

PUBLIC RECORD

Dates: 04/01/2021 - 12/01/2021

Medical Practitioner’s name: Dr Muhammad ISHTIAQUE

GMC reference number: 7011783

Primary medical qualification: MB BS 1991 University of Sind

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

Summary of outcome

Suspension, 2 months.

Tribunal:

Legally Qualified Chair	Mr Kenneth Hamer
Lay Tribunal Member:	Mr Paul Curtis
Medical Tribunal Member:	Mrs Deborah McInerny
Tribunal Clerk:	Mr Matt O’Reilly

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner’s Representative:	Mr Alan Jenkins, Counsel, instructed directly
GMC Representative:	Mr Nicholas Walker, Counsel

Attendance of Press / Public

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

Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on Facts - 06/01/2021

Background

1. Dr Ishtiaque graduated from the University of Sind Pakistan in 1991. After qualifying he worked as a junior doctor and trained as a surgeon in Pakistan. In 2006 Dr Ishtiaque came to the UK, registered with the GMC and sat the MRCS. He passed his MRCS from the UK in 2008. From 2009 Dr Ishtiaque worked in SHO roles and then substantive middle grade positions in general surgery in different hospitals in the NHS for a number of years. Dr Ishtiaque worked as a registrar in general surgery through locum agencies around 2014 – 2015 within the NHS. These positions included working at the Queen Elizabeth Hospital in Birmingham, the Northern General Hospital in Sheffield and Kings Mill Hospital in Mansfield ('the Hospital'), Tunbridge Wells, Worthing Hospital and St Richard Hospital.
2. Dr Ishtiaque was booked for shifts at the Hospital through 'My Locum Agency', to work as a locum registrar in surgery for 4 days, starting on 24 July 2017.
3. It is alleged that on 25 July 2017, Dr Ishtiaque had a conversation with Ms A, a receptionist in the Surgical Assessment Unit of the Hospital, who had previously never met Dr Ishtiaque. It is alleged that Ms A had left her desk to get some tablets and Dr Ishtiaque had asked Ms A what the tablets were for. Ms A had explained that she took the tablets for pain and cancer, that she had had breast cancer in 2014, resulting in a hysterectomy and a double mastectomy. A junior doctor, Dr C, was also present and had been a part of the conversation. It is alleged that during that conversation, Dr Ishtiaque placed his hand on Ms A's breast area and rubbed her chest over her clothes, without her consent. It is further alleged that this action was sexually motivated.
4. Ms A reported the incident to a senior colleague at the Hospital. She also reported the incident to Nottingham Police and made a statement on 26 July 2017. 'My Locum Agency', who were informed. Dr Ishtiaque's contract was terminated at the Hospital. Sherwood Forest Hospitals NHS Foundation Trust informed the GMC via a Fitness to Practise referral form on 26 July 2017.
5. Dr Ishtiaque was charged with sexual assault and was tried at Nottingham Crown Court in September 2018. Dr Ishtiaque was acquitted.

The Outcome of Applications Made during the Facts Stage

6. This hearing is being held remotely. The Tribunal refused the application by Mr Jenkins, Counsel on behalf of Dr Ishtiaque, for Dr Ishtiaque to provide evidence in person before the Tribunal. The Tribunal's full decision on the application is included at Annex A.

The Allegation and the Doctor's Response

7. The Allegation made against Dr Ishtiaque is as follows:
 1. At around 10:00 on 25 July 2017, whilst in the vicinity of the Reception area of the Surgical Assessment Unit at Kings Mill Hospital, you:
 - a. placed your hand onto the clothing over Ms A's right chest area ('chest');
To be determined
 - b. rubbed your hand up and down Ms A's chest. **To be determined**
 2. Your actions as described at paragraph 1 were:
 - a. carried out without Ms A's consent; **To be determined**
 - b. sexually motivated. **To be determined**
8. The Tribunal received a witness statement and oral evidence on behalf of the GMC from the following witnesses:
 - Ms A, oral evidence by video link, witness statement dated 26 May 2016;
 - Dr C, Obstetrics and Gynaecology (FY1) Trainee Doctor (at the time of the events), oral evidence by video link, witness statement dated 21 May 2019.
9. Dr Ishtiaque provided his own witness statement, unsigned and undated, which he confirmed was true. He also gave oral evidence at the hearing.

Documentary Evidence

10. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:
 - Ms A's police statement, dated 26 July 2017;
 - Dr C's police statement, dated 15 August 2017;
 - Dr Ishtiaque's police interview, dated 27 July 2017;
 - GMC Fitness to practise referral form, from the Medical Director's Office Manager, Sherwood Forest Hospitals NHS Foundation Trust, dated 26 July 2017;
 - A plan and three photographs of the reception area of the Surgical Assessment Unit at Kings Mill Hospital, Mansfield;

- The Crown Court at Nottingham transcript of the evidence of Ms A and Dr C in the criminal trial of Dr Ishtiaque, September 2018.

The Tribunal's Approach

11. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Ishtiaque does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred. The Tribunal has also borne in mind the speech of Lord Nichols of Birkenhead in *Re H* [1996]AC 563.

12. The Tribunal bore in mind the relevant legal principle as set out in *Dutta v GMC* [2020] EWHC 1974 (*Admin*), in which the judgement of Mr Justice Warby stated:

“38. In any event, I regret to say, in my judgment the Tribunal's reasoning process is vitiated by at least three fundamental errors of approach. First, the Tribunal approached the resolution of the central factual dispute by starting with an assessment of the credibility of a witness's uncorroborated evidence about events ten years earlier, only then going on to consider the significance of unchallenged contemporary documents. Secondly, the Tribunal's assessment of the witness's credibility was based largely if not exclusively on her demeanour when giving evidence. Thirdly, the way the Tribunal tested the witness evidence against the documents involved a mistaken approach to the burden of proof and the standard of proof.”

13. The Tribunal also bore in mind the relevant legal principle as set out in *Basson v GMC* [2018] EWHC 505 (*Admin*), in which the judgement of Mr Justice Mostyn stated:

“14. ... A sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship...”

The Tribunal's Analysis of the Evidence and Findings

14. 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.

15. The Tribunal found all three witnesses, Ms A, Dr C and Dr Ishtiaque to be honest witnesses who were trying to assist it. Each witness sought to tell the truth as he or she believed matters to have taken place at the time of the events on 25 July 2017. There were, however, and perhaps inevitably, inconsistencies between the accounts given by the witnesses and in the Tribunal preferring the evidence of one witness on a specific matter over that of another witness the Tribunal does not find that any witness was lying or seeking to mislead the Tribunal.

