**
- e. on or around 27 November 2019 you:

- i. asked Ms B what she was doing with Ms C the previous day, or words to that effect; **To be determined**
- ii. said to Ms B ‘so you weren’t discussing exchanging partners?’, or words to that effect, with reference to Ms B’s conversation with Ms C at 2ei above. **To be determined**

Ms C

3. Between August 2018 and November 2019 you behaved inappropriately and/or unprofessionally towards a colleague Ms C whilst at work with her, in that:
 - a. on one or more occasion you invited Ms C to attend your on-site staff accommodation during working hours for ‘teaching’ or words to that effect; **To be determined**
 - b. on one or more occasion you told Ms C that she ‘looked nice’ or words to that effect; **To be determined**
 - c. on one or more occasion you said to Ms C ‘you look like the type of woman I would go for in my day and still would’ or words to that effect; **To be determined**
 - d. on one or more occasion you told Ms C that you were allowed to have a relationship outside of your marriage, or words to that effect; **To be determined**
 - e. on one or more occasion you told Ms C that you were allowed to have sex outside of your marriage, or words to that effect; **To be determined**
 - f. on a date between July 2018 and August 2018 you obtained Ms C’s personal mobile telephone number from the medical rota system; **To be determined**
 - g. on or around 11 August 2018 you sent an inappropriate joke of a sexual nature to Ms C by WhatsApp; **To be determined**
 - h. on a date in mid to late 2018 you invited Ms C to attend at your on-site staff accommodation for a work-related purpose and whilst at your accommodation you:
 - i. asked Ms C whether she was in a relationship, or words to that effect; **To be determined**
 - ii. asked Ms C if she was dating, or words to that effect; **To be determined**

- iii. told Ms C that you were in an open relationship with your wife, or words to that effect; **To be determined**
 - iv. told Ms C that in your culture you were allowed to have multiple partners, or words to that effect; **To be determined**
 - v. sat down next to Ms C with a visible erection; **To be determined**
 - vi. leaned towards Ms C and attempted to kiss her on the lips; **To be determined**
 - vii. kissed Ms C on the face; **To be determined**
 - viii. said to Ms C ‘kiss me once and you will see’ or words to that effect; **To be determined**
 - ix. ejaculated; **To be determined**
 - x. said to Ms C as she was leaving ‘don’t tell anyone, just think about it’ or words to that effect; **To be determined**
 - xi. said to Ms C ‘don’t tell Dr D or Dr E’ or words to that effect. **To be determined**
- i. in or around September 2018 you sent a message to Ms C on WhatsApp saying ‘does anyone miss me?’ or words to that effect; **To be determined**
 - j. you told Ms C that you had come back to the area for her, or words to that effect. **To be determined**
4. Your conduct as described at paragraphs 1 to 3:
- a. was sexually motivated; **To be determined**
 - b. amounted to sexual harassment pursuant to s.26 Equality Act in that you engaged in unwanted conduct of a sexual nature, which had the purpose or effect of violating the dignity of Ms A, Ms B and Ms C, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. **To be determined**

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

The Admitted Facts

5. At the outset of these proceedings, through his counsel, Ms Stephenson, Dr Nasim made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above,

in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

6. In light of Dr Nasim's response to the Allegation made against him, the Tribunal is required to determine whether Dr Nasim's behaved inappropriately and/or unprofessionally towards three female colleagues whilst at work with them, and whether his behaviour was sexually motivated.

Witness Evidence

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

- Ms A, in her witness statement, dated 21 June 2021, and orally via video link;
- Ms B, in her witness statement, dated 23 June 2021, and orally via video link;
- Ms C, in her witness statement, dated 25 August 2021, and orally via video link;

8. 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 E, dated 4 June 2021;
- Dr D, dated 22 June 2021;
- Dr F, dated 29 June 2021;

9. Dr Nasim provided his own witness statement, dated 14 October 2022 and also gave oral evidence at the hearing.

10. The Tribunal also received evidence on behalf of Dr Nasim in the form of testimonials from the following witnesses who were not called to give oral evidence:

- Ms R, dated 24 April 2020;
- Ms S, dated 2 November 2021;
- Mr I, dated 30 November 2021 and 10 October 2022;
- Ms J, dated 2 November 2021;
- Ms K, dated 2 November 2021;
- Dr L, dated 2 November 2021;
- Mr M, dated 8 November 2021;
- Ms N, dated 23 April 2020;
- Dr O, dated 13 October 2022.

Documentary Evidence

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

- Investigation meeting record for Ms A by Dr D, dated 18 December 2019;
- Text messages between Ms B and her partner, dated 11 November 2019;
- WhatsApp messages between Ms B and Ms C, dated 27 November 2019;
- Email thread with statement attached from Ms B to Mr P, dated 28 November 2019;
- Complaint email with Complaint Statement attached from Ms B to Ms E, undated;
- Investigation meeting record for Ms B by Dr D, dated 18 December 2019;
- Email thread with screenshots of WhatsApp messages from Ms B to Mr H with Ms C copied in, dated 20 January 2020;
- Screenshots of text messages between Ms C and Dr Nasim, various dates;
- Statement from Ms C to Mr P, dated 29 November 2019;
- Investigation meeting record for Ms C by Dr D, dated 18 December 2019;
- Dr Humair Nasim CV, undated;
- XXX (accommodation) Floor Plans;
- Screenshots of text messages between Dr Nasim and Mr Q, 20 August 2018;
- Photograph taken on 29 August 2022 showing (from left to right): Mr Q, Mr Humair Nasim, Ms C, and Dr F, undated;
- Dr Nasim's CPD Certificates, various dates.

The Tribunal's Approach

12. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Nasim 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.

13. In assessing a witness's credibility, the Tribunal reminded itself that it should not assess witness credibility exclusively on the demeanour of the witness when giving their evidence, but their veracity should be tested by reference to objective facts proved independently in their evidence, in particular by reference to the documents in the case. The Tribunal should make a rounded assessment of a witness's reliability, rather than approaching their reliability in respect of each charge in isolation from the others: *R (on the application of Dutta) v GMC [2020] EWHC 1974 (Admin)*.

14. It was open to the Tribunal not to rule out the whole of a witness's evidence based on credibility; credibility could be divisible: *Khan v The General Medical Council [2021] EWHC 374 (Admin)*.

15. The Tribunal noted that, when considering the evidence of any witness in this case, it should also bear in mind the extent to which the passage of time may have affected the

memory of a witness. The Tribunal was aware from its own experience that memories can fade with the passage of time, and that recollections may change, or may become confused, as to what did or did not happen at a particular time. The Tribunal should make due allowance for the way in which the passage of time may have affected the recollections of any of the witnesses.

16. In relation to witnesses generally, the Tribunal bore in mind that an honest witness could be mistaken, and a mistaken witness was not necessarily wrong about every fact.

17. As to individual pieces of evidence, the Tribunal was entitled to draw proper inferences - to come to common sense conclusions based upon the evidence which it accepted as reliable; but it must not speculate. Similarly, the Tribunal should not speculate about what other evidence there might have been. The Tribunal should only draw an inference if it could safely exclude other possibilities: *Sony v GMC (2015) EWAC 0364 Admin*.

Good Character and Testimonial Evidence

18. The Tribunal took into account, in making its determinations of fact, the good character of Dr Nasim.

19. The LQC reminded the Tribunal that, whilst good character was not a defence to the allegations, the evidence of good character counted in Dr Nasim's favour in two ways:

- First, Dr Nasim's good character supported his credibility and was therefore something the Tribunal should take into account when deciding whether it believed his evidence (the 'credibility limb'); and
- Secondly, Dr Nasim's good character might mean that he was less likely to have committed the allegations cited (the 'propensity limb').

20. It was for the Tribunal to decide what weight it would give to the evidence of good character, taking into account everything it had heard about Dr Nasim.

21. The Tribunal noted that it should always be mindful that, whilst evidence of good character was relevant to credibility and propensity, in relation to the Allegation the significance of such evidence ought not to be overstated and should not detract from the primary focus on the evidence directly relevant to the alleged wrongdoing: *Martin v Solicitors Regulation Authority [2020] EWHC 3525 (Admin)*.

22. The Tribunal had been provided with a number of character references on behalf of Dr Nasim via testimonial evidence. The Tribunal bore in mind that it should consider these and attach such weight to them as it considered appropriate. It was not evidence that goes directly to the Allegation but was a matter to be put into the balance in the evaluation of all the evidence in the case.

Sexual Motivation

23. Once the Tribunal had made findings of fact as regards the allegations contained in parts 1, 2 and 3 of the Allegation, the LQC advised the Tribunal that it must then consider part 4 and determine whether the conduct found proved was sexually motivated.

24. In *Basson v GMC [2018] EWHC 505 (Admin)*, the High Court defined acting with sexual motivation as conduct done either in pursuit of sexual gratification or in pursuit of a future sexual relationship.

25. The Tribunal reminded itself that allegations of sexual motivation in the regulatory context were particularly serious. As such, the Tribunal would wish to seek cogent evidence before it concluded that a case of sexual motivation was made out. Sexual motivation requires a specific intent on the part of the doctor. It was not the same as carelessness, recklessness, or negligence.

26. It was important not to equate inappropriate conduct with sexually motivated conduct and the Tribunal should address the important question as to whether there could have been any other explanation for inappropriate conduct: *Arunkalaivanan v GMC [2014] EWHC 873 (Admin)*. However, the key and indispensable ingredient of motivation related to the individual's state of mind. The determination of an individual's state of mind was not something that could be proved by direct observation. It could be proved only by inference or deduction from the surrounding evidence.

27. The Tribunal must be satisfied, on the balance of probabilities, that sexual motivation should be inferred from all the circumstances noting that the character evidence might be relevant to that exercise.

28. When considering sexual motivation, the Tribunal should make a deduction from all the facts and circumstances of the case and look at the material in the round. However, the best evidence of a sexual motivation could be the behaviour itself. If there was no plausible, alternative explanation as to why the doctor engaged in conduct or actions of an overtly sexual nature, then the Tribunal was entitled to conclude that the motivation was sexual.

Harassment

29. Harassment is defined within s26 of the Equality Act (2010) and any conduct found proved to come within that definition will amount to harassment, or to behaviour "in a harassing manner", within the ordinary meaning of those words:

[26 Harassment (1) A person (A) harasses another (B) if— (a) A engages in unwanted conduct related to a relevant protected characteristic, and (b) the conduct has the purpose or effect of— (i) violating B's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B. (2) A also harasses B if— (a) A engages in unwanted conduct of a sexual nature, and (b) the conduct has the purpose or effect referred to in subsection (1)(b). (3) A also harasses B if— (a) A or another

person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex, (b) the conduct has the purpose or effect referred to in subsection (1)(b), and (c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct. (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account— (a) the perception of B; (b) the other circumstances of the case; (c) whether it is reasonable for the conduct to have that effect. (5) The relevant protected characteristics are— age; disability; gender reassignment; race; religion or belief; sex; sexual orientation.]'

