PUBLIC RECORD

Dates:
13/10/2020 – 23/10/2020;
09/11/2020 – 12/11/2020

Medical Practitioner's name:	Dr Olakunle AROWOJOLU
GMC reference number:	4467036
Primary medical qualification:	MB BS 1982 University of Ibadan

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

Summary of outcome

Erasure

Immediate order imposed

Tribunal:

Legally Qualified Chair	Mr Tim Bradbury
Lay Tribunal Member:	Mrs Carrie Ryan-Palmer
Medical Tribunal Member:	Dr Maria Broughton

Tribunal Clerk:	Mr Stuart Peachey

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Daniel Janner, QC, instructed by Hempsons Solicitors
GMC Representative:	Ms Chloe Hudson, 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 - 09/11/2020

Background

1. At the time of the Allegation, Dr Arowojolu was working as an out-of-hours General Practitioner ('GP') for Primecare at XXX ('the Surgery')

2. The concerns in this case relate to an alleged incident in the early hours of 22 July 2013, when Dr Arowojolu performed an examination upon Ms A, XXX. The examination took place in a consultation room at the Surgery at which only Ms A and Dr Arowojolu were present. It is alleged that on two occasions during the course of this examination, Dr Arowojolu put his hand down the front of Ms A's knickers touching her vagina with his fingers. It is alleged that Dr Arowojolu's conduct in this regard was sexually motivated.

<u>The Criminal Proceedings</u>

3. Dr Arowojolu was arrested by the Police on 22 July 2013, on suspicion of sexual assault and he was interviewed the same day.

4. On 16 January 2014, Dr Arowojolu was charged with sexual assault, contrary to Section 3 of the Sexual Offences Act 2003.

5. On 16 October 2014, Dr Arowojolu was convicted of the offence following a trial at Chelmsford Crown Court.

6. On 14 November 2014, Dr Arowojolu was sentenced to two years imprisonment. He appealed the conviction and sentence.

7. On 1 April 2015, at the Court of Appeal, Dr Arowojolu's conviction was quashed and a re-trial was ordered. He was released from prison on 2 April 2015 on bail. Dr Arowojolu served a total of 5 months' imprisonment.

8. On 22 February 2016, the re-trial commenced but was abandoned on the first day due to disclosure by the prosecution of a previous sexual allegation that Ms A had made against XXX. The re-trial was adjourned.

9. On 28 November 2016, there was a re-trial. However, the Jury were unable to agree a verdict. They were discharged and a further re-trial was ordered.

10. On 7 July 2017, at the re-trial of Dr Arowojolu he was acquitted by a unanimous jury verdict.

The 2019 Medical Practitioners Tribunal ('the initial Tribunal')

11. In 2019, the initial Tribunal found the facts proved in relation to the allegation arising out of the incident on 22 July 2013, Dr Arowojolu's fitness to practice impaired by reason of misconduct and Dr Arowojolu's name was erased from the Medical Register.

12. Dr Arowojolu appealed the initial Tribunal's decision. Following the conclusion of that appeal, the High Court, having held the initial Tribunal had misdirected itself, quashed the initial Tribunal's findings in their entirety and ruled that Dr Arowojolu's case be referred back to the MPTS for a new Tribunal to adjudicate.

The Outcome of an Application Made During the Facts Stage

13. The Tribunal granted Ms Hudson, Counsel, on behalf of the General Medical Council ('GMC') application made pursuant to Rule 34(13)(14) of the GMC's Fitness to Practise Rules 2004 ('the Rules'), for Dr H, a GMC expert witness, to give evidence via Video Link. This application was not opposed by Mr Janner, QC, on behalf of Dr Arowojolu. It determined that it was in the interest of justice and fairness to hear Dr H's evidence by remote means.

The Allegation and the Doctor's Response

14. The Allegation against Dr Arowojolu is as follows:

    1. On 22 July 2013, you:

a. asked Ms A to show you her stomach in the reception area of XXX Health Centre; To be determined

b. performed an intimate examination ('the First Part of the Examination') on Ms A; To be determined

c. failed to offer a chaperone prior to, or any time during, the First Part of the Examination. To be determined