16. Moreover, the Tribunal has borne in mind the inconsistencies in the evidence pointed out by Mr Jenkins, including for instance, whether Dr Ishtiaque may have touched one or both of Ms A's breasts, whether with his right hand or both hands, whether Ms A was "an arm's length" or more away from Dr C, and whether Dr Ishtiaque was sitting or standing.
17. In its determination on the facts, the Tribunal, as advised by the Legally Qualified Chair, has first sought to consider the accounts given by Ms A and Dr C in their police statements closest to the time of the events, followed by their evidence in the Crown Court in September 2018, and the contents of Dr Ishtiaque's police interview on 27 July 2017.
18. In approaching Dr Ishtiaque's police interview, the Tribunal has made allowance for the fact that English is not Dr Ishtiaque's first language, although he is fluent in English and able to understand and answers questions when he gave evidence before the Tribunal. More to the point, the Tribunal accepts that, despite having the assistance of a solicitor, Dr Ishtiaque's evidence was that he was in a state of shock when being interviewed by the police, having been accused of a sexual assault which he then, and has at all times, vehemently denied.
19. The Tribunal has well in mind that the burden of proof remains throughout on the GMC and that in a case of this nature the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it to the requisite standard of proof.

Paragraph 1(a) and (b) of the Allegation

1. At around 10:00 on 25 July 2017, whilst in the vicinity of the Reception area of the Surgical Assessment Unit at Kings Mill Hospital, you:
 - a. placed your hand onto the clothing over Ms A's right chest area ('chest'); **Found proved**
 - b. rubbed your hand up and down Ms A's chest.
Found proved

20. The Tribunal finds both parts of paragraph 1 proved.

21. The Tribunal's reasons and findings in relation to paragraph 1 are as follows:

- It is largely common ground, and the Tribunal finds, that on 25 July 2017 at around 10 a.m., Ms A, Dr C and Dr Ishtiaque were all three in the little area known as the Surgical Assessment Unit Reception Area. The Reception Area is, as Dr C said, a public area, and it is no doubt a busy and at times very busy

area of the hospital. Ms A, Dr C and Dr Ishtiaque were all behind the front counter. Dr C and Ms A were seated, Dr C in front of the computer closest to the far wall under the clock, and Ms A also at a computer nearest to the reception area. Dr Ishtiaque was in the reception area to mark up or report on one or more patients and Dr C was mainly concentrating on work he was doing on his computer. Ms A was going about her duties as the receptionist and the atmosphere was perfectly normal.

- Having seen photographs of the reception area, and heard evidence about the positioning of the three persons, the Tribunal is satisfied that Dr C could not have left the area behind the counter without passing Dr Ishtiaque and Ms A. The area behind the counter is relatively small with chairs in front of computers below the counter and cupboards behind the seating area as shown in the photographs. It has a single route for entrance and exit at the end closest to where Ms A was seated. It would not have been possible for Dr C to leave the reception area where he was working behind the counter without being observed by Ms A and Dr Ishtiaque.
- The Tribunal is satisfied that Dr C was physically present during the relevant time of the events in question. That said, the Tribunal is satisfied that he was concentrating mainly on his own work, and it does not appear that he actually said anything very much or played any significant part in the critical conversation that took place between Ms A and Dr Ishtiaque regarding Ms A's health. Any conversation about other topics, such as cycling, preceded the conversation about Ms A's health and was unrelated to the events which the Tribunal has to determine.
- There is no dispute that a conversation was struck up between Dr Ishtiaque and Ms A after she went to the small cupboard situated behind where she was sitting which contained her personal belongings. Ms A went to the cupboard to collect some pills, which she brought back to her desk to take. In answer to a question from Dr Ishtiaque, Ms A freely began to explain her medical problems and told Dr Ishtiaque of her history of breast cancer and undergoing bilateral mastectomies. Dr Ishtiaque is a Member of the Royal College of Surgeons with experience of cancer treatment and there is a history of breast cancer in his own family. He listened to Ms A's explanation of her medical history and felt great sympathy towards her and the fact that she was a young woman. Dr Ishtiaque and Ms A talked about various treatment options over the course of a 15 minute or so conversation. In her evidence in the Crown Court, in answer to questions from prosecuting counsel, Ms A said that it was

a perfectly normal conversation, and she did not feel uncomfortable in any way up to that point.

- Ms A was now seated with her chair swivelled towards Dr Ishtiaque who was standing a few feet away from her and facing her with his back towards the area where the cupboards are situated. At this point Dr C was still seated in the far corner to Dr Ishtiaque's right as he was standing. Dr C was mainly concentrating on his computer screen although vaguely aware of and listening in to the conversation taking place around him.
- The Tribunal is satisfied that Ms A did indicate with her hands that by touching the area of her breasts and rubbing her hands quickly up and down that her chest area would be flat. In his police interview (and in his evidence before the Tribunal) Dr Ishtiaque referred to Ms A extending her chest towards him and rubbing the area to indicate there were no breasts. Dr Ishtiaque demonstrated this to the police in interview and repeated the demonstration in his evidence before the Tribunal. Despite the fact that Ms A denies she herself touched her chest, and there is no reference to such an act in either her police statement or in her evidence in the Crown Court, the Tribunal is quite satisfied that she did this. The conversation, despite taking place in a public area and in the presence of Dr C, was an intimate and very personal one about Ms A medical history and plans for possible further surgery which Ms A was willing to recount and talk about with Dr Ishtiaque. It is perfectly feasible that she did demonstrate with her hands over her clothing that she had no breasts in the way Dr Ishtiaque described to the police and in evidence before the Tribunal.
- Dr Ishtiaque continued by saying to the police that Ms A "probably" held his hand or hands. Earlier in his police interview Dr Ishtiaque said he was "not sure" whether he touched Ms A, and he said that he "might" have touched her. Although Dr Ishtiaque now denies that he ever did touch Ms A, the Tribunal is satisfied that his account nearer the time is more likely to be accurate and that some touching or contact between Ms A and Dr Ishtiaque is likely to have taken place. Over the passage of time, it is possible that Dr Ishtiaque's recollection maybe be affected by what he now believes took place.
- The Tribunal find it inconceivable that despite any language issues and Dr Ishtiaque being in a state of shock, he would have told the police he was not sure whether he touched Ms A, or that he might have touched her, if he believed that he had not done so. Moreover, his account of Ms A "probably"

holding his hand or hands when she was rubbing herself is consistent with some contact taking place.