Cross- admissibility and propensity

30. The Tribunal must consider each paragraph of the Allegation separately in order to be able to make individual findings. However, if one part of the Allegation is found proved, the Tribunal is entitled to take account of that, when considering propensity to act as alleged in other parts of the Allegation.

31. Although it is open to the Tribunal to take into account all the evidence adduced in relation to each allegation, *Hanson 2005 EWCA Crim 824* at [18] cautions that propensity (where found) is only one relevant factor. The Tribunal must assess its significance in the light of all the other evidence in the case. Propensity cannot be regarded as a satisfactory substitute for direct evidence: *R v Mitchell 2016 UKSC 55, at [55]*. The Supreme Court described propensity as an incidental issue.

32. The Court of Appeal in *Freeman & Crawford 2008 EWCA Crim 1863 at [20]* also addresses the question of cross-admissibility of evidence. A Tribunal is not required to determine whether it is satisfied, on the evidence, to find one paragraph in the Allegation proved before it can move on to use that evidence to deal with any other paragraph in the Allegation: that approach would be too restrictive.

33. The Tribunal has to reach a conclusion on each paragraph separately, but it is entitled, in determining whether or not each paragraph is proved, to have regard to relevant evidence in regard to any other paragraph. It may consider the evidence in the round.

The Tribunal's Analysis of the Evidence and Findings

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

Ms A

Paragraph 1(a)

35. The Tribunal noted that there was a dispute between Dr Nasim and Ms A as to the words used by the doctor and the intention behind those words, on the relevant occasion.

36. Ms A's evidence in her witness statement was clear regarding the nature of the comments, but non-specific as to the actual words. She said "*Dr Nasim did make a comment in a banter fashion when I was working with him on the ward. Dr Nasim told me he was available to fulfil any sexual needs that I may have. It was said in jest and I laughed it off and left. I can't remember the context, something along the lines that I was a single parent with needs, and he was available.* [Tribunal emphasis]"

37. Ms A, in her oral evidence, informed the Tribunal that she still could not recall the exact words that were used. She said, when cross-examined by Ms Stephenson as to whether Dr Nasim had in fact offered to fulfil her sexual needs, that she "*can't remember the exact words but that was the impression given*". When Ms Stephenson put to her whether the phrase Dr Nasim had used could have been "*I'm here for anything you need,*" Ms A conceded that "*yes, that's possible.*" However, Ms A did also inform the Tribunal in her oral evidence that "*It was the way he said it, it was not professional or appropriate.*". Ms A further informed the Tribunal that she brought up the topic of Dr Nasim's own marriage as a means to discourage him from making any further comments with sexual implications.

38. Dr Nasim denied this in his witness statement. He said, "*The only context in which I can think I would have offered myself as being available would have been in a work context*". Dr Nasim also stated in his witness statement that a conversation had been had previously about Ms A being a single mother and that the father of her child was Pakistani, and Ms A had "*made some derogatory remarks about Pakistani people and men in general.*" Dr Nasim stated that Ms A had a prejudiced view of Pakistani men.

39. The Tribunal found that there had been a conversation regarding Ms A's status as a single mother. She says that the words Dr Nasim said to her could have been "*I'm here for whatever you need*" but she is adamant both in her statement and in her interview that these comments were made in a context which had clear sexual undertones. She had never committed herself to a particular form of words but was consistent as to the meaning conveyed.

40. The Tribunal noted that Ms A was asked by Ms Stephenson whether she had misunderstood and whether there could have been another interpretation, to which Ms A replied that she did not think that there could be another interpretation; she said that the words may have been "*I am here for anything you need*" but the context was clear to her that it was said in a sexual context. Ms A says she had then brought up the issue of his marriage as a topic of conversation to dissuade Dr Nasim, and he accepted that a conversation about his marriage took place.

41. The Tribunal considered Ms A's concessions during cross-examination very carefully, but noted:

- i. Ms A had never claimed full recall of the precise phraseology employed;

- ii. It could be considered to her credit that she took such care to indicate where she could and could not be precise in her testimony;
- iii. She did not waver as to her conviction of the intent and meaning of that aspect of the conversation;
- iv. Her version provided a logical explanation as to the next topic of the conversation, Dr Nasim's marriage, in that she raised it as a deflective technique;
- v. The potential explanation put forward by Dr Nasim seemed less probable, as it would surely have been apparent to Ms A that she could call on him in a professional context if needed, and that she would in any event be unlikely to mistake such a comment in such a context as a sexual proposal.

42. In relation to Paragraph 1(a) of the Allegation, the Tribunal concluded that it was more likely than not that Dr Nasim had behaved inappropriately to Ms A by saying to her that he was available to fulfil any sexual needs that Ms A may have, or words to that effect.

43. The Tribunal therefore found Paragraph 1(a) of the Allegation proved.

Paragraph 1(b)

44. The Tribunal bore in mind Ms A had stated that she brought up the conversation of Dr Nasim's marriage as an attempt to dissuade him from continuing his comments about her potential sexual needs as a single parent.

45. In her Investigation meeting with Dr D, Ms A is recorded as saying "*he [Dr Nasim] said because of my culture... it's OK*", in reference to having sex with other women while he is married.

46. Dr Nasim said in his witness statement "*I do not recall any discussion with Ms A about marriage other than the discussion about her ex-partner...*".

47. The Tribunal reminded itself that Dr Nasim conceded that he had a conversation with Ms B regarding the permissibility in Islam for a man to have more than one wife. The Tribunal concluded that this evidence from Dr Nasim made it more probable that a similar conversation may also have occurred with Ms A. The Tribunal reminded itself that it was possible Ms A had heard this account from Ms B but deemed it unlikely she had then fabricated that element of her own account or mistakenly adopted it.

48. Ms A informed the Tribunal that she initiated the conversation about his marriage to put him off, but he was not dissuaded, and replied that it does not matter that he is married as in his culture it is appropriate to be with another woman whilst married.

49. The Tribunal was aware that it should not find Paragraph 1(b) of the Allegation proved purely because it had found 1(a) of the Allegation proved. However, it found the evidence of Ms A on this point cogent and consistent.

50. The Tribunal therefore found Paragraph 1(b) of the Allegation proved.

Ms B

Paragraph 2(a)

51. It was put to Ms B by Ms Stephenson in her cross-examination that Dr Nasim had asked her for coffee or to take her and her partner out for a meal. Ms B refuted this, informing the Tribunal *“no, I remember he used the word ‘date’ as this rang alarm bells in my head”*.

52. The Tribunal noted there was a text message from Ms B to her partner sent on 11 November 2019 at 12:57 that reads *“remember I told you about that oldish doctor that always jokes about taking me on a date etc?”*

53. Dr Nasim said in his witness statement *“I accept that [I] did use the word ‘date’ when interacting with Ms B but I did not ask to take her out on a date with the intention of pursuing or exploring an intimate relationship. Any reference to a ‘date’ was friendly, and I thought in keeping with the way I heard others use the same term. I thought Ms B recognised and understood this too. I am sorry that it made Ms B feel uncomfortable.”*

54. The Tribunal noted that there was no dispute that the word *“date”* had been used. However, it also noted Ms B’s witness statement, in which she made it clear that the request for a ‘date’ was made persistently:

“Dr Nasim mentioned taking me out on a date a few occasions from mid-September to November 2019”

“Dr Nasim became persistent with asking me out on a date”

55. The Tribunal regarded Ms B as a credible and reliable witness, not merely because of her demeanour when giving oral evidence, but also because her account of events as alleged at Paragraph 2(b) of the Allegation, below, is supported by a closely contemporaneous account in the text message referred to above.

56. The Tribunal therefore found Paragraph 2(a) of the Allegation proved.

Paragraph 2(b)(i)

57. At the outset of these proceedings, Dr Nasim formally admitted that there was a conversation surrounding Ms B’s sexuality, as she was in a same-sex relationship.

58. Ms B in her witness statement said *“he [Dr Nasim] told me that he was asking me because in his culture and religion there aren’t any same sex couples and he didn’t know much about it.”*

59. Dr Nasim in his statement accepted that he had asked Ms B about the nature of her relationship and that he raised the issue: *“I remember that as she was starting to go through my profile, she asked me if I was married. I confirmed I am (although she must have known already from our previous conversation). I asked Ms B about her relationship – I remember saying something along the lines that it was quite new to me, same sex relationships, as it is not very common in my (Muslim) culture. I asked if it was ok to ask about her sexuality and that I would understand if she did not want to talk about it. Ms B said it was ok, it depends on the question.”* He also admitted asking whether she had always been attracted to women and whether she would ever be with a man again.

60. Dr Nasim said in his witness statement that he asked these questions *“not with any sexual or inappropriate intention.”*

61. By reference to the rest of the interaction between Dr Nasim and Ms B, key parts of which were admitted, the Tribunal found it was consistent and logical that he would also ask Ms B how long she had been with her partner. He had been comfortable asking Ms B much more intimate questions, and the Tribunal saw no reason to doubt Ms B on this aspect.

62. The Tribunal therefore found Paragraph 2(b)(i) of the Allegation proved.

Paragraph 2(b)(iv)

63. Ms B explained to the Tribunal in cross-examination that she considered this comment that she ‘would not be interested in an older man anyway’ to be in relation to Dr Nasim himself, coming shortly after his questions as to her current relationship, and his admitted words *“would you ever be with a man again?”*

64. Ms B said in her witness statement *“It was clear that he was referring to himself, but he acted like he was joking. I knew what he was implying. I felt very uncomfortable and it wasn’t easy to be in that situation.”*

65. The Tribunal again referred to the text message that Ms B had sent to her partner in which she wrote *“he kept saying ‘you wouldn’t be interested in an older man anyway’”*.

66. Dr Nasim denied saying to Ms B that she would not be interested in an older man, as a reference to himself. In his witness statement, he said, *“... something clumsy about not waiting until she was ‘too old’, or ending up with ‘too old’ a (male) partner.”*

67. Dr Nasim did not state that Ms B was fabricating this, he said rather that she misunderstood. The Tribunal did not consider that this was a plausible misunderstanding or that Dr Nasim’s explanation was credible.