2. The First Part of the Examination was inappropriate in that Ms A was:

a. a work colleague; To be determined

b. suffering from a non-emergent problem. To be determined

3. During the First Part of the Examination, you:

a. lifted Ms A's top and exposed her stomach; To be determined

b. placed your left hand on Ms A's back and your right hand on her stomach and assisted in manoeuvring her up and down a number of times in a sit up motion; Admitted and found proved

c. asked Ms A 'can I just put my hand here?' or words to that effect; Admitted and found proved

d. placed your right hand under Ms A's trousers and Underwear, touching her pubic bone; To be determined

e. applied pressure to Ms A's pubic bone with the palm of your right hand; To be determined

f. moved your left hand lower down Ms A's back; To be determined

g. touched Ms A's clitoris with the middle finger of your right hand; To be determined

h. placed the two fingers either side of your middle finger of your right hand on either side of Ms A's clitoris; To be determined

i. continued to move Ms A into a sit-up position and place your finger on her clitoris after she repeatedly said 'no I want to get up now, I want to stop now,' or words to that effect. To be determined

4. After the First Part of the Examination, you said to Ms A to 'lay back down, I will show you how to do an exercise that will help,' or words to that effect. To be determined

5. You continued an intimate examination on Ms A ('the Second Part of the Examination') in which you:

   a. placed your left hand on Ms A's lower back and your right hand underneath her Underwear; To be determined

   b. pushed the palm of your right hand against her pubic bone; To be determined

   c. rested the three middle fingers of your right hand on her clitoris and labia; To be determined

   d. rubbed Ms A's clitoris and labia with your right hand; To be determined

   e. moved your left hand from Ms A's lower back to her left breast and stroked it; To be determined

   f. said 'yes, it's nice,' or words to that effect; To be determined

   g. stopped the Second Part of the Examination only after Ms A has asked you to repeatedly. To be determined

6. You failed to make a record of the:

   a. First Part of the Examination; To be determined

   b. Second Part of the Examination. To be determined

7. Your conduct as detailed at paragraphs 1 – 5 above was sexually motivated. To be determined

Factual Witness Evidence

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

- Ms A; and a witness statement, dated 22 February 2018;
- Mr B, the husband of Ms A; and a witness statement, dated 22 January 2018; and a supplemental statement, dated 11 October 2018

16. The Tribunal also received witness statements on behalf of the GMC from the following witness who was not called to give oral evidence:

- Ms I, a District Nursing Sister at the Surgery, dated 18 October 2013.

17. Dr Arowojolu provided his own witness statements, dated 22 July 2013; 26 February 2019; 17 July 2019; 3 September 2019, and also gave oral evidence. The Tribunal also received oral evidence from Mrs C, Dr Arowojolu's wife.

18. The Tribunal also received witness statements on behalf of Dr Arowojolu from the following witness who was not called to give evidence:

- Mrs J, a Medical Secretary, dated 20 February 2019.

Expert Witness Evidence

19. The Tribunal received evidence from two expert witnesses:

Dr H, instructed on behalf of the GMC

A retired General Practitioner ('GP'):

- Oral evidence;
- Expert Report, dated 7 June 2018;
- Supplemental comments, dated 2 January 2019; and
- Curriculum Vitae ('CV').

Dr K, instructed on behalf of Dr Arowojolu:

A retired GP:

- Oral evidence;
- Expert Report, dated 5 September 2018; and
- Curriculum Vitae ('CV'),

Documentary Evidence

20. The Tribunal had regard to all the documentary evidence adduced during these proceedings. This evidence included, but was not limited to:

- Agreed factual summary of statements served as unused material by the Crown Prosecution Service ('CPS') in 2015;
- Transcript of Ms A's evidence at 2017 Criminal Trial, dated 3 July 2017;
- Transcript of Dr Arowojolu's evidence at 2017 Criminal Trial, dated 4 July 2017;
- Agreed timings of telephone calls with Ms A on 22 July 2013;
- Agreed timings shown on Close Circuit Television ('CCTV') footage;
- GMC Guidance: *Intimate Examinations and Chaperones*, dated 25 March 2013;
- Annotated copy of floor plan;
- Diagram of Torso;
- Various testimonials attesting to Dr Arowojolu's good character;
- Evidence of Dr Arowojolu's Continuing Professional Development ('CPD');
- Email confirming MCQ examination result;
- Transcript of Ms A's handwritten letter to her father;
- Transcript of *R v Arowojolu* Judge Lodge's directions in law, dated July 2017;
- *Arowojolu v GMC [2019) EWHC 3155 (Admin)*;
- *Dutta v GMC [2020] EWHC 1974 (Admin); and*
- *Casey v GMC [2011] NIQB 95*;
- CCTV footage – Extracts of CCTV footage from the Surgery on the night and early hours of 21 and 22 July 2013 showing corridors and part of the reception area of the Surgery

The Tribunal's Approach

21. The Legally Qualified Chair gave the following legal advice to the Tribunal which the Tribunal has followed during the course of its deliberations:

22. At this stage the Tribunal is required to determine whether the facts alleged, or any of them, have been proved.

23. The Tribunal must give separate consideration to the evidence in relation to each alleged fact. Therefore, it does not follow that the Tribunal finds one alleged fact proved, or not proved, as the case may be, that the Tribunal will reach the same conclusion in relation to any of the other alleged facts.