- The issue in paragraph 1 comes down to whether Dr Ishtiaque placed his hand onto the clothing over Ms A's right chest area and rubbed his hand up and down (the allegation in paragraph 1) or whether, consistent with his account to the police two days after the event, Ms A held his hand or hands when she herself was rubbing her chest wall.
- The Tribunal has given anxious consideration to this issue, and in doing so have reviewed the whole of the evidence before them. The Tribunal is not satisfied that Ms A at any time took hold of Dr Ishtiaque's hand or hands. The Tribunal accepts the evidence of Ms A supported by Dr C that Dr Ishtiaque placed his hand onto Ms A's clothing over her right chest area and rubbed his hand up and down on her chest. Ms A herself told the police that any touching was for "a few seconds", and the Tribunal accepts this to be the case.
- Ms A's evidence in relation to paragraph 1 of the Allegation is supported by Dr C's evidence who, in the Crown Court, said that he had a "completely unobstructed view". The Tribunal has considered where each of the three witnesses was in the reception area at the critical time, and the points made by Mr Jenkins about what Dr C could or could not have seen. In his statement to the police, Dr C said that as the conversation progressed between Ms A and Dr Ishtiaque she turned in her computer chair and faced Dr Ishtiaque. In order for Dr C to see this he himself must have moved his own chair as previously he was facing forwards onto his computer screen. In the Crown Court he said that "the chairs rotated so we could almost speak as a three-way of face-to-face anyway". The Tribunal accept this evidence.
- The Tribunal is satisfied that the matters in paragraph 1 happened immediately following Ms A's action in rubbing her own chest area. It is probable that Dr Ishtiaque acted instinctively, and as a professional acting as if he might do as a doctor, and in circumstances where Ms A was describing to Dr Ishtiaque her medical history. Although she was not his patient and he was not her doctor, Dr Ishtiaque went forward and momentarily reached out and placed his hand onto Ms A's clothing as described in paragraph 1. In so doing, it is perfectly feasible that Dr Ishtiaque replicated her actions as if to satisfy himself as a doctor that what she was saying was correct.
- In finding paragraph 1 proved on a balance of probabilities, the Tribunal has nonetheless borne in mind that nothing was said at the time to Dr Ishtiaque by Ms A or Dr C, and that Ms A's account to a colleague which she says she gave

shortly after appears to be far from clear as appears from the transcript of Ms A's evidence in the Crown Court. Despite these matters, the Tribunal is satisfied that paragraph 1 is proved and that the incident occurred in the way the Tribunal has found above.

- The Tribunal should add that there has been no suggestion before it, and we reject as inconceivable, that the evidence of Ms A and Dr C may have been concocted or affected in some way, innocently or otherwise. Shortly after the events Dr C left the hospital and had no contact with Ms A before he came to make his statement to the police on 16 August 2017, and he and Ms A were kept separate and apart when they both gave evidence in the Crown Court.

Paragraph 2(a) of the Allegation

2. Your actions as described at paragraph 1 were:
 - a. carried out without Ms A's consent; **Found proved**

22. The Tribunal finds paragraph 2(a) proved for the following reasons:

- Nothing was said by Ms A to indicate that she consented or agreed to Dr Ishtiaque doing what he did. Had she been his patient at the time it could be argued that he may have had implied consent to examine her. To his credit, Dr Ishtiaque accepted that if the matters alleged in paragraph 1 took place then it would have been inappropriate.
- There is support from Dr C that Dr Ishtiaque acted without consent. In his police statement, Dr C states that Dr Ishtiaque did not “seek any consent prior to examining the breast area” of Ms A.
- The Tribunal notes that in his evidence in the Crown Court, Dr C said that although he used the word “examining”, he could equally have used words such as “touching” or “feeling” to describe what he says he saw Dr Ishtiaque do, and that he would not now describe it as an examination. When he came to give evidence before the Tribunal he had little memory of the incident. Nevertheless, when making his statement to the police within a few weeks of the event, and when matters were likely to be fresher in his mind, he did say that Dr Ishtiaque did not “seek any consent prior to examining the breast area”. The word “examining” in this context is consistent with a clinical setting but without consent being obtained from Ms A.
- The Tribunal would add that while Dr Ishtiaque denies any form of touching of Ms A, the Tribunal notes that in his police interview he said “I'm not sure that I touched her or not but I feel that it was just a kind of, you know, implied consent

if you show something”. When asked by the interviewing officer whether Ms A gave her consent or permission, Dr Ishtiaque replied: “Well I think so the way she actually she was describing her problems and just you know putting her chest showing I have no breasts, you know I have bilateral mastectomy.”

23. Paragraph 2(b) of the Allegation

2. Your actions as described at paragraph 1 were:
 - b. sexually motivated. **Found not proved**

24. The Tribunal finds paragraph 2(b) not proved for the following reasons:

- The Tribunal is completely satisfied that Dr Ishtiaque had no sexual motivation at any time.
- The Tribunal say this for three reasons. First, the place where the events took place was in a public area and in full view of anyone who might pass by. Whilst a sexual assault may take place in a public space the setting here, in a hospital reception area and at 10.00 am during a busy working day, make it improbable that Dr Ishtiaque had any sexual motivation when he placed his hand on Ms A in the way alleged in paragraph 1.
- Secondly, and as stated above, the Tribunal has found that Dr Ishtiaque’s actions were reasonably likely to be instinctive and reactionary to what he had been told by Ms A. He felt profound sympathy both as a doctor and as a human being. Dr Ishtiaque had seen Ms A rub her chest with her hands to indicate that she had no breasts, and he reached forward as if he were examining her as a patient.
- Thirdly, Dr C said that the incident was “very bizarre” and he was not sure what Dr Ishtiaque gained from touching Ms A.
- The Tribunal finds that Dr Ishtiaque had no sexual intention towards Ms A at any point, and his actions were not in pursuit of sexual gratification. Nor does the Tribunal consider that a reasonable person knowing all the facts would consider his actions were sexual.

The Tribunal’s Overall Determination on the Facts

25. The Tribunal has determined the facts as follows:

1. At around 10:00 on 25 July 2017, whilst in the vicinity of the Reception area of the Surgical Assessment Unit at Kings Mill Hospital, you:
 - a. placed your hand onto the clothing over Ms A’s right chest area (‘chest’); **Found proved**

- b. rubbed your hand up and down Ms A's chest.
Found proved
- 2. Your actions as described at paragraph 1 were:
 - a. carried out without Ms A's consent; **Found proved**
 - b. sexually motivated. **Found not proved**

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

Determination on Impairment - 11/01/2021

1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Ishtiaque's fitness to practise is impaired by reason of misconduct.