68. The Tribunal therefore found Paragraph 2(b)(iv) of the Allegation proved.

Paragraph 2(b)(v)

69. The Tribunal again considered the text message Ms B had sent to her partner in which Ms B wrote *“he told me that he has extramarital relationships with other women while he is away from home, but not penetration because that was the rules his wife gave him.”*

70. Also in her witness statement, Ms B stated that *“Dr Nasim talked about having an affair outside of his marriage. I remember the words he used distinctively were ‘extra marital affairs’ as I wouldn’t use that phrase. While he was talking about having affairs, I remember that he said, ‘not penetration’. That came out of nowhere, but I think he was subtly trying to persuade me, as I was in a same sex relationship with a woman and therefore I don’t have penetrative sex.... I mentioned his wife, I thought if we talked about his wife it would distract from Dr Nasim’s focus on me. I had asked Dr Nasim if his wife knew about his affairs. He told me that his wife knew, and that she had agreed the rules with him.”*

71. Ms Stephenson suggested to Ms B during cross-examination that Dr Nasim had not used the term *“penetrative sex”*. Ms B replied *“I remember this. Clear as day. It stuck in my mind”*.

72. Dr Nasim denied *“any discussion with Ms B about penetrative sex or using the words “not penetration.”*

73. Dr Nasim said in his witness statement *“Ms B started asking me about multiple partners being allowed in Islam. I explained that extra marital affairs are not allowed in my culture, but in certain situations, men can marry more than one wife, although it is not very common.”*

74. The Tribunal noted that Dr Nasim had accepted there was some discussion regarding extra marital affairs. It also noted that Ms B’s contemporaneous text included *“he told me that he has extramarital affairs with other women while he is away from home but not penetration...”*. The Tribunal concluded that there was no scope for any misunderstanding, that it was implausible for Ms B to have made up the words in question, and that it was more likely than not Dr Nasim had made the comments in question in the context alleged.

75. The Tribunal therefore found Paragraph 2(b)(v) of the Allegation proved.

Paragraph 2(b)(vi)

76. Ms B said in her witness statement *“At some point during the conversation during the training session, Dr Nasim had said ‘You must be flattered’, because he had been paying me so much attention. I didn’t feel flattered but I told him that I was flattered but I am very loyal while I am in a relationship.”*

77. Ms B's text message to her partner stated *"I was a bit taken aback and said 'I'm flattered but you won't get anywhere with me, I'm very loyal when I'm in a relationship with someone'."*

78. Dr Nasim denied *"any sexual intent towards Ms B and... suggesting or saying that she must be flattered I was giving her such attention."*

79. The Tribunal considered this part of the Allegation in the context of the conversation as a whole, together with the facts found proved thus far. It found it more likely than not that Dr Nasim had told Ms B that she must be flattered.

80. Where it differed from that of Dr Nasim, the Tribunal preferred the evidence of Ms B.

81. The Tribunal therefore found Paragraph 2(b)(vi) of the Allegation proved.

Paragraph 2(b)(vii)

82. In her witness statement, Ms B said, *"Dr Nasim then asked me about having a threesome with me and my partner, he was laughing when he said it. I don't remember how he worded that question, but it seemed that he was trying to involve my partner because I said that I was loyal to her... I remember definitely making it clear to him by answering 'no' to that request."*

83. In the text message to her partner, Ms B wrote that Dr Nasim *"mentioned a threesome as in with you!"*

84. Ms B was clear and emphatic in her oral evidence when it was put to her by Ms Stephenson that Dr Nasim did not use the word 'threesome'. She replied, *"he did. I have not misremembered. He said threesome with me and my partner and I said no"*

85. Dr Nasim denied this. He informed the Tribunal that he had suggested taking Ms B and her partner for a meal. He said in his witness statement *"I used the phrase the 'three of us' (not threesome) or I may even at one point have said the 'four of us' - meaning to include my wife as well. Ms B declined with a gentle laugh saying her partner would not agree to it."*

86. This was put to Dr Nasim in questions from the Tribunal. He was asked if it was normal for him to take not only a person who had provided him with routine training, but also their partner, for a meal. He replied saying *"Most people will go for a drink. I don't drink so I will go for a meal."*

87. The Tribunal found that the offer for a meal for three people, in such circumstances, might well be considered an excessive or disproportionate response to a routine interaction in the workplace. Ms B informed the Tribunal that XXX, it was her responsibility and part of her usual duties.

88. The Tribunal considered it highly implausible that Ms B could have misinterpreted an invitation for a meal as a proposal for a sexual liaison. Having found her a credible and reliable witness, whose evidence was supported by a contemporaneous text message to her partner, the Tribunal preferred her evidence to that of Dr Nasim's.

89. The Tribunal therefore found Paragraph 2(b)(vi) of the Allegation proved.

Paragraph 2(b)(viii)

90. Ms B said in her witness statement *"I remember, during the training session, that Dr Nasim mentioned that I should go with him to his office to train him. I think he wanted us to relocate to his office so we wouldn't be out in the open and I refused."*

91. Challenged by Ms Stephenson in cross-examination Ms B admitted her recall was unclear. Asked whether this was *"possibly misremembered"* Ms B replied, *"I don't think so but, in the context of everything, this stood out the least."*

92. Ms Stephenson also suggested it was unlikely that Dr Nasim had invited Ms B to his office for her to train him as he did not have a personal office.

93. Ms B said she *"remembered him saying something along those lines"*.

94. The Tribunal concluded that, in light of Ms B's unsure recollection, and Dr Nasim's evidence that he did not have an office in the hospital, the GMC had not discharged the burden of proof.

95. The Tribunal therefore found Paragraph 2(b)(viii) of the Allegation not proved.

Paragraph 2(b)(ix)

96. Ms B said in her witness statement *"Dr Nasim told me that he had used this XXX training as an excuse to come and see me. I don't remember his specific words. I just felt manipulated and deceived as I had believed that he needed help with XXX. I never would have arranged the meeting if I had known he was going to overstep the mark to the extent that he did."*

97. This was challenged by Ms Stephenson in cross-examination, to which Ms B replied *"he definitely did say that."*

98. Dr Nasim said in his witness statement that *"I had asked about online training/guidance and it was Ms B who offered to do the training in-person with me."* Ms B said this training could only take place in person. The Tribunal considered that it was implausible that Ms B had offered to do the training with Dr Nasim unprompted, and that the request had come from Dr Nasim.

99. The Tribunal considered that it was more likely than not, in the context of Ms B's text to her partner suggesting that Dr Nasim had asked her on a date multiple times and the other inappropriate comments that he had made to her, that he had also said to Ms B that he engineered this training to see her.

100. The Tribunal therefore found Paragraph 2(b)(ix) of the Allegation proved.

Paragraph 2(c)

101. In cross-examination, it was put to Ms B by Ms Stephenson that Dr Nasim had in fact apologised to her and expressed regret for anything that he said that may have made her feel uncomfortable. Ms B refuted this explanation and replied *"I don't remember him apologising, I remember him telling or asking me not to tell anyone."*

102. Ms B said in her witness statement *"On 12 November 2019, Dr Nasim came to see me, he told me not to tell anyone about our conversation we had the day before. I felt a bit intimidated as if he was warning me. I told him I wouldn't tell anyone. I realised then that Dr Nasim knew that he had overstepped the line with me."*

103. Dr Nasim denied this. Dr Nasim said in his witness statement *"When I next saw Ms B, when I went to see her with the 360 degree feedback forms, which I think was the following day, or the day after, I said I was sorry if any of my questions had made her feel uncomfortable. ... From my perspective it cleared the air and any potential awkwardness was resolved. She didn't seem at all concerned at that point – I actually got the impression I had potentially been over-thinking it."* He added in his response to this paragraph of the Allegation *"I did not tell her not to tell anyone about our conversation."*

104. Dr Nasim was asked by the Tribunal why he felt any need to apologise. In his statement, he said that the discussion ended amicably and on good terms. He did not offer any further insight as to why, on reflection, he felt the need to apologise. The Tribunal found the evidence of Ms B to be the more probable.

105. The Tribunal therefore found Paragraph 2(c) of the Allegation proved.

Paragraph 2(d)

106. Ms B stated in her witness statement *"I bumped into Dr Nasim and he told me that I looked pretty. I felt like he was looking at me in a sexual way"*.

107. This was challenged by Ms Stephenson in Ms B's cross-examination. Ms Stephenson suggested that Dr Nasim had said that Ms B looked nice, and Ms B replied *"no, definitely 'you look pretty'"*.

108. Dr Nasim said in his witness statement *“I have no memory of telling Ms B that she looked pretty or words to that effect. I may have complimented her outfit, but would not have used the word ‘pretty’. If I did say anything about her appearance it was certainly not sexually motivated.”*

109. The Tribunal concluded that a comment was made by Dr Nasim about Ms B’s appearance. This was not denied by Dr Nasim. Having regard to its earlier conclusions in relation to her credibility and reliability, the Tribunal determined that it was more likely than not that the comment was as stated by Ms B, that she looked *“pretty”* or words to that effect.

110. The Tribunal therefore found Paragraph 2(d) of the Allegation proved.

Paragraph 2(e)(i) and 2(e)(ii)

111. The Tribunal considered Paragraph 2(e) in its entirety.

112. Ms B said in her witness statement *“Dr Nasim came over and asked me what I was doing with Ms C the previous day. He asked me this in an accusing sort of way. I think he was getting paranoid and worried because he didn’t know we were friends. I told him that I was good friends with Ms C. He was laughing and he asked, ‘so you weren’t discussing exchanging partners?’. I believe he was referring to mine and Ms C’s partners as Ms C had a boyfriend. I believe he was implying that we would be having a threesome or foursome as I had been with a man before. I don’t know why he said that. I was shaking my head and I told him to stop it.”*

113. The Tribunal was presented with text messages sent between Ms B and Ms C. A message sent from Ms B to Ms C at 13:07 on 27 November 2019 regarding the incident read *“He [Dr Nasim] said something else this morning – he stopped and said ‘why were you talking to Ms C yesterday?’ (Obviously feeling paranoid) so I said ‘she’s a good friend of mine’ and he said ‘so you weren’t exchanging partners or anything’ and started laughing”.*

114. Dr Nasim said in his oral evidence that he had asked Ms B whether she had a new partner, but this was *“relating to a new assistant.”*

115. The Tribunal considered that by November 2019 Dr Nasim knew who Ms C was, that she was a physician associate, and would not have mistaken her for a new assistant for Ms B. The Tribunal found his account was not credible, and that it was more likely to have been an attempt to provide an innocent explanation for his use of the word ‘partner’.

116. The Tribunal therefore found the entirety of Paragraph 2(e) of the Allegation proved.

Ms C

117. In relation to the individual elements of the Allegation relating to Ms C, the Tribunal considered first the nature of the two very different accounts of Dr Nasim and Ms C. The

account of Dr Nasim suggested a young, female colleague who was pursuing him. His account was that she had arranged the liaison, kissed him at the door and invited a medical examination of her lower limbs and abdomen which he deemed inappropriate without a chaperone. He seemed to suggest that she has since then come up with false accusations against him. Dr Nasim has also claimed that Ms C was racist towards Pakistani men, making the most pointed allegation for the first time in cross-examination.