24. In considering the allegation the Tribunal must be satisfied that each of the elements of the alleged fact have been made out before finding the fact proved.

Burden and Standard of Proof

25. The GMC brings the allegation and the burden of proving the allegation is on the GMC; there is no burden on the doctor to disprove the allegation and the fact that he has chosen to give and call evidence on his own behalf does not mean that he has taken any burden upon himself.

26. The Standard of Proof is the 'Balance of Probabilities' – in plain language – Is it more likely than not that the fact alleged is true. The Tribunal, in determining whether the allegation has been proved on the balance of probabilities, should, where appropriate, have regard to the fact that the more serious the allegation, the less likely it is to have occurred and therefore the evidence should be stronger before the Tribunal concludes it is proved on the balance of probabilities.

Alleged facts that Dr Arowojolu 'failed' in some respect

27. Dr Arowojolu faces a number of allegations that he 'failed' in some or other respect.

28. Before finding such an allegation proved the Tribunal would not only have to be satisfied that the doctor in fact failed to do that which is alleged. But, as a prerequisite, the Tribunal would have to determine that the doctor was under a positive duty to act, that is to say - the doctor failed to do that which was to be expected of a reasonably competent doctor.

Sexual Allegations – The danger of making assumptions

29. Given the nature of the Allegation in this case and the evidence in relation to the allegations made by Ms A against XXX in 2003, the Tribunal should guard against the danger of making assumptions in the same way as juries in criminal trials are directed as to the same dangers.

30. It has been the experience of judges in the criminal courts who try sexual offences that an image of stereotypical behaviour and demeanour by a victim or the perpetrator of a non-consensual offence such as sexual assault by some members of the public can be misleading and capable of leading to injustice. That experience has been gained by judges, experts in the field, presiding over many such trials during which guilt has been established but in which the behaviour and demeanour of complainants and defendants, both during the incident giving rise to the charge, and in evidence, has been widely variable. Judges have, as a result of their experience, in recent years adopted the course of cautioning juries against applying stereotypical images of how an alleged victim or an alleged perpetrator of a sexual offence ought to have behaved at the time, or ought to appear while giving their evidence, and to judge the evidence on its intrinsic merits. This is not to invite juries to suspend their own judgement but to approach the evidence without prejudice.

31. In particular, the Tribunal should avoid assumptions as to how a victim might be expected to behave during, or immediately following a sexual assault and assumptions as to when, how, or whether, they would make a complaint to others concerning a sexual assault to which they had been a victim – It is the experience of the courts that there is no typical response.

32. Similarly, there is no typical demeanour to be expected of a victim following a sexual assault or when subsequently giving evidence about it. Some victims may exhibit evident distress others may present as being impassive or emotionless.

33. In this case, the GMC rely upon the demeanour of Ms A and the apparent distress and upset described by those who spoke to her shortly after the event and which can be heard on the audio recordings the Tribunal has heard. The GMC submit that this supports their case that Dr Arowojolu had sexually assaulted Ms A shortly before those conversations occurred.

34. Whether, this evidence does support the GMC case is a matter for the Tribunal to consider. However, the Tribunal must bear in mind that, just as it is possible for someone

to make a false allegation, it is also possible for someone to put on an act of distress should they choose to do so – exhibit 'crocodile tears' as Mr Janner has put it. Further, although the Tribunal will wish to consider whether Ms A's demeanour supports the GMC's case, such evidence cannot be regarded as providing independent support for the allegation.

Hearsay

35. During the course of the hearing, hearsay evidence had been admitted. That is to say the Tribunal has heard evidence of what others have said relating to the issues before it but who have not themselves given evidence.

36. The Tribunal is entitled to have regard to hearsay evidence. However, the Tribunal should give careful consideration to the weight that it considers appropriate to attach to such evidence.

37. Further, when considering hearsay evidence:

- The Tribunal will bear in mind that the maker of the statement has not given evidence on oath.