The Evidence

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. Dr Ishtiaque provided oral evidence at Stage 2 of the hearing. In addition, the Tribunal received further documentary evidence. The evidence included, but was not limited to:
 - GMC Stage 2 bundle which includes:
 - Certificate of conviction, dated 3 October 2018;
 - Police report incident ('MG5');
 - Criminal proceedings transcript extract of Ms B's evidence, dated 25-28 September 2018;
 - February 2019 MPT decision.
 - March 2020 MPT review decision;
 - Handwritten statement of Ms B, 25 July 2017.
 - Notes from a meeting with Dr Ishtiaque, dated 25 July 2017 (unclear who took these notes)
 - Police statement of Divisional General Manager of Sherwood Forest Hospitals, 22 January 2017;
 - Police statement of Ms B, dated 25 July 2017.
 - Unredacted police interviews of Dr Ishtiaque, dated 27 July 2017;

- His Honour Judge Spencer QC sentencing remarks, dated 28 September 2018.
- Chronology of events.
- Defence bundle for March 2020 MPT Hearing, which include:
 - Reflective piece;
 - Reading list;
 - CPD certificates;
 - Personal Development Plan;
 - Case based discussion reports.
- Supplementary defence bundle for March 2020 MPT Hearing, which includes:
 - Court of Appeal notification of outcome of appeal against sentence, 19 November 2019;
 - CPD certificates;
 - Letter from Dr Ishtiaque’s Responsible Officer, dated 12 March 2020.
 - Letter from Dr Ishtiaque’s Psychotherapist regarding counselling session between 9 October 2018 and 4 January 2019;
 - Testimonial evidence.
- Defence bundle for these proceedings dated January 2021, which includes:
 - Reflective piece;
 - Reading list;
 - Testimonial evidence;
 - Colleague multi-source feedback summary reports, dated 20 August 2020 – 30 September 2020;
 - Patient Feedback;
 - CPD Certificates.

Further Information Provided by the GMC at the Impairment Stage

3. At the beginning of stage 2, Mr Walker presented the Tribunal with further information in relation to previous concerns raised about Dr Ishtiaque, which resulted in a conviction and previous MTPS findings. The previous allegation was as follows.

4. On the evening of 24 July 2017, Dr Ishtiaque, who was employed as a locum surgeon at the King's Mill Hospital in Mansfield, was staying in the hospital accommodation, as was Ms B, a medical student. After a conversation between Ms B and Dr Ishtiaque in the communal kitchen of the accommodation, he attempted to kiss Ms B.
5. Dr Ishtiaque was charged with sexual assault in respect of both the incident with Ms B and Ms A and was tried at the Crown Court of Nottingham in September 2018. At trial, Dr Ishtiaque was convicted of sexual assault in relation to Ms B, but acquitted in relation to Ms A. As a result of his conviction, Dr Ishtiaque was sentenced to two months imprisonment, suspended for 12 months, and ordered to sign the Sex Offenders Register for a period of five years. Dr Ishtiaque subsequently appealed his conviction and sentencing but that appeal was not heard until November 2019.
6. Following his conviction and sentencing, the GMC referred the conviction case relating to Ms B to an MPT hearing. That hearing took place in February 2019. The February 2019 Tribunal heard an application to adjourn the hearing until any appeal of the conviction and sentencing had been heard. The application to adjourn was refused and accordingly, Dr Ishtiaque was found to be impaired by reason of his conviction and was suspended by the February 2019 Tribunal for a period of 12 months and a review was directed.
7. The appeal against Dr Ishtiaque's conviction was heard on 19 November 2019 and was dismissed, but his sentence was varied in two ways. Firstly, the two-month suspended prison sentence was quashed, and replaced with a one-month Community Order. Secondly, given that variation, the requirement for Dr Ishtiaque to remain on the Sex Offenders Register for five years was removed.
8. On 13 March 2020, Dr Ishtiaque attended an MPT Review hearing where the reviewing Tribunal concluded that Dr Ishtiaque's fitness to practise was no longer impaired by reason of his conviction.
9. In the case of Ms A, a preliminary hearing took place on 2 October 2020 to consider the application made by Mr Walker on behalf of the GMC, under Rule 34(1) of the General Medical Council (GMC) (Fitness to Practise Rules) 2004 (as amended) ('the Rules'), to allow the GMC adduce evidence of Dr Ishtiaque's previous conviction and the factual circumstances surrounding it to this Tribunal.

10. The Tribunal determined to refuse the GMC's application under Rule 34(1) of the Rules to allow details of Dr Ishtiaque's conviction and the factual circumstances of it to be adduced at the Facts stage of this hearing.

Submissions

11. On behalf of the GMC, Mr Walker submitted that Dr Ishtiaque's fitness to practise is impaired by reason of misconduct. Mr Walker submitted that Dr Ishtiaque's misconduct was serious and that he acted without any provocation. Mr Walker spoke of the harm caused to Ms A and drew the Tribunal's attention to her witness statement, where she details how the incident has impacted her mental wellbeing.
12. Mr Walker submitted that this case might be mitigated by the fact the Tribunal found that Dr Ishtiaque's motives were not sexually motivated at the Facts stage of the proceedings, but he outlined a number of aggravating features, which are as follows: the incident took place in a busy area of the hospital, which could have led to the reputation of the profession and the staff in the hospital suffering, had anybody seen the incident occur; Dr Ishtiaque was in a position of seniority over Ms A; Dr Ishtiaque should have been 'more aware of his actions than ever' considering what had occurred with Ms B the evening before. Mr Walker stated that overall, Dr Ishtiaque's conduct fell short of the fundamental tenets and, in his submission, is misconduct.
13. Mr Walker submitted the following reasons why, in the GMC's submission, Dr Ishtiaque remains impaired today: Dr Ishtiaque has shown a tendency to act in a way that could bring the profession into disrepute or breach a fundamental tenet; both incidents are unexplained and both Tribunals are at a loss as to why they occurred; Dr Ishtiaque has shown himself as capable of taking real risk and the decision to act the way he did towards Ms A, means he showed no appreciation for the harm he had caused to Ms B after what had occurred the prior evening; Dr Ishtiaque's insight is not complete.
14. On behalf of Dr Ishtiaque, Mr Jenkins submitted that Dr Ishtiaque's fitness to practise is not impaired by reason of misconduct. Mr Jenkins submitted that Ms A was not uncomfortable with the conversation between herself and Dr Ishtiaque, and that there is no evidence that Ms A tried to stop the conversation. Mr Jenkins submitted that although this conversation was 'unusual', Dr Ishtiaque would be used to discussing such medical issues as he is a doctor. Mr Jenkins stated that Dr Ishtiaque has 'learnt a huge amount' since the incident and that he now has a better understanding of personal and professional boundaries.

15. Mr Jenkins submitted that a member of the public who knew the details of this incident, would not find it deplorable or shocking. Mr Jenkins stated that Dr Ishtiaque's actions were 'clumsy' and 'a misjudgement' but since the Tribunal are satisfied that there was no sexual motivation behind the incident, in his view, this is not misconduct.
16. Mr Jenkins submitted that if misconduct were to be found, the Tribunal should consider Dr Ishtiaque's steps to remediate his actions, testimonials from colleagues and the determination from the March 2020 Tribunal, who considered Dr Ishtiaque to have shown insight.
17. Mr Jenkins submitted that Dr Ishtiaque has learnt a great deal after his remediation work and that he now understands how one behaves towards others. Mr Jenkins stated that, in his view, the chance of repetition is very low and submitted that Dr Ishtiaque is not currently impaired by reason of misconduct.