118. Conversely, Ms C's account suggests a significantly older man in a position of superiority had been pursuing her and that she had been consistently avoiding his attentions. He had ultimately behaved inappropriately towards her.

119. Dr Nasim told that Tribunal that he and Ms C got along well and she had willingly and actively shared her 'phone contact with him, and had sought his company on separate occasions, including inviting him to a Christmas party, and coming to his leaving party. Ms C refuted this, stating that all 'phone contacts were shared for operational reasons, that there was a board for all staff members to post their names for the Christmas party, and the dinner that she attended was arranged by her superiors and she did not believe it to be Dr Nasim's leaving event.

120. Ms C told the Tribunal that she had been reluctant to make a complaint against Dr Nasim as her consultant advisor had told her not to whistle-blow as he had done so and had been blacklisted. She had come forward late and only when she realised others may be being mistreated by Dr Nasim and in a sense of duty.

121. The Tribunal determined that the matters within this set of allegations were not such as could be reconciled as misunderstandings. It was clear that the discrepancies were so significant that only one party could be giving a truthful account. Indeed, Ms Stephenson for Dr Nasim stated that *"there is less scope for the allegations made by Ms C to be the product of misinterpretation or inaccurate memory."*

122. Ms Stephenson listed several factors which she said undermined the evidence of Ms C. The Tribunal considered all of these carefully:

- As regards the 'late' or partial reporting of the nature of the incident, the Tribunal did not find that this undermined her account. Ms C explained her reluctance to come forward and to speak of the matter;
- Ms C may not have originally reported that Dr Nasim actually kissed her, but she did say he tried. In her interview with Dr D, Ms C said *"he edged closer and edged in to kiss"*. This was consistent with her evidence to the Tribunal that he tried to kiss her, she turned her head, and he kissed the side of it;
- Whether the actual location of the flat is misremembered is peripheral as it is agreed that the incident – however and at whatever time it occurred – happened in Dr Nasim's flat;
- Ms C was emphatic that Dr Nasim never came into her flat. Whilst Ms Stephenson contended that Ms A's evidence contradicted Ms C's account, the Tribunal did not find this inconsistency compelling. Ms A also said she did not want to 'speculate'

on what was said to her and that she was not sure she could trust her memory on the full details;

- The Tribunal did not find the deletion of Ms C's WhatsApp messages to have been in any way sinister or unusual. It was at a time when she stated she had no intention of coming forward, and her explanation that she a) deleted messages she found unpleasant and b) lost many when she changed phones was neither inconsistent nor improbable.

123. The Tribunal had much more cause for concern regarding the evidence of Dr F. Ms C is clear that she relied on and confided in him, and he may well be expected to remember and relate this. His statement served by the GMC states 'I do not recall Ms C confiding in me about anything'. As this statement was served and agreed, the Tribunal was required to accept this evidence, and it did. However, it is evidence to be considered and not in itself determinative. It was open to the Tribunal to seek to reconcile the differing accounts and it bore in mind the much greater relevance and impact of the issues in question for Ms C than for Dr F, and therefore the likelihood of her better recollection. Nevertheless, it was clear that there was a significant discrepancy on this point as regards the evidence presented by GMC, and one which must be factored into the Tribunal's reasoning.

124. The Tribunal also found it appropriate to remind itself, at this point in its determination, of the good character of Dr Nasim and the testimonials presented in his support.

125. The Tribunal found the evidence provided by the text messages between Dr Nasim and Ms C of particular importance in assisting to determine which version of events was the more credible. The texts from Dr Nasim repeatedly inviting Ms C to join him are much more in keeping with the narrative that she provided than that of Dr Nasim. He repeatedly asked her for tea and made a reference to an "*Indian head massage*", which the Tribunal found was consistent with Dr Nasim pursuing Ms C, rather than the other way around.

126. The Tribunal found that there was a clear internal inconsistency within the explanation Dr Nasim put forward. He stated that he felt Ms C attempted to force her attention on him, that she was "*over familiar*" and touched him and he did not feel comfortable with her. He stated in cross-examination that Ms C made a very inappropriate comment regarding Pakistani men. Again, this account was inconsistent with the content of the text messages, and with his statement that after the occasion in the flat they remained on good terms.

127. Ms C remained consistent throughout that she did not enjoy or welcome Dr Nasim's company and that she maintained publicly amicable relations from a sense of professionalism.

128. It was inferentially put Ms C may be making these allegations falsely, whether on the basis that she made advances in 2018 and was spurned by Dr Nasim or from other motivation. He appeared to suggest in his statement a number of reasons why Ms C might

have now come forward with these allegations from a position of malice, that he had rebuked or challenged her. These matters were put to her in cross-examination (though the alleged issue of racist comments was not as it only arose in Dr Nasim's cross-examination). These were refuted by Ms C in a rational and credible manner and no independent evidence has been presented to support that inference.

129. The Tribunal found that Ms C had neither fabricated nor embellished her evidence, either as a result of having her alleged advances 'spurned' or for any other reason. Again, the Tribunal referred itself to the tone of the text message from Dr Nasim to Ms C, which clearly indicated that he was the keener of the two to arrange some form of social interaction. The Tribunal also bore in mind the respective credibility of their accounts in relation to Dr Nasim's evidence that Ms C invited him to examine her lower limbs and abdomen. It found Dr Nasim's suggestion to be inherently implausible and reminded itself of Ms C's forthright response to Ms Stephenson's cross-examination on that point. She rejected it entirely, and immediately offered to waive any suggestion that she might give her evidence in private; indeed, she volunteered her medical records in order to rebut Dr Nasim's account.

130. It was in light of these points that the Tribunal began its consideration of the discrete elements of the Allegation. It remained cognisant that each element had to be proved by the GMC, and that the Tribunal must not approach the determinations on the basis that one party provided the only credible evidence, but that it must consider all the evidence for each aspect of the allegation.

Paragraph 3(a)

131. It was put to Ms C in her cross-examination by Ms Stephenson that she had in fact invited Dr Nasim to her flat. Ms C flatly denied this.

132. Dr Nasim denied inviting Ms C to his flat. He said in his statement. *"I did not invite Ms C to attend my on-site staff accommodation during working hours for teaching or any other reason."*

133. The Tribunal had sight of text messages between Dr Nasim and Ms C and noted that there was a consistent theme within these messages of Dr Nasim inviting Ms C to "come over" which Ms C would consistently avoid.

134. Where it differed from that of Dr Nasim, the Tribunal preferred the evidence of Ms C on this disputed fact.

135. The Tribunal therefore found Paragraph 3(a) of the Allegation proved.

Paragraph 3(b)

136. Ms C said in her statement that *“He [Dr Nasim] was friendly towards me, smiled at me a lot and told me that I looked nice. I didn’t think much of it at first, it may have been my naiveté at the time. I thought as an older doctor he was just being friendly.”*

137. Ms C also told Dr D in the Investigation meeting that *“He [Dr Nasim] would say things like ‘hey, you look nice today’.”*

138. Additionally, in her email to Mr P, Ms C wrote *“He [Dr Nasim] continues to comment on how I look on the wards”*

139. Dr Nasim said in his statement *“I did not tell Ms C that she looked nice or words to that effect and in any case I would not have done it with any sexual intent in the way described in her statement. If I did tell Ms C that she looked nice, it would have been in the context of a friendly interaction only.”*

140. The Tribunal found that Ms C was consistent that Dr Nasim told her that she *“looked nice”*. It also considered that Dr Nasim had accepted that he may have told Ms C that she *“looked nice”* or words to that effect.

141. The Tribunal therefore found 3(b) of the Allegation proved.

Paragraph 3(c)

142. Ms C told Dr D in the Investigation meeting, when asked for examples of Dr Nasim’s inappropriate comments, that he would say *“you look nice - like the type of woman I would go for in my day and would still go for.”*

143. Dr Nasim denied this. He said in his witness statement, *“I did not say this or any words to that effect.”*

144. Where it differed from that of Dr Nasim, and as Dr Nasim had accepted that he may have told her she looked nice, the Tribunal found the evidence of Ms C the more probable to be true on this disputed fact.

145. The Tribunal therefore found Paragraph 3(c) of the Allegation proved.

Paragraph 3(d) and Paragraph 3(e)

146. The Tribunal considered Paragraph 3(d) and 3(e) together.

147. In her email to Mr P, Ms C wrote *“Mr Naseem had rationalised his propositions by saying in his religion he is allowed to have multiple sexual partners whilst still being married to his wife.”*

148. Ms C referred to this in the Investigation meeting with Dr D, when she stated *“he [Dr Nasim] started talking how he is allowed to have relationships / sex outside of his marriage.”*

149. Ms C also mentioned this in her witness statement. She said *“Dr Nasim told me he was in an open relationship with his wife and that in his culture he was allowed to have multiple partners.”*

150. Dr Nasim denied this. He said in his witness statement *“I have no interest in exploring an intimate relationship outside my marriage and would never say anything suggestive of this either. Nor would I make any statements about what is in fact prohibited in Islamic marital law. Marriage is a sacred institution in Islam, and whilst in certain situations a man is allowed to marry more than one wife (up to four), sexual relationships outside of marriage are not permitted.”*

151. Dr Nasim suggested that Ms C would make offensive and racist comments about Muslim men. He said as a response to these Paragraphs of the Allegation *“I remember discussions with Ms C about Muslims and Islam which I found offensive at times and she appeared to have some quite distorted, prejudiced views. She would talk about Muslims having multiple marriages in a derogatory way and make offensive sweeping statements about Muslim men’s attitude to white (western) women.”*

152. The Tribunal considered that Dr Nasim accepted he had engaged in a discussion regarding Islamic law concerning marriage with Ms B, though denied any inappropriate intent. The Tribunal was aware that Ms C may have heard a similar account from Ms B, but found it unlikely that she had then mistakenly incorporated it into her own evidence. It was satisfied that Ms C’s claim to have a distinct memory of the comment was more credible than the alternative, namely that she adopted this element of her allegation from Ms B in the knowledge Dr Nasim had or would admit discussing this with Ms B.

153. The Tribunal therefore found Paragraphs 3(d) and 3(e) of the Allegation proved.

Paragraph 3(f)

154. Ms C said in her witness statement *“Dr Nasim was able to obtain my number from the medical rota system which retains contact details for doctors and is accessible to doctors on the rota.”*

155. Dr Nasim said in his statement, as a response to the Allegation *“I did have Ms C’s mobile number, but I did not obtain it from the medical rota system – we exchanged numbers for work purposes, which is normal practice on the wards. We sometimes used our phones for social arrangements too.”*

156. The Tribunal accepted that Dr Nasim had legitimate access to Ms C’s phone number as the hospital expected members of staff to have access to each other’s numbers.