- There has not been an opportunity for the witness to be cross-examined or challenged in relation to their statements and the Tribunal has not had the opportunity to assess the credibility or reliability of the maker of the statement.

- Further, there is always the danger inherent in hearsay evidence of misreporting that which has been said on a previous occasion, or indeed, the sense of what was said, and that danger will inevitably be compounded, or greater, if there is multiple hearsay.

Inferences

38. The Tribunal is entitled to draw inferences, that is to say reach common sense conclusions based upon reliable evidence that the Tribunal accepts. However, the Tribunal will take care to distinguish between reaching conclusions that are based upon reliable evidence, on the one hand, and speculation as to matters upon which there is no, or insufficient evidence, on the other – The Tribunal must not speculate as to matters about which there is no, or insufficient evidence.

39. It is a matter of record that Dr Arowojolu was arrested on 22 July 2013 and interviewed the same day. He declined to answer any questions on legal advice. He did, however, provide a detailed statement which the Tribunal has seen. The Tribunal should not draw any inferences adverse to Dr Arowojolu from the fact that he did not answer questions by the police.

Expert Evidence

40. Expert evidence has been called on behalf of the GMC and Dr Arowojolu.

41. This evidence has been admitted to provide the Tribunal with information and opinion evidence, that is within the witness's expertise, but which may be outside the Tribunal's own experience and knowledge.

42. It is by no means unusual for expert evidence to be called; it is placed before the Tribunal as part of the evidence as a whole and to assist the Tribunal with regard to one particular aspect of the evidence, namely the issues relating to the Doctor's professional duties and alleged failings which are the subject of Paragraphs 1 and 2 of the Allegation.

43. A witness called as an expert is entitled to express an opinion in respect of his findings and the matters about which he is asked; and the Tribunal is entitled to, and will, have regard to this evidence, and to the opinions expressed by the experts when coming to its own conclusions on the issues to which the expert evidence relates.

44. However, the Tribunal should bear in mind that, if having regard to the evidence it does not accept the evidence of the expert, the Tribunal does not have to act upon it. Indeed, the Tribunal is not bound to accept even the unchallenged evidence of an expert. Although, if the Tribunal does not accept the uncontradicted evidence of an expert it will give its reasons for so doing.

Evidence in relation to Ms A's previous allegation of sexual assault in 2003

45. Evidence has been adduced on behalf of Dr Arowojolu of a previous allegation of sexual assault by Ms A.

46. This concerned an allegation made in 2003 by Ms A, when she was 14 years old, that over a period of approximately 2 years, she had been sexually assaulted, or subjected to sexually inappropriate behaviour on numerous occasions. The allegations included rubbing Ms A's leg and vaginal areas over clothing, touching her breasts beneath her

clothing and trying to kiss her.

47. Ms A disclosed the alleged abuse in a letter to her XXX father which Ms A said was written as a result of her then boyfriend, who had learnt of the abuse, telling her, in terms, that if she did not tell her father he would.

48. As a result of the disclosure there was a police investigation, Ms A gave a recorded ABE interview. Ms A gave an account of sexual abuse she said she had experienced at the hands of XXX.

49. XXX was interviewed by the police in which he denied the allegations.

50. In the event, XXX was not charged with any offence and no further action was taken.

51. It is submitted on behalf of the doctor that the allegations made by Ms A against XXX in 2003 were lies and that Ms A is a fantasist.

52. In support of the assertion that the 2003 allegations were false the following matters were relied upon:

- XXX not charged.
- The particulars set out in the agreed facts at the Crown Court.
- Ms A's delay in complaining.
- Nature of the allegations being implausible [covering 2 years in three locations – XXX].

    1. Abuse allegedly happened openly in several rooms which were not locked.
    2. The risk of XXX e.g. XXX walking in.
    3. The absence of any family member raising concerns.
    4. Her mother saying she never showed any signs of resentment to XXX.
    5. The nosebleed incident undermined her truthfulness because XXX did not take XXX to the shops as was claimed by Ms A.

6. Ms A showed no resistance in going to XXX home.

7. Ms A did live with her mother as recently as 5 weeks before she made her ABE interview.

- Presence of others who disputed her evidence [XXX].

- She admitted that as a teenager she lied to her mother about where she had been.

- She lied worse when she started going out with XXX.

- She had been suspended from school.

- She lied to her mother [a person in authority] yet claims she was afraid to complain about XXX because he was in authority.