The Tribunal's Determination on Impairment

The Relevant Legal Principles

18. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone.
19. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct and, secondly, whether its findings on this lead to a finding of impairment.
20. The Tribunal must determine whether Dr Ishtiaque's fitness to practise is impaired today, taking into account Dr Ishtiaque's conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

The Tribunal's Determination on Impairment

Misconduct

21. The Tribunal first considered whether the conduct found proved in the case of Dr Ishtiaque relating to Ms A amounted to misconduct.
22. As found by the Tribunal at the facts stage of these proceedings, on 25 July 2017 at around 10:00 am, whilst in the vicinity of the reception area of the Surgical Assessment Unit at the Hospital, Dr Ishtiaque placed his hand onto the clothing over Ms A's right chest area, and rubbed his hand up and down her chest. His actions were carried out without Ms A's consent.
23. The Tribunal found that Dr Ishtiaque's actions were momentary and lasted a few seconds, and were probably an instinctive reaction to the conversation between himself and Ms A and her actions, and as if he were examining her. Nonetheless, Ms A was not Dr Ishtiaque's patient and he touched an intimate area of her body without her consent, although without sexual motivation on his part. The Tribunal was satisfied that Dr Ishtiaque's actions were plainly inappropriate, and would be regarded so by any reasonable member of the public or the medical profession.
24. The Tribunal had regard to the effect of Dr Ishtiaque's actions on Ms A. In her GMC witness statement, she stated:

"The GMC has asked me about how I have been impacted by the incident. I have had a significant amount of counselling. I'm looking for another job as I find it very difficult to be around doctors, which is a problem working in a hospital. I'm currently waiting for more therapy because I have certain triggers which can lead to a panic attack. I feel like I have changed as a person since the incident. I have changed my appearance after what happened. It has made me feel very uncomfortable at work and I don't feel safe working for the NHS."

25. Ms A also told the Tribunal that although she continued to work that day she did not return to the Hospital for work until January 2018 because of the effect of the incident on her.
26. The Tribunal also noted the following factors:

- Ms A was a colleague of Dr Ishtiaque at the time;
- the incident took place in a work setting;
- Dr Ishtiaque was in a position of seniority over Ms A.

27. These factors possibly led to Ms A being more forthcoming to Dr Ishtiaque about her medical history than she might otherwise have been. Dr Ishtiaque took no steps to end the conversation.

28. The Tribunal had regard to paragraphs 17, 36, 37 and 65 of Good Medical Practice (GMP) which state:

“17 You must be satisfied that you have consent or other valid authority before you carry out any examination or investigation, provide treatment or involve patients or volunteers in teaching or research.

...

36 You must treat colleagues fairly and with respect.

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

...

65 You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession.”

29. In all the circumstances, the Tribunal determined that Dr Ishtiaque’s actions fell far short of the standards of conduct reasonably to be expected of a doctor.

30. The Tribunal concluded that Dr Ishtiaque’s actions amounted to misconduct which is serious.

Impairment by reason of misconduct

31. The Tribunal, having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr Ishtiaque’s fitness to practise is currently impaired by reason of his misconduct.

32. The Tribunal had regard to paragraph 76 of the judgment in the case of *CHRE v NMC & Paula Grant [2011] EWHC 927 (Admin)*, in which Mrs Justice Cox adopted the approach of Dame Janet Smith in her Fifth Shipman Report who said:

“Do our findings of fact in respect of the doctor’s misconduct Show that his/her fitness to practise is impaired in the sense that s/he:

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

33. The Tribunal find that Dr Ishtiaque’s actions in the case of Ms A were such that he brought the medical profession into disrepute and broke a fundamental tenet of the medical profession. Thus his actions satisfy limbs b and c in Dame Janet Smith’s examples.

34. The incident involving Ms A, and the incident involving Ms B, involved serious improper conduct towards a colleague on hospital premises involving a young woman who by his actions suffered harm and distress.

35. The Tribunal noted the steps which Dr Ishtiaque has taken by way of remediation as set out in his two reflective statements of March 2020, in the case of Ms B, and January 2021, in the case of Ms A.

36. The Tribunal agreed that in both cases Dr Ishtiaque has undertaken an extensive series of remedial steps including: discussing each of the cases with healthcare colleagues, reading literature on professional ethics and boundaries, attending face to face courses on maintaining professionalism, undertaking online courses on emotional behaviour therapy, and taking professional help from and undergoing sessions with a psychotherapist.

37. The Tribunal also notes the large body of testimonials from professional colleagues and patients which speak well of Dr Ishtiaque’s abilities as a caring and competent practitioner over many years. His clinical skills are not in question.
38. The Tribunal has had the benefit of seeing and hearing Dr Ishtiaque at this stage of the proceedings, particularly on the issues of insight, remediation, and repetition.
39. In his reflective statement of January 2021 and in his oral evidence before the Tribunal, Dr Ishtiaque has recognised and accepted that his conduct in allowing himself to engage in conversation with Ms A about her medical history was inappropriate. In his oral evidence he repeated his apology for causing her distress and he expressed remorse, which the Tribunal considers is genuine. He told the Tribunal that he has learnt to respect the space of others and recognises that he might have interfered with her personal space.
40. The Tribunal finds that Dr Ishtiaque has shown insight and taken remedial steps in the context of where he perceives he did wrong. He said that he respected the decision of this Tribunal, and, in relation to Ms B, that he realises the seriousness of those matters and he apologised for his actions. The Tribunal readily accepts that the risk of repetition would appear to be low or negligible if the case of Ms A stood alone. However, the incident involving Ms A occurred the morning after the incident involving Ms B which could increase the risk of repetition of inappropriate conduct in some form. Against this, there have been no similar or other concerns in the 3 ½ years that have elapsed since the events in July 2017.
41. The Tribunal has borne in mind section 1(1A) and 1(1B) of the Medical Act 1983 as amended, which the Tribunal repeat:

“1(1A) The over-arching objective of the General Council in exercising their functions is the protection of the public.

1 (1B) The pursuit by the General Council of their over-arching objective involves the pursuit of the following objectives –

- (a) To protect, promote and maintain the health, safety and well-being of the public;
- (b) To promote and maintain public confidence in the medical profession;
- (c) To promote and maintain proper professional standards and conduct for members of that profession.”