157. The Tribunal therefore found Paragraph 3(f) of the Allegation not proved.

Paragraph 3(g)

158. Ms C said in her witness statement *“On 11 August 2018, Dr Nasim forwarded me an inappropriate joke of a sexual nature via WhatsApp. I deleted the message and I did not respond to him.”*

159. When asked in her oral evidence what the joke was, Ms C told the Tribunal that she does not remember what it was specifically but only that it was about breasts and breast feeding. She also said in her oral evidence that she does not remember what date it was sent.

160. Dr Nasim said in his statement, in response to this paragraph of the Allegation that he denies *“sending Ms C an inappropriate joke of a sexual nature by WhatsApp or any other means.”*

161. In the absence of the actual text message and of Ms C’s candid admission that she had little recollection of the content, the Tribunal could not be satisfied as to:

- i. who sent it, whether it had in fact been sent to Ms C and Dr Nasim by another and she misread the detail,
- ii. the nature and content of the message.

162. The Tribunal therefore found Paragraph 3(g) of the Allegation not proved.

Paragraph 3(h)

163. Dr Nasim denied Paragraph 3(h) of the Allegation *“in full”*. He said in his witness statement *“Ms C came to my apartment on one occasion in 2018.”* He denied instigating the meeting and insisted Ms C arranged it. The Tribunal has already found Paragraph 3(a) of the Allegation proved, in that Dr Nasim had invited Ms C to his flat.

164. It therefore followed that the stem of Paragraph 3(h) of the Allegation was also found proved.

Paragraph 3(h)(i) and Paragraph 3(h)(ii)

165. The Tribunal considered Paragraphs 3(h)(i) and 3(h)(ii) together

166. Ms C said in her witness statement that Dr Nasim *“asked me questions such as whether I was in a relationship and if I was dating.”*

167. Dr Nasim denied this. He stated as his response to the entirety of Paragraph 3(h) of the Allegation *“I did not ask Ms C about her relationship status – she volunteered the information.”* Dr Nasim said that *“She [Ms C] talked about relationships – she told me that she liked Mr G.”*

168. Where it differed from that of Dr Nasim, the Tribunal preferred the evidence of Ms C on this disputed fact.

169. The Tribunal therefore found Paragraphs 3(h)(i) and 3(h)(ii) of the Allegation proved.

Paragraph 3(h)(iii) and Paragraph 3(h)(iv)

170. The Tribunal considered Paragraphs 3(h)(iii) and 3(h)(iv) together.

171. The Tribunal considered its finding for Paragraph 3(d) and 3(e) and concluded that having found he made the comments on that occasion it was more likely than not that Dr Nasim has made the same comments to Ms C on this occasion. The evidence of Ms C on this point was cogent and persuasive, and there was no new evidence to undermine it.

172. The Tribunal therefore found Paragraphs 3(h)(iii) and 3(h)(iv) of the Allegation proved.

Paragraph 3(h)(v)

173. Ms C said in her Investigation meeting with Dr D that *“He [Dr Nasim] had an obvious outline on his trousers”*, referring to an erection.

174. Ms C also said in her witness statement *“I noticed that Dr Nasim was visibly erect.”*

175. Dr Nasim denied this. He stated that he *“did not have an erection”*.

176. Where it differed from that of Dr Nasim, the Tribunal preferred the evidence of Ms C on this disputed fact. It was clearly a distressing matter for Ms C to relate but her evidence on this point under cross-examination was nevertheless consistent and compelling.

177. The Tribunal therefore found Paragraph 3(h)(v) of the Allegation proved.

Paragraph 3(h)(vi), Paragraph 3(h)(vii) and Paragraph 3(h)(viii)

178. The Tribunal considered Paragraphs 3(h)(vi) and 3(h)(vii) and 3(h)(viii) together.

179. Ms C said in her investigation meeting with Dr D that *“He [Dr Nasim] edged closer and edged in to kiss. It was very awkward. He asked me to “kiss him once, you’ll see”. It was very sickening.”*

180. Ms C also said in her witness statement *“Dr Nasim quickly leaned forward to kiss me. He caught me off guard and I quickly turned away. He ended up kissing my face rather than my lips. He then said to me, ‘kiss me once and you will see’. I managed to say ‘no’, but I was shocked by what had just happened.”*

181. When it was put to Ms C by Ms Stephenson in cross-examination *“there was never a kiss or any attempted kiss”*, Ms C replied, *“Yes there was”*. The Tribunal took note of the fact that Ms C did not say that there was actual contact in the early complaint but did not find this significant or inconsistent. The gravamen of the Allegation was an attempted kiss to the mouth which Ms C says she diverted by turning her head.

182. Dr Nasim denied this. He stated that he *“did not ... attempt to kiss Ms C”*

183. Where it differed from that of Dr Nasim, the Tribunal preferred the evidence of Ms C on this disputed fact.

184. The Tribunal therefore found Paragraph 3(h)(vi), 3(h)(vii) and 3(h)(viii) of the Allegation proved.

Paragraph 3(h)(ix)

185. Ms C said in her witness statement *“I noticed that Dr Nasim had a wet patch on his trousers. It was obvious that he had ejaculated as the wet patch was noticeable because he was wearing beige coloured trousers. I find it difficult to talk about this incident because I felt so violated. I felt so sick and disgusted by it.”*

186. As with Paragraph 3(h)(v), Ms C’s evidence on this point was forceful and compelling. She clearly felt uncomfortable raising the issue and the Tribunal found her evidence credible. The Tribunal considered whether, even if it accepted Ms C’s version of what she saw, there was an alternative explanation for the ‘wet patch’, but determined that it was more probable than not, considering the events the Tribunal had found proved leading up to this, that Dr Nasim has ejaculated in his trousers.

187. The Tribunal therefore found Paragraph 3(h)(ix) of the Allegation proved.

Paragraph 3(h)(x)

188. Ms C said in her Investigation meeting with Dr D *“he [Dr Nasim] said ‘don't tell anyone- just think about it’. I just wanted to get out of the room. I left the room.”*

189. Dr Nasim denied this. He said in response to the Allegation *“I did not tell her not to tell anyone about anything.”*

190. Where it differed from that of Dr Nasim, the Tribunal preferred the evidence of Ms C on this disputed fact.

191. The Tribunal therefore found Paragraph 3(h)(x) of the Allegation proved.

Paragraph 3(h)(xi)

192. In her statement to the hospital, Ms C refers to being told by Dr Nasim not to tell “T and U”. The Tribunal could find no reference in Ms C’s evidence of her being told not to tell Dr D or Dr E.

193. The Tribunal therefore found Paragraph 3(h)(xi) not proved.

Paragraph 3(i)

194. Ms C said in her statement *“In September 2018, Dr Nasim sent me a WhatsApp message. It said, ‘Does anyone miss me?’. I didn’t reply to this message.”*

195. Ms C also referred to this in the Investigation meeting with Dr D. She told him that Dr Nasim had messaged her to *“ask if anyone was missing him”*.

196. Dr Nasim responded to this Allegation in his witness statement. He said, *“I do not remember sending a WhatsApp message saying ‘does anyone miss me’ and I have no record of doing so, but even if I did, it was not sexually motivated.”*

197. Where it differed from that of Dr Nasim, and as he conceded it may have occurred, the Tribunal preferred the evidence of Ms C on this disputed fact.

198. The Tribunal therefore found Paragraph 3(i) of the Allegation proved.

Paragraph 3(j)

199. Ms C said in the Investigation meeting with Dr D that Dr Nasim *“returned and said he’d come back to the Isle of Man for me”*.

200. Dr Nasim denied this in his witness statement. He said *“I do not remember saying this and I think it is unlikely I did, but if I did, it was a joke and not intended to sound at all sinister or sexualised as Ms C has implied. I remember people used to make comments about me coming back to the Isle of Man for the money and I would just joke (to deflect the discussion) and say ‘no, I came back for you.’ In hindsight it is possible that I said that to Ms C or that she heard me say it to someone else.”*

201. The Tribunal considered this was Dr Nasim accepting that it was possible that he may have said this and therefore concluded it was more probable than not that this was a comment Dr Nasim made to Ms C.

202. The Tribunal therefore found Paragraph 3(j) of the Allegation proved.

Paragraph 4(a)

203. The Tribunal considered the submission by Ms Stephenson that cross-examination had been unfairly curtailed with particular reference to part 4 of the allegation, though

potentially relevant to all aspects of consideration of the evidence. The Tribunal determined that principles to be derived from the cases cited, in particular *Sait v GMC*, were that it was vital that an accused person was fully aware of the nature and extent of the allegations against him and given opportunity to respond. That case focused on the Tribunal's findings that an attempt to progress a relationship was sexually motivated. The court found the failure to put to the appellant the alleged sexual motivation remarkable and procedurally unfair. The Tribunal concluded that in Dr Nasim's hearing, although the cross-examination may not have been as detailed as anticipated, it was satisfied that all the principal elements of the allegation were clearly known and understood by him. The Tribunal noted in particular:

- i. that it was apparent from his detailed and considered response that he was fully aware of the nature of the Allegation, and that the facts alleged were made in order to further or render more likely a sexual liaison with the complainants;
- ii. he was invited to comment by Counsel for the GMC, Mr Paul Williams, whether, if the facts alleged were true as regards each individual allegation, they would be clearly sexually motivated;
- iii. the Tribunal noted that when asked questions by Counsel in cross-examination Dr Nasim was not reticent and spoke freely with no intervention from Mr Williams. The Tribunal was of the view that when the issues of sexual motivation were put to him, he had full awareness of the nature of the allegations and full opportunity to comment as to his motives if he so wished.

204. The Tribunal was satisfied that in all the circumstances it was appropriate to proceed to make findings of fact on the basis of the evidence presented and heard before the Tribunal. It should not seek to consider what may or may not have been the impact or outcome of more detailed cross-examination but only consider the relevant evidence.

205. The Tribunal reminded itself of the definition of sexual motivation in *Basson v General Medical Council [2018] EWHC 505 Admin*: "sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship." The Tribunal determined that the inappropriate comments made to Ms A, that Dr Nasim was available to fulfil any sexual needs she may have as a single parent, and that it was ok for him to be with another woman as his culture permitted it, were clearly sexually motivated and in pursuit of a future sexual relationship.

206. The Tribunal was satisfied that Dr Nasim had asked to take Ms B out on a date, asked if she would ever be with a man again, and had mentioned penetration. In particular the Tribunal noted that he appeared to offer himself as a potential sexual partner, whether in a 'threesome' or otherwise, and took note of the fact that he had asked her not to tell anyone of the conversations as evidence of his knowledge of the impropriety involved. The paragraphs of the Allegation found proved in relation to Ms B, taken together, were sexually motivated in that they were made in pursuit of a future sexual relationship with her.