42. In the *Grant* case, at paragraph 71, Mrs Justice Cox said that it is essential, when deciding whether fitness to practise is impaired, not to lose sight of the fundamental considerations and need to protect the public and declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession. At paragraph 75, the judge said that in determining whether a practitioner’s fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public, but also whether public confidence would be undermined if a finding of impairment were not made in the particular circumstances.
43. These considerations have been frequently repeated by the courts in other cases, although each case must be considered on its own set of facts and circumstances.
44. In the present case, this Tribunal, unlike the Tribunals in 2019 and March 2020 dealing with the case of Ms B and without knowledge of Ms A’s case, now knows about both cases. This Tribunal has received and read extensive documentation about the events relating to Ms B. The Tribunal accepts that the incidents on 24 and 25 July 2017 were different, and it has found that Dr Ishtiaque’s actions in relation to Ms A were not sexually motivated.
45. Nonetheless, both incidents, as stated above, involved serious improper behaviour by a doctor towards a young woman at a time and in a place when they ought to have felt safe from any form of improper advances. The first case led to Dr Ishtiaque being convicted by a jury of sexual assault. The second case has resulted in this Tribunal finding that his actions amounted to serious misconduct. No real explanation has been put forward for either event occurring.
46. The Tribunal considered, in light of the above, particularly sub-paragraphs (b) and (c) of section 1(1B), that public confidence in the profession would be undermined if a finding of current impairment were not made.
47. The Tribunal, therefore, determined that Dr Ishtiaque’s fitness to practise is impaired by reason of his misconduct in the case of Ms A.

Determination on Sanction - 12/01/2021

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

The Evidence

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

Submissions

3. On behalf of the GMC, Mr Walker submitted that a period of suspension was the correct sanction in the case of Dr Ishtiaque. Mr Walker submitted that although it is clear Dr Ishtiaque has shown some insight, this is complicated by the fact that Dr Ishtiaque does not accept some of the underlying facts of the case. Mr Walker submitted that such factual denials may mean there are more concerns regarding insight than might be otherwise.
4. Mr Walker stated that Dr Ishtiaque is an experienced practitioner and, in his submission, ought to have known that his conduct was 'seriously wrong'. Mr Walker also submitted that Dr Ishtiaque's remorse is limited. Mr Walker stated that although Dr Ishtiaque is sorry there was the complaint and sorry for the conversation that took place with Ms A, his remorse did not seem to go much further than that. Mr Walker submitted that Dr Ishtiaque has completed the types of courses a Tribunal would want to see him embark on, but the question as to why this incident took place remains unanswered.
5. Mr Walker moved on to state that taking no action would not be sufficient and that it was difficult to see how a period of conditions on Dr Ishtiaque's registration would adequately address this issue. Mr Walker concluded by submitting that any sanction lower than suspension would not be sufficient to protect the reputation of the profession and that due to the serious misconduct that took place, suspension is the appropriate sanction in this case.
6. On behalf of Dr Ishtiaque, Mr Jenkins submitted that the case should be concluded with the Tribunal taking no action on Dr Ishtiaque's registration. Mr Jenkins submitted that this case is not 'usual' and, in his view, patients are not at risk.

7. Mr Jenkins invited the Tribunal to consider the fact that Dr Ishtiaque had been previously suspended and found to be no longer impaired by the March 2020 Tribunal in respect of Ms B.
8. Mr Jenkins referred the Tribunal to the relevant paragraphs of the Sanctions Guidance (November 2020). He submitted that taking no action in this case was the appropriate sanction. He submitted that a period of suspension was not appropriate in this case, as had been submitted by the GMC, as there was not a need to protect the public given the circumstances of this case.
9. Mr Jenkins submitted that this is a very unusual case and that the Sanctions Guidance provides that, in exceptional circumstances in cases of protecting the public, taking no action can be justified. However, this was not a case of public protection and accordingly exceptional circumstances did not need to be found before taking no action. Mr Jenkins also submitted that Dr Ishtiaque was ‘unlucky’ in the sequence of events which had led to him being suspended and had the 2019 MPT been adjourned until after the appeal of the criminal case, Dr Ishtiaque may not have been suspended for 12 months.
10. Mr Jenkins reminded the Tribunal that in finding paragraphs 1 and 2 (a) of the Allegation proved, it has said that it was probable Dr Ishtiaque had acted instinctively and that he had profound sympathy towards Ms A both as a doctor and a human being. Mr Jenkins invited the Tribunal to consider Dr Ishtiaque’s insight and remediation when determining sanction and the lapse of time since the events before this Tribunal. He submitted that Dr Ishtiaque had already served a lengthy suspension from both the interim order and the substantive suspension which had previously been imposed on his registration.
11. Since March 2020, Dr Ishtiaque has been working regularly as a locum at, amongst others, Queen Elizabeth Hospital, Woolwich, and East Surrey Hospital.
12. Mr Jenkins submitted that a period of suspension would be unfair and that, whilst conditions could address further remediation, the proper sanction in this case is no action.

The Relevant Legal Principles

13. The Legally Qualified Chair reminded the Tribunal that the decision as to the appropriate sanction, if any, is a matter for this Tribunal’s own independent judgement. The Tribunal

was reminded that it should consider the least restrictive sanction first, before moving on to consider more serious sanctions. The Tribunal should also consider proportionality.

14. In reaching its decision, the Tribunal should take into account the Sanctions Guidance and the statutory overarching objective, which includes protecting and promoting the health, safety and wellbeing of the public, promoting and maintaining public confidence in the profession, and promoting and maintaining proper professional standards and conduct.

The Tribunal's Determination on Sanction

15. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal alone, exercising its own judgment. In so doing, it has given consideration to its findings of fact, its findings of misconduct and impaired fitness to practise, and the submissions of counsel for the GMC and counsel for Dr Ishtiaque.
16. The Tribunal has paid particular attention to the 'Sanctions Guidance' and the overarching statutory objective.
17. Throughout its deliberations the Tribunal bore in mind that the purpose of sanctions is not to be punitive. It is particularly important in this case that Dr Ishtiaque does not receive a higher sanction in circumstances where he has been previously been punished by the criminal courts and received a sanction from a Medical Practitioners Tribunal in the case relating to Ms B.
18. In making its decision, the Tribunal had regard to the principle of proportionality, weighing Dr Ishtiaque's interests with those of the public. In so doing, it had regard to the judgment in the case of *Bolton v. Law Society* [1994] 1 WLR 512, which states that 'the reputation of the profession is more important than the fortunes of any one individual member. Membership of a profession brings many benefits, but that is part of the price'.
19. Before considering what action, if any, to take in respect of Dr Ishtiaque's registration, the Tribunal considered and balanced the mitigating and aggravating features in this case.