207. Similarly, the Tribunal found that Dr Nasim’s inappropriate behaviour towards Ms C, in particular attempting to kiss her, and approaching her with a visible erection were innately and clearly sexually motivated in that they were designed to achieve immediate sexual gratification or further his chances of a future sexual relationship.

208. The Tribunal therefore found Paragraph 4(a) of the Allegation proved in relation to those factual paragraphs and sub-paragraphs that it had also found proved.

Paragraph 4(b)

209. The Tribunal considered that there was clear evidence from all complainants that the behaviour subject of the allegations was unwanted and that by finding that this behaviour was sexually motivated, it amounted to harassment as defined in s.26 of the Equality Act (2003).

210. The Tribunal therefore found Paragraph 4(b) of the Allegation proved in relation to those factual paragraphs and sub-paragraphs that it had also found proved.

Cross Admissibility

211. The Tribunal was aware throughout its consideration of the evidence of the point made by Dr Nasim’s Counsel and accepted in full by the GMC that there had been contact and discussion between the 3 complainants prior to their official record of complaint. The Tribunal considered that this was quite natural in the circumstances and there was no evidence of any deliberate or malevolent collusion, however the potential for unwitting contamination and the unconscious adoption of attitudes or even memories was strong. The Tribunal was not assisted by the vague nature of the timeline, but it seemed clear that all 3 witnesses may have compared their accounts. Indeed, it seemed apparent they had come to a joint conclusion Dr Nasim was ‘sleazy’. For this reason, the Tribunal determined that it would not be safe to place any strong reliance on the evidence of one witness as regards the complaint of others. The only exception was the partial reliance placed by the Tribunal on the repetition of the Allegation that Dr Nasim discussed having permission to pursue relationships outside his marriage with each complainant, since this was supported by Dr Nasim having done so with Ms B. The Tribunal found it unlikely that there had been deliberate collusion or that Ms A and Ms C had mistakenly adopted the memory of Ms B.

The Tribunal’s Overall Determination on the Facts

212. The Tribunal has determined the facts as follows:

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

Ms A

1. On one or more occasion during 2019 you behaved inappropriately and/or unprofessionally towards a colleague Ms A whilst at work with her, in that you said to her that:
 - a. you were available to fulfil any sexual needs that Ms A may have, or words to that effect; **Determined and found proved**
 - b. it was ok in your culture to be with another woman when married, or words to that effect. **Determined and found proved**

Ms B

2. Between September 2019 and 27 November 2019 you behaved inappropriately and/or unprofessionally towards a colleague Ms B whilst at work with her, in that:
 - a. on one or more occasion, you asked to take Ms B out on a date; **Determined and found proved**
 - b. on or around the 11 November 2019 you said to Ms B words to the effect of:
 - i. ‘how long have you been with her for?’ with reference to Ms B’s partner; **Determined and found proved**
 - ii. ‘have you always known that you are attracted to women?’; **Admitted and found proved**
 - iii. ‘would you ever be with a man again?’; **Admitted and found proved**
 - iv. ‘you wouldn’t be interested in an older man anyway.’; **Determined and found proved**
 - v. ‘not penetration’ with reference to you having an extra marital affair; **Determined and found proved**
 - vi. ‘you must be flattered’; **Determined and found proved**
 - vii. asking Ms B about you having a threesome with her and her partner; **Determined and found proved**
 - viii. suggesting to Ms B that she should go with you to your office to train you; **Determined and found not proved**

- ix. telling Ms B that you had used the appraisal system training as an excuse to come and see her. **Determined and found proved**
- c. on or around the 12 November 2019 you said that Ms B should not tell anyone about your conversation of 11 November 2019 as described at paragraph 2b, or words to that effect; **Determined and found proved**
- d. on or around 26 November 2019 you said to Ms B that she looked pretty, or words to that effect; **Determined and found proved**
- e. on or around 27 November 2019 you:
 - i. asked Ms B what she was doing with Ms C the previous day, or words to that effect; **Determined and found proved**
 - ii. said to Ms B ‘so you weren’t discussing exchanging partners?’, or words to that effect, with reference to Ms B’s conversation with Ms C at 2ei above. **Determined and found proved**

Ms C

- 3. Between August 2018 and November 2019 you behaved inappropriately and/or unprofessionally towards a colleague Ms C whilst at work with her, in that:
 - a. on one or more occasion you invited Ms C to attend your on-site staff accommodation during working hours for ‘teaching’ or words to that effect; **Determined and found proved**
 - b. on one or more occasion you told Ms C that she ‘looked nice’ or words to that effect; **Determined and found proved**
 - c. on one or more occasion you said to Ms C ‘you look like the type of woman I would go for in my day and still would’ or words to that effect; **Determined and found proved**
 - d. on one or more occasion you told Ms C that you were allowed to have a relationship outside of your marriage, or words to that effect; **Determined and found proved**
 - e. on one or more occasion you told Ms C that you were allowed to have sex outside of your marriage, or words to that effect; **Determined and found proved**
 - f. on a date between July 2018 and August 2018 you obtained Ms C’s personal mobile telephone number from the medical rota system; **Determined and found not proved**

- g. on or around 11 August 2018 you sent an inappropriate joke of a sexual nature to Ms C by WhatsApp; **Determined and found not proved**
 - h. on a date in mid to late 2018 you invited Ms C to attend at your on-site staff accommodation for a work-related purpose and whilst at your accommodation you:
 - i. asked Ms C whether she was in a relationship, or words to that effect; **Determined and found proved**
 - ii. asked Ms C if she was dating, or words to that effect; **Determined and found proved**
 - iii. told Ms C that you were in an open relationship with your wife, or words to that effect; **Determined and found proved**
 - iv. told Ms C that in your culture you were allowed to have multiple partners, or words to that effect; **Determined and found proved**
 - v. sat down next to Ms C with a visible erection; **Determined and found proved**
 - vi. leaned towards Ms C and attempted to kiss her on the lips; **Determined and found proved**
 - vii. kissed Ms C on the face; **Determined and found proved**
 - viii. said to Ms C ‘kiss me once and you will see’ or words to that effect; **Determined and found proved**
 - ix. ejaculated; **Determined and found proved**
 - x. said to Ms C as she was leaving ‘don’t tell anyone, just think about it’ or words to that effect; **Determined and found proved**
 - xi. said to Ms C ‘don’t tell Dr D or Dr E’ or words to that effect. **Determined and found not proved**
 - i. in or around September 2018 you sent a message to Ms C on WhatsApp saying ‘does anyone miss me?’ or words to that effect; **Determined and found proved**
 - j. you told Ms C that you had come back to the area for her, or words to that effect. **Determined and found proved**
4. Your conduct as described at paragraphs 1 to 3:
- a. was sexually motivated; **Determined and found proved**

- b. amounted to sexual harassment pursuant to s.26 Equality Act in that you engaged in unwanted conduct of a sexual nature, which had the purpose or effect of violating the dignity of Ms A, Ms B and Ms C, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. **Determined and found proved**

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

Determination on Impairment - 10/11/2022

213. Having given its determination on the facts in this case, in accordance with Rule 17(2)(k) of the Rules, the Tribunal had to consider whether, on the basis of the facts which it has found proved, Dr Nasim's fitness to practise is currently impaired by reason of misconduct.

The Evidence

214. The Tribunal received and took account of:

- A statement of Dr V, Responsible Officer for Dr Nasim (submitted by the GMC);
- Unredacted copies of the testimonial evidence previously submitted on behalf of Dr Nasim.

Submissions

215. On behalf of the GMC, Mr Williams submitted that this was a case of a doctor abusing his power in a workplace setting. All three witnesses who had made complaints of inappropriate behaviour against him were younger, female colleagues to whom he was senior.

216. Mr Williams set out the two-stage test that the Tribunal should apply, first determining whether the misconduct was serious and, if so, whether that should lead to a finding that his fitness to practise is currently impaired. He referred the Tribunal to paragraphs 35, 36, 37 and 65 of Good Medical Practice (GMP) as being relevant to its deliberations.

217. Mr Williams submitted that there were aggravating factors including that the serious misconduct took place over a period of time, and against several people, which emonstrated a protracted pattern of behaviour. He also contended that Dr Nasim had made false accusations of racism against Ms A and Ms C.

218. Mr Williams referred to the Tribunal's determination on the facts and that it had found Dr Nasim's behaviour to be sexually motivated and to fall within the definition of harassment under section 26 of the Equality Act 2010. Mr Williams submitted that Dr Nasim's behaviour might be described as predatory.

219. Mr Williams submitted that Dr Nasim had made no apology and no expression of regret and had maintained his denials. Further, he had demonstrated no reflection or remediation for his actions other than the few courses he had attended. Mr Williams invited the Tribunal to consider whether these courses could have been of real value to Dr Nasim if he had attended them with the mindset of ongoing denial.

220. Mr Williams submitted that as there had been no demonstration of remediation, a significant lack of insight and no reflection, a real risk of repetition was evident. He accepted the testimonials of Dr Nasim's character and professional practice but questioned whether, set against his persistent and serious misconduct, they were enough to influence a determination of impairment of his current fitness to practise.

221. In response to Tribunal questions, Mr Williams submitted that Dr Nasim's denial, of itself, was not an aggravating feature as every doctor is entitled to deny allegations against them. However, he submitted that the false accusations of racism against Ms A and Ms C could be considered an aggravating feature.

222. On behalf of Dr Nasim, Ms Stephenson conceded that, based on the facts found proved, findings of serious misconduct and impairment of Dr Nasim's current fitness to practise would be likely.

223. Ms Stephenson submitted that the Tribunal should remind itself that Dr Nasim had 21 years of unblemished practice, and aside from the evidence from these three complainants, there were no other complaints made or upheld against him.

224. Ms Stephenson echoed Mr Williams submissions that Dr Nasim was entitled to defend himself and a necessary part of his defence was to have the witnesses cross-examined and their evidence tested. This could not be found as an aggravating factor.

225. Ms Stephenson did concede that Dr Nasim's denial of the Allegation meant that the Tribunal inevitably had little evidence of insight or remediation from Dr Nasim at this stage.

The Relevant Legal Principles

226. The LQC gave advice on the approach to be taken by the Tribunal in relation to impairment.

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

228. The Tribunal must determine whether Dr Nasim's fitness to practise is impaired today, taking into account his conduct at the time of the events and any relevant factors

since then, such as whether the matters are remediable, have been remedied and any likelihood of repetition. It should also consider whether a finding of impairment is warranted taking into account the wider public interest.

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

- a. to protect, promote and maintain the health, safety and wellbeing of the public
- b. to maintain public confidence in the profession
- c. to promote and maintain proper professional standards and conduct for members of the profession.

The Tribunal's Determination on Impairment Misconduct

230. The Tribunal first considered whether the facts found proved amounted to serious misconduct.

231. The Tribunal considered first the nature of its findings of fact, that there was repeated harassment of individuals which was sexually motivated.

232. Ms A, Ms B, and Ms C were all junior colleagues of Dr Nasim within the same hospital. The Tribunal determined that his inappropriate behaviour towards them was in clear breach of GMP paragraph 36:

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

233. The Tribunal considered that Dr Nasim's conduct towards Ms A, Ms B, and Ms C was also in breach of paragraph 37 of GMP:

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

234. There was evidence from each complainant that the misconduct had adversely affected them. Ms C had given evidence that she had gone so far as to change her accommodation in order to avoid Dr Nasim following the incident in his apartment.

235. Dr Nasim was older and much more senior than all three complainants and the Tribunal found that his misconduct constituted an abuse of his position.

236. The Tribunal was aware it would be difficult for Dr Nasim to demonstrate insight or remediation immediately after facts he denied had been found proved, however on the evidence available it could only conclude there was a current lack of insight into the general impact of his misconduct.

237. The Tribunal found that Dr Nasim’s conduct fell far short of the standards reasonably to be expected of a doctor. His actions were in breach of paragraph 65 of GMP which provides that doctors must ensure that their conduct justifies their patients’ trust in them and the public’s trust in the medical profession. The Tribunal found that, individually and collectively, his actions amounted to serious misconduct.

Impairment

238. In determining whether or not Dr Nasim’s fitness to practise is currently impaired by reason of his misconduct the Tribunal took into account the testimonial evidence submitted on his behalf and that there was no evidence of inappropriate behaviour towards women, other than those which were the subject of this hearing, throughout his 21 years of practice. The testimonials indicated that Dr Nasim was regarded as professional and polite by many colleagues.

239. The Tribunal considered that such misconduct was not easily remediable but that remediation was possible. However, the Tribunal had been presented with no indication that Dr Nasim had any insight or had taken any effective steps to remediate his behaviour. On that basis, the Tribunal could not be satisfied that the risk of repetition was highly unlikely.

240. The Tribunal bore in mind that in his oral evidence, when reflecting on his learning from the incidents, Dr Nasim had said “*perception is the thing, we are all walking on eggshells, you say something and the next day, its sexual harrassment*”. He added that he would refrain from social interactions that could be misunderstood. The Tribunal took this to demonstrate an insufficient understanding of the relevant issues.

241. The Tribunal concluded that Dr Nasim’s misconduct did have the effect of bringing the medical profession into disrepute. It also found that he had breached a fundamental tenet of the medical profession, by treating not one, but three colleagues with extreme disrespect.

242. In particular, the Tribunal concluded that the need to maintain public confidence in the medical profession, and standards of behaviour within that profession required a finding that Dr Nasim’s fitness to practise is currently impaired by reason of his misconduct. Members of the public would not have confidence in doctors if the Tribunal regarded such misconduct, unremediated and unaddressed, as not impairing a doctor’s fitness to practise.

243. The Tribunal determined Dr Nasim’s fitness to practise to be impaired by reason of misconduct.

Determination on Sanction - 14/11/2022

244. Having determined that Dr Nasim’s fitness to practise is impaired by reason of misconduct, the Tribunal now had to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

The Evidence

245. The Tribunal has taken into account evidence received during all stages of the hearing, where relevant, to reach a decision on sanction.

Submissions

246. Mr Williams on behalf of the GMC stated that Dr Nasim’s behaviour was fundamentally incompatible with continued registration, and that the only appropriate sanction was that of erasure.

247. On notice from the Tribunal that the Legally Qualified Chair (LQC) would reference *Arunachalam v The General Medical Council [2018] EWHC 758 (Admin)* in advising the Tribunal, Mr Williams sought to distinguish the case, and the sanction imposed, from that of Dr Nasim. He referred the Tribunal to relevant paragraphs within its determination on impairment. Mr Williams submitted that Dr Nasim had demonstrated no insight, that the complainants were clearly more severely impacted and that the misconduct was more grave.

248. Mr Williams submitted that conditions were clearly neither applicable nor appropriate and referred the Tribunal to the relevant sections of the Sanctions Guidance (SG) as regards suspension. He submitted that the conduct was too serious to come within the ambit of suspension and that there was significant risk of repetition as there had been no acknowledgement of fault and no insight evident.

249. Mr Williams cited paragraph 108 of the SG and paragraph 109 (a), (b), (d), (f) and (j) in support of his submission that the appropriate sanction was erasure. He also referred the Tribunal to paragraphs 142-143 and 147-148 concerning abuse of trust and predatory behaviour. He submitted that the SG envisages erasure as likely to be appropriate where such factors were present. He also referred the Tribunal to paragraph 138 of the SG, which states that ‘*more serious outcomes*’ are likely in cases which involve bullying, sexual harassment, physical violence towards colleagues, or unlawful discrimination.

250. Mr Williams submitted that Dr Nasim engaged in a course of predatory sexual behaviour, abusing his position against three younger, subordinate colleagues. He exploited his position as a doctor for his own sexual gratification. He submitted that Dr Nasim’s misconduct was so serious that it was fundamentally incompatible with continued registration and that the only appropriate sanction was erasure. This would not be disproportionate as there is no indication of any insight or remediation.

251. On behalf of Dr Nasim, Ms Stephenson submitted that the passages of the SG regarding sexual motivated behaviour to which Mr Williams had referred were in relation to a doctor’s behaviour towards a patient. She added that while adult female colleagues may

require protection, the SG makes a distinction between patients and colleagues for a reason, as patients are more vulnerable.

252. Ms Stephenson did not seek to diminish the seriousness of Dr Nasim’s conduct, and accepted that any finding of sexual misconduct indicated a serious deviation from the standards expected. However, she invited the Tribunal to accept that all misconduct necessarily exists on a scale of seriousness; otherwise, the most serious assault would sit on a level with that of a much more minor assault.

253. Ms Stephenson submitted that suspension would be the appropriate course for the Tribunal to adopt, and that it would be a more proportionate approach which still protected the public and public confidence in the medical profession. The misconduct was serious, in particular as regards Ms C, but not the most serious when considered in the scale of all sexual misconduct which the SG sought to cover; paragraphs 142 – 159 demonstrated this with reference to criminal sexual assault and child sex abuse. *Arunachalam* was authority for the need to assess the level of sexual misconduct and that it was not an automatic route to erasure on public interest grounds.

254. Ms Stephenson referred the Tribunal to paragraph 92 of the SG, which states that suspension ‘*will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration*’. She submitted that the indicators listed were not a ‘checklist’ but guidance as to the kind of matters the Tribunal should consider. She submitted that Dr Nasim came within 97(f) as there had been no repetition despite the notable lapse of time since the GMC commenced its investigation.

255. Ms Stephenson conceded there was no real evidence of insight at this stage, but added that it would be very difficult, if not impossible, for Dr Nasim to demonstrate insight having exercised his right to deny the majority of the Allegation. She said that this did not constitute an extra aggravating factor, but that it was a natural consequence of his position. She submitted that it should not be held against him twice. Ms Stephenson said there was nothing to show any unwillingness to engage with remediation, which would be consistent with a sanction of suspension. Dr Nasim had voluntarily attended some courses in 2019 and 2020.

256. Ms Stephenson referred the Tribunal to the testimonials and statement from Dr Nasim’s Responsible Officer. She stated that 21 years of service as a doctor within the United Kingdom, strong character references and an otherwise unblemished record was important and relevant mitigation. She also detailed the significant impact erasure, and indeed suspension, would have on the Doctor and his family as he was the principal source of income.

257. Ms Stephenson invited the Tribunal to consider the SG carefully along with the mitigating factors she had identified, and that erasure was neither the appropriate nor proportionate sanction. She submitted that suspension with a review would give Dr Nasim

the opportunity to reflect at length, to remediate, and to provide evidence of insight, and would be a proportionate response in the eyes of any informed member of the public.

The Relevant Legal Principles

258. The LQC gave legal advice on the approach for the Tribunal to take when considering what sanction, if any, to impose.

259. The decision as to the appropriate sanction to impose, if any, is a matter for the Tribunal exercising its own judgement. At the sanction stage of proceedings there is no burden or standard of proof and the decision on sanction is a matter for the Tribunal's judgment alone.

260. In reaching its decision, the Tribunal must take account of the Sanctions Guidance (2020) (SG) and Good Medical Practice (GMP). The Tribunal must bear in mind that it should consider the range of sanctions available, commencing with the least restrictive. The purpose of a sanction is not to be punitive, but to protect patients and/or the wider public interest, although it may have a punitive effect.

261. The principle in *Bolton v Law Society [1994] 1 WLR 512*, that personal mitigation should be given limited weight as the reputation of the profession is more important than the fortunes of an individual member, has been approved in many relevant authorities as applying in these proceedings.

262. Throughout its deliberations, the Tribunal must apply the principle of proportionality, balancing Dr Nasim's interest with the public interest. It must also take into account the statutory overarching objective.

263. *Arunachalam v The General Medical Council* is authority that "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 workers in the profession and to protect their freedom to work without being molested." It was also an important reminder to the Tribunal that relevant mitigation must be carefully considered in reference to each potential sanction, and the Tribunal must set out its reasoning as to the weight and significance it attributes to that mitigation at each stage.

The Tribunal's Determination on Sanction

Aggravating and Mitigating Factors

264. The Tribunal identified the following aggravating factors:

- Dr Nasim's sexual misconduct adversely affected three junior colleagues, significantly so as regards Ms C;
- Dr Nasim has not demonstrated insight or remediation;

- Dr Nasim falsely claimed that 2 of the complainants demonstrated racist attitudes, in a bid to attribute potential false motivation to his accusers;
- Dr Nasim harassed Ms A, Ms B, and Ms C in their workplace, and Ms C within his hospital accommodation where she would have felt isolated and vulnerable;
- The misconduct was serious and sustained.

265. The Tribunal identified the following mitigating factors:

- Over a long career of 21 years as a registered medical practitioner, Dr Nasim has had no previous findings of impaired fitness to practise;
- He has no cautions or convictions;
- Dr Nasim has been able to put forward many testimonials in support of his character and worth as a doctor, including very recent references from his current employers;
- It has been three years since the events set out in the Allegation, without any repetition.

266. The Tribunal identified the most serious aggravating factors in this case as the impact of Dr Nasim's actions on his subordinate younger, female colleagues, as well as the lack of insight and ongoing risk. Other doctors and members of the public would condemn Dr Nasim's behaviour. The most significant mitigating factors were the testimonials for Dr Nasim, his long-standing career with no regulatory action, and the passage of time since the incident with no further complaints being made against him. After weighing the aggravating and mitigating factors discussed above, the Tribunal considered each sanction in ascending order of severity, starting with the least restrictive.