Aggravating Factors

20. The Tribunal consider the following to be aggravating features in the case of Ms A:

- At around 10:00 on 25 July 2017, whilst in the vicinity of the reception area of the Surgical Assessment Unit at the Hospital Dr Ishtiaque, without Ms A's consent, placed his hand onto the clothing over Ms A's right chest area and rubbed his hand up and down her chest.
- Ms A was a work colleague, the incident happened in a public place at the Hospital which might have been seen by members of the public or other professionals and Dr Ishtiaque was in a position of seniority over Ms A.
- Indeed the incident was witnessed by Dr C who found it "shocking".
- Dr Ishtiaque walked off and made no apology at the time to Ms A.
- The impact of the incident on Ms A was substantial and she was off work for many months and received counselling.
- The incident occurred in the morning, after another incident the evening before, in which Dr Ishtiaque also caused distress to a young female colleague.

21. The Tribunal balanced those aggravating features against what it considered to be the mitigating features in this case.

Mitigating Factors

22. In mitigation, the Tribunal had regard to the following features concerning the incident with Ms A:

- Dr Ishtiaque's actions were not sexually motivated.
- It is reasonably likely that Dr Ishtiaque acted instinctively and in reaction to Ms A telling him about her medical history and indicating she had no breasts.
- As a doctor Dr Ishtiaque felt profound sympathy towards Ms A, and the touching of her clothing over her body was momentary and lasted a few seconds.
- Dr Ishtiaque has demonstrated insight and apologised for causing Ms A distress and he has taken remedial measures to prevent his behaviour towards Ms A (and Ms B) recurring.
- Prior to the events on 24 and 25 July 2017, Dr Ishtiaque had no previous disciplinary or criminal history.
- A period of 3 ½ years has elapsed since the incident on 25 July 2017 occurred.

23. In deciding what sanction, if any, to impose the Tribunal considered each of the options available to it, starting with the least restrictive.

No action

24. The Tribunal considered carefully whether, given all the circumstances, it would be sufficient, proportionate and in the public interest to conclude the case of Ms A by taking

no action. The Tribunal gave much consideration to Mr Jenkins' submission to conclude the case by taking no action.

25. Mr Jenkins made a number of points based largely on proportionality, such as the effect of the Interim Orders Tribunal suspending Dr Ishtiaque's registration in October 2017, and the suspension imposed by the Medical Practitioners Tribunal in March 2019 in the case of Ms B, has meant that Dr Ishtiaque's registration was suspended for some 29 months; the timing of the various hearings and appearances in court; and that Dr Ishtiaque is a good and caring doctor and there are no concerns in this case about the need to protect the public.
26. The Tribunal agreed with Mr Jenkins that there are no issues concerning public protection in the sense of the health, safety and wellbeing of the public. In this case it would be erroneous for the Tribunal to look for exceptional circumstances to take no action.
27. The Tribunal approached the issue of taking no action on its merits. Despite Mr Jenkins' submissions, the Tribunal does not consider it would be right to take no action. First, Ms A was a work colleague and not a patient and as such a member of the public. Secondly, Ms A was entitled to protection from an inappropriate advance to an intimate area of her body by Dr Ishtiaque. Thirdly, the Tribunal considers that to take no action would undermine public confidence in the medical profession given the seriousness of the Tribunal's findings of misconduct and its finding on impairment.
28. In short, the Tribunal concluded that whilst its task is to impose an appropriate and proportionate sanction in the case of Ms A, and not increase any sanction because of the case of Ms B, it does not consider taking no action is appropriate or consistent with the overarching objective in sub-paragraphs (b) and (c) of section 1(1B) of the Medical Act 1983.

Conditions

29. The Tribunal next considered whether to impose conditions on Dr Ishtiaque's registration. In so doing, it bore in mind that any conditions imposed would need to be appropriate, proportionate, workable, and measurable.
30. The Tribunal had regard to paragraphs 80 and 81 of the Sanctions Guidance which states that, in many cases, the purpose of conditions is to help the doctor to deal with their health issues and/or remedy any deficiencies in their practice or knowledge of English.

31. The present case does not involve Dr Ishtiaque’s health, or issues around his performance, or shortcomings in any areas of his clinical practice. He has been commended as a good doctor by all.
32. The Tribunal, therefore, concluded that a period of conditional registration would not be appropriate in this case.

Suspension

33. The Tribunal next considered whether it would be appropriate and proportionate to suspend Dr Ishtiaque’s registration.
34. Paragraphs 91 and 92 of the Sanctions Guidance state:

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

92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (i.e. 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).”

35. The Sanctions Guidance goes on to state at paragraph 97 that, amongst other matters, suspension may be appropriate where there has been a serious breach of *Good medical practice*, but where the doctor’s misconduct is not fundamentally incompatible with continued registration; where complete removal from the medical register would not be in the public interest; that there is no evidence of repetition of similar behaviour since the incident; and that the doctor has insight and does not pose a significant risk of repeating the behaviour.
36. In the present case, the Tribunal has identified, in its impairment determination, breaches of *Good medical practice* and has said that Dr Ishtiaque has shown insight and taken remedial steps in the context of where he perceives he did wrong. He has stated that he

respects the decision of this Tribunal and the courts in the case of Ms B. Dr Ishtiaque did what was expected of him by the 2019 Tribunal and there is no reason to believe that he would not continue to fully reflect on the matters that this Tribunal found in its determination of the facts.

37. Whilst the fact that two incidents occurred in July 2017 concerning two separate women is a relevant and material factor there has been nothing since and Dr Ishtiaque does not pose a significant risk of repeating inappropriate behaviour.
38. The Tribunal has had many testimonials that speak highly of Dr Ishtiaque's skills as a doctor, and since his registration was restored in March 2020, he has been back at work regularly and successfully and with no concerns.
39. The Tribunal determined that there remains a need to mark the seriousness of Dr Ishtiaque's actions and his departure from the principles of *Good Medical Practice* in order to maintain and uphold public confidence and professional standards. The Tribunal has also borne in mind the case of Bolton v. Law Society mentioned above.
40. It was the opinion of the Tribunal that a period of suspension would send a message to both the public and fellow practitioners that such behaviour is not acceptable, and would fairly balance the interests of the doctor with the need to uphold the overarching objective in sub-sections b and c of section 1(1B) of the Medical Act 1983.
41. Having determined that a period of suspension is the most appropriate sanction that could be applied in this case, the Tribunal went on to consider what length of suspension to impose.
42. In considering the length of the suspension, the Tribunal has borne in mind paragraphs 99 - 101 of the Sanctions Guidance, which state that the length of the suspension may be up to 12 months and is a matter for the tribunal's discretion, depending on the seriousness of the particular case.
43. Amongst the factors that will be relevant when determining the length of suspension is the seriousness of the Tribunal's findings and any mitigating or aggravating factors the Tribunal has identified. Paragraph 102 and the table in the Sanctions Guidance give examples of factors that will also be relevant to the length of sanction, under broad categories, depending on the nature of the case.

44. After considerable reflection, the Tribunal concluded that a period of 2 months suspension would sufficiently address limbs two and three of the overarching objective whilst marking the seriousness of Dr Ishtiaque’s misconduct in the Allegation. The Tribunal was of the opinion that an ordinary member of the public knowing all the facts of the case, including the matters relating to Ms B, would be satisfied that suspension was the appropriate sanction and that this period was proportionate and sufficient.
45. Given the length of the suspension and all the facts in this case, the Tribunal was satisfied that a review is not necessary, and that the suspension should end after two months.
46. This means that Dr Ishtiaque’s registration will be suspended for two months from when notice of this decision is deemed to have been served upon him, unless he lodges an appeal.

Determination on Immediate Order - 12/01/2021

1. Having determined to suspend Dr Ishtiaque’s registration for a period of two months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Ishtiaque’s registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Mr Walker submitted that an immediate order was appropriate in the case of Dr Ishtiaque. Mr Walker submitted that, given the Tribunal’s findings of serious misconduct, it would be in the interest of the public for Dr Ishtiaque’s registration to be subject to an immediate order and that such a measure was proportionate and necessary.
3. On behalf of Dr Ishtiaque, Mr Jenkins submitted that an immediate order was unnecessary and disproportionate in this case. Mr Jenkins submitted that Dr Ishtiaque is a ‘good and useful doctor’ and that, in all the circumstances, it would not be in the public interest to deprive the public of his skills by subjecting Dr Ishtiaque’s registration to an immediate order.

The Tribunal’s Determination

4. In reaching its decision the Tribunal referred to the relevant paragraphs of the SG. It exercised its own judgement and had regard to the principle of proportionality.

5. Notwithstanding its findings of misconduct, it is not clear to the Tribunal why an immediate order is desirable, let alone necessary in this case. Dr Ishtiaque has been practising unrestricted since March 2020, without any concerns.
6. This means that Dr Ishtiaque's registration will be suspended for two months from when notice of this decision is deemed to have been served upon him, unless he lodges an appeal. If Dr Ishtiaque does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.
7. That concludes this case.

Confirmed
Date 12 January 2021

Mr Kenneth Hamer, Chair

ANNEX A – 06/01/2021

Application for Dr Ishtiaque to give live evidence.

1. This hearing is being held remotely. On Day 2 of the hearing, Mr Jenkins made an application, on behalf of Dr Ishtiaque, for Dr Ishtiaque to be able to give evidence in person at the hearing.

Submissions on behalf of Dr Ishtiaque

2. Mr Jenkins submitted that it was the wish of Dr Ishtiaque to provide his evidence to the Tribunal in person as he would be able to present better in a live hearing and that the Tribunal would be able to better read his body language rather than him giving his evidence remotely.
3. Mr Jenkins stated that that on 30 November 2020 he had attended the last pre-hearing case management meeting with the MPTS when it was stated that a decision had been taken to hold the hearing virtually. Following the meeting Dr Ishtiaque had made clear to his solicitors and Mr Jenkins that he wished the hearing to be held virtually and that he wished to give evidence in person.
4. The matter was taken up in correspondence with the MPTS when Mr Ishtiaque stated that he wished his evidence to be given in person. Mr Ishtiaque was informed that an application would need to be made to the Tribunal.
5. At the opening of the case on 4 January 2021, Mr Jenkins stated that Mr Ishtiaque still wished to give evidence in person, but any application could be left open pending the Prime Minister's statement that night on television. The hearing therefore began with the GMC's witnesses giving evidence virtually and being cross-examined by Mr Jenkins and asked questions by the Tribunal.
6. On the morning of 5 January 2021, Mr Jenkins stated that Dr Ishtiaque still wished to give evidence in person and that it would be fair for him to do so.
7. Mr Jenkins submitted that whilst there have been plenty of virtual hearings, he was not aware how many had been held against the wishes of the doctor and where the doctor considered it would be unfair for his or her evidence to be heard virtually. He invited the Tribunal to consider what was fair in all the circumstances.

Submissions on behalf of the GMC

8. Mr Walker submitted that the application should be subject to a degree of critical analysis. He submitted that there does not appear to a need for Dr Ishtiaque's evidence

to be heard live other than Dr Ishtiaque’s wish for the Tribunal to be able to see his body language. He submitted that the Tribunal could see his body language remotely on the video.

9. Mr Walker submitted that if virtual hearings were unfair then they would not happen. Mr Walker submitted that the GMC is neutral on this application.

The Tribunal’s decision

10. The Tribunal had regard to the MPT guidance for handling requests for a change of venue, and further, its related guidance, dated August 2020, which states:

- “4. The following factors will be considered when deciding whether to hold a hearing virtually or at SJB:
 - a. The needs of vulnerable witnesses. Each case will be different, depending on the nature of the vulnerability and the practicalities of implementing any special measures required.
 - b. The needs of non-vulnerable witnesses and other participants arising from a disability or from circumstances related to the Covid-19 pandemic. For example, where a participant is required by UK government advice to take shielding measures due to their age, certain medical conditions or pregnancy, or where participants live in an area where travel restrictions are in place.
 - c. The volume or format of evidence to be presented. For example, where the hearing bundle will be extensive, or where physical evidence will be presented, a SJB hearing is more likely to be required.
5. In the absence of any other factors, we do not consider the following to be relevant considerations:
 - a. number of witnesses
 - b. the nature of the allegation or type of hearing
 - c. extent of press or public interest.”

11. The Tribunal also had regard to the advice on the MPTS public website, dated 3 November 2020, which states:

“The UK government has announced that the whole of England will come under new national restrictions from 5 November for a period of four weeks.

The MPTS will continue to run hearings, in order to meet our statutory responsibility to protect the public by making decisions.

During the period of national restrictions, MPTS hearings will be held virtually unless there is a particular need for a hearing to be held in our Manchester hearing centre. Hearings may be held in Manchester if:

- The needs of the participants cannot be met by a virtual hearing.
- The circumstances of the case make it unsuitable for a virtual hearing.”

12. The Tribunal also bore in mind that on the evening of 4 January 2021, the Prime Minister announced a further national lockdown, stating that people should only leave for limited reasons, such as to work if they absolutely cannot work from home.

13. The Tribunal noted that, in the instant case, Dr Ishtiaque, like all others engaged in these proceedings, was able to join the hearing using Skype for Business and his visual and audio connections were operating satisfactorily. The Tribunal was not informed that there were any communications problems between Dr Ishtiaque and Mr Jenkins that required to be dealt with face to face.

14. On 5 January 2021, the Tribunal announced its reasons for rejecting Dr Ishtiaque’s application. It said that whilst it respected Dr Ishtiaque’s desire to give live evidence at the MPTS’s building in Manchester it considered that his needs could be adequately met by a virtual hearing. Further, that it would not be unfair or disproportionate to continue as a remote hearing.

15. Accordingly, the Tribunal rejected the application.