No action

267. The Tribunal first considered whether to conclude the case by taking no action. Taking no action after a finding of impaired fitness to practise is appropriate only in exceptional circumstances. The Tribunal determined that there are no exceptional circumstances in this case that would justify such a course. To take no action would neither be proportionate nor in the public interest, given the serious nature of Dr Nasim's misconduct.

Conditions

268. The Tribunal next considered whether to impose conditions on Dr Nasim's registration. Neither Counsel asked the Tribunal to impose conditions or sought to identify any conditions that would be appropriate and workable to address the misconduct found.

269. This was not a case where specific deficiencies in medical practice need to be dealt with by further professional development or supervision. The Tribunal was not satisfied that it would be feasible to devise conditions which would address the misconduct identified in this case. The Tribunal concluded that imposing conditions on Dr Nasim's registration would

neither be appropriate to maintain public confidence in the medical profession, nor sufficient to deal with any risk of repetition of misconduct.

Suspension

270. The Tribunal next considered whether to suspend Dr Nasim’s registration for a lengthy period as suggested by Ms Stephenson. Suspension can have a deterrent effect and could be used to send a signal to Dr Nasim, the profession, and the public as to the standards expected of registered medical practitioners.

271. The Tribunal referred to paragraph 92 and 93 of the SG:

‘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 (see paragraphs 24–49).’

272. The Tribunal also took account of relevant criteria in paragraph 97 of the SG:

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

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

b In cases involving deficient performance where there is a risk to patient safety if the doctor’s registration is not suspended and where the doctor demonstrates potential for remediation or retraining.

c In cases that relate to the doctor’s health, where the doctor’s judgement may be impaired and where there is a risk to patient safety if the doctor were allowed to continue to practise even under conditions, or the doctor has failed to comply with restrictions or requirements.

d In cases that relate to knowledge of English, where the doctor's language skills affect their ability to practise and there is a risk to patient safety if the doctor were allowed to continue to practise even under conditions.

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.'

273. The Tribunal reminded itself of the nature and gravity of the misconduct it had found proved. The comments and behaviour of Dr Nasim to his junior colleagues, taken individually and as a whole, amounted to sexual harassment. While the Tribunal found that the incidents regarding Ms A and Ms B were of themselves serious, it found that these were 'lower on the scale' than the incidents regarding Ms C. The Tribunal determined that on that occasion Dr Nasim had engineered an opportunity to secure Ms C's presence in his flat alone with him. There he had approached her with an erection, kissed her non-consensually, and ejaculated in his trousers.

274. Dr Nasim had abused his position of trust as a senior professional colleague with all three women and disrespected them in pursuit of sexual gratification. Dr Nasim showed a lack of insight into the seriousness of his actions and their adverse consequences.

275. Dr Nasim had not demonstrated sufficient recognition of the reasons for his behaviour, its potential to cause enduring harm or the actual impact on Ms A, Ms B, and Ms C, who all had to give evidence to the Tribunal and answer questions in cross-examination. His insight was, at best, minimal, although the Tribunal did accept Ms Stephenson's submission regarding the difficulty arising from his having exercised his right to deny the majority of the Allegations.

276. The Tribunal considered that the sanction imposed on Dr Nasim's registration should send a strong signal to the medical profession and the wider public that misconduct of this kind is disgraceful and brought the profession into disrepute. The Tribunal concluded that Dr Nasim's actions amounted to a particularly serious departure from the principles set out in GMP and other relevant guidance.

277. The Tribunal found it significant that the misconduct was all directed towards colleagues and that there was no evidence of inappropriate behaviour with or towards patients. Whilst this did not of itself minimise its gravity, and there was authority that such behaviour should draw severe sanctions (*Arunachalam* above, paragraph 17), the Tribunal found it was a factor in determining the level of risk that continued registration would

present; it would also be a factor in how an informed member of the public would view the fairness of the sanction imposed.

278. Dr Nasim’s misconduct persisted over a period of time and was directed to three separate colleagues. Against this was the evidence that Dr Nasim had performed his duties as a doctor without complaint and entirely satisfactorily, as evidenced by the testimonials supplied and his recent re-employment by Cornwall Trust. The Tribunal concluded that there was no evidence of risk to patient safety but that whilst, as previously stated, it could not be satisfied that a risk of repetition was highly unlikely, such risk towards colleagues was nonetheless low. As regards the overarching objective, the Tribunal’s principal concern was to ensure that any sanction imposed promoted and maintained public confidence in the medical profession, and promoted and maintained proper professional standards and conduct for members of the profession.

279. The Tribunal had to determine whether Dr Nasim’s misconduct “*falls short of being fundamentally incompatible with continued registration*” or whether erasure was the only appropriate sanction. Whilst the Tribunal found there was little evidence of insight and remediation, it accepted that it would be unusual to see such in a case which had so recently been denied. It had already found that the misconduct was remediable, even if such a course might not be easy. It bore in mind Ms Stephenson’s representation on Dr Nasim’s behalf that he was willing and committed to learning from his errors, and that he had voluntarily attended two courses before the hearing, even if the apparent results to date were less than may be desired.

280. The Tribunal considered that the criteria within the SG for imposition of suspended registration were satisfied in this case. It found that although serious and of a sexual nature, when viewed against the evidence of Dr Nasim’s good character the misconduct fell short of being fundamentally incompatible with continued registration. There was no evidence to demonstrate that remediation is unlikely to be unsuccessful, no evidence of repetition since the incidents over three years ago. It was satisfied that Dr Nasim could make steps to reflect and to develop insight.

281. For these reasons, the Tribunal accepted Ms Stephenson’s submission that Dr Nasim’s actions were not fundamentally incompatible with continued registration, nevertheless it was so serious that significant action must be taken to maintain public confidence in the profession.

282. The Tribunal determined that a period of suspension would be sufficient to address the public concern. A suspension is a serious outcome which would publicly mark the gravity of Dr Nasim’s misconduct and protect and uphold standards and maintain public trust and confidence in the medical profession.

283. In reaching its decision, the Tribunal gave serious consideration to Mr Williams’ submission that erasure was the only proportionate and appropriate sanction in this case. It recognised that this was a case in which erasure could be regarded as a possible outcome.

However, the Tribunal was mindful of the principle of proportionality, to which it must have regard. Having accepted that Dr Nasim's position in this hearing, which should not be held against him, made it difficult, if not impossible, to provide significant evidence of insight and remediation, it considered that it would be disproportionate to give undue weight to that issue. Notwithstanding the seriousness of its findings, the Tribunal considered that having determined that suspension was both appropriate and proportionate it should therefore determine that Dr Nasim's misconduct was not fundamentally incompatible with continued registration, and that it should not erase his name from the register.

Duration of Suspension

284. The Tribunal went on to consider the appropriate length of suspension, taking account of the SG. It took account of the public interest in enabling doctors to return to clinical practice where appropriate and the mitigation put forward on Dr Nasim's behalf. It was aware of the impact suspension would have on the Dr Nasim's ability to support his family but deemed that this was not sufficient to outweigh the wider public interest of upholding and maintaining public confidence in the profession. The Tribunal considered that a short period of suspension would be insufficient to mark the seriousness of the misconduct found proved and that the suspension should be for the maximum time allowable of 12 months.

285. The Tribunal was concerned to ensure that Dr Nasim's misconduct was suitably marked and that he had sufficient time to develop greater insight and undertake a process of remediation. The Tribunal concluded that a twelve-month suspension is the most appropriate and proportionate sanction in this case. It is sufficient to uphold proper standards and to maintain public confidence in the medical profession; it does not preclude Dr Nasim's subsequent return to work as a doctor.

Review

286. The Tribunal also decided that there should be a review of Dr Nasim's case, with a hearing to convene shortly before the end of his suspension, unless an early review is sought. Dr Nasim will have an opportunity to demonstrate any further remediation or development of insight; also to show that he has maintained skills, continued professional development and is able to return to practice safely.

287. The Tribunal wished to emphasise that at the review hearing the onus will be on Dr Nasim to demonstrate how he has developed insight, remediated, and reflected on his misconduct. It therefore may assist the reviewing Tribunal if Dr Nasim is able to provide:

- A detailed written reflection on his misconduct and its impact on the profession and the wider public;
- Evidence of his attendance on courses or eLearning modules, particularly targeted at sexual misconduct and harassment;
- Evidence that he has maintained his medical skills and knowledge;

- Any other information that he considers will assist the reviewing tribunal.

Determination on Immediate Order - 14/11/2022

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

Submissions

289. Mr Williams referred the Tribunal to paragraphs 172 and 178 of the SG:

‘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.

...

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.’

290. Mr Williams submitted that as the Tribunal had imposed a period of suspension for the maximum amount of time, 12 months, it had determined Dr Nasim’s misconduct was serious.

291. Mr Williams submitted therefore that, knowing the circumstances that the Tribunal had outlined in its determination on sanction, a member of the public would be concerned if the Tribunal was not to impose an immediate order.

292. On behalf of Dr Nasim, Ms Stephenson referred to paragraph 173 of the SG:

‘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'

293. Ms Stephenson submitted that this was not a case where there was evidence that there was a risk to patient safety, and she referred to the Tribunal's determination on sanction where it outlined that any further risk to colleagues was low. She added that Dr Nasim has been practising for 3 years without repetition, and the public would be satisfied that the period of suspension was sufficient. Therefore, Ms Stephenson submitted that an immediate order was not necessary.

The Tribunal's Determination

294. In its deliberations, the Tribunal reminded itself of the SG and considered parties' submissions.

295. The Tribunal also considered the statement of Dr Nasim's Responsible Officer, in which he stated, *"Since this incident, Dr Nasim uses caution in his language and interactions with staff members... he is aware that his personal and professional life is separate and should remain separate."*

296. The Tribunal determined that it would not be necessary to impose an immediate order to *"protect members of the public"* or *"in the best interests of the doctor"*. It was not of the view that immediate action needed to be taken to protect public confidence in the medical profession. The Tribunal was conscious of the seriousness of the misconduct but determined that this was adequately addressed by the substantive suspension and reassured by the statement from Dr Nasim's Responsible Officer. The Tribunal therefore determined that it would not be inappropriate for Dr Nasim to continue in unrestricted practice before that order takes effect.

297. The Tribunal therefore determined not to impose an immediate order. There was no basis for the Tribunal to conclude that an immediate order was necessary to protect the public, was otherwise in the public interest or was in Dr Nasim's own interests.

298. This means that Dr Nasim's registration will be suspended 28 days from when notice of this decision is deemed to have been served upon him, unless he lodges an appeal. If Dr Nasim does lodge an appeal, he will remain free to practise unrestricted until the outcome of any appeal is known.

299. There is no interim order to revoke.

300. Case concluded.