- She claimed for the first time in these proceedings that XXX had been sexually assaulted by XXX.

- She claimed for the first time in these proceedings that XXX was an alcoholic to undermine his evidence against her.

- She only named the friend she claimed she had told about this, for the first time in these proceedings.

- No supportive evidence that XXX were swingers.

- The allegation she had been attempted raped by XXX wearing a leopard skin thong was fantasy.

- Her demeanour in cross-examination.

53. Ms A, has given evidence in these proceedings, and maintains that the allegations she made in respect of XXX in 2003 were true.

54. It is submitted on behalf of Dr Arowojolu that the alleged falsity of the 2003 allegations is relevant to Ms A's credibility generally and, in particular in relation to the allegations of

sexual assault made against Dr Arowojolu because it demonstrates that Ms A 'has a track record' of making false allegations of sexual assault and, in particular, against 'older men in positions of authority [over her]'. Or to put it another way, it is submitted that Ms A has a 'propensity' to make false allegations.

The Tribunal's approach to evidence of 'propensity'

55. In considering the evidence in relation to the 2003 incident, the Tribunal must first consider the issue of whether the allegations made by Ms A were false.

56. The Tribunal must ask itself whether there is, at the very least, a real possibility that the allegations Ms A made against XXX in 2003, and which she has maintained to date, were deliberate lies.

57. If the Tribunal were to conclude that there was no real possibility that the allegations were false, or, if the Tribunal concluded that it was unable to determine whether there was such a possibility or not, then the 2003 allegations would have no further relevance to the case.

58. However, if the Tribunal were to conclude that there is a real possibility that it was a deliberate false complaint made against XXX, the Tribunal would next need to consider whether this fact shows that Ms A has a propensity or tendency to tell lies.

59. If the Tribunal were to conclude that Ms A does have propensity or tendency to tell lies this is something the Tribunal should consider when assessing her reliability and credibility in relation to the current Allegation.

60. However, the issue of the truth or otherwise of the 2003 allegations, is only part of the evidence. The fact that someone may have made a false complaint in the past does not, and cannot, mean that every complaint they make in the future must be false.

Good Character

61. The Tribunal has heard that Dr Arowojolu is 60 years old and does not have any previous findings made against him by his regulator or any criminal convictions. It has also heard character evidence and testimonials attesting to his good character.

62. This evidence is important in two respects

1. Firstly, Dr Arowojolu has given evidence on oath and the fact that he is a person of good character is relevant to his credibility – because the Tribunal may think that someone who is of good character is more worthy of belief than someone who is not.

2. Secondly it is relevant to the question whether the doctor has a disposition, or propensity, to engage in the type of conduct alleged and the Tribunal may consider that someone who has no previous history of conducting himself in the manner alleged may be less likely to have conducted himself in that way as someone who did a have such a history.

63. Although, of course, the fact that someone is of good character does not mean that the Tribunal must accept their evidence, or that they are otherwise incapable of acting in the manner alleged.

64. But good character is a matter the Tribunal should take into account in its deliberations in Dr Arowojolu's favour.

The Tribunal's Analysis of the Evidence and Findings

65. The accounts given respectively by Ms A and Dr Arowojolu as to the events in the consultation room at the Surgery in the early hours of 22 July 2013 are in stark conflict. Ms A alleges that whilst lying on the examination couch, Dr Arowojolu, under the guise of conducting an abdominal examination and showing her how to perform sit-ups, on two separate occasions, put his right hand down the front of her knickers touching her clitoris with his fingers. Despite telling him to stop, Ms A stated he did not initially do so.

66. Dr Arowojolu maintained that at no time did he put his hands in Ms A's knickers or touch her vagina in anyway. He said that he performed a limited examination of the elasticity of the skin of Ms A's stomach and the tone of her abdominal muscles and he showed her how to perform sit-ups whilst his left hand was placed on her back and his right hand was on her abdomen.

67. The Tribunal determined that such was the stark difference between Ms A and Dr Arowojolu's accounts as to the examination in the consultation room and, in many respects, the events before and after the examination, that there was no scope for mistake or misinterpretation of the events by either party. Rather, either Ms A was lying, or she was telling the truth. It was submitted by Mr Janner that the Tribunal should find

Ms A to be a liar and a 'fantasist'.

68. In these circumstances, the Tribunal first considered the facts that were not in dispute, or which could be independently verified, before considering the details of the respective evidence of Ms A and Dr Arowojolu and before considering their credibility and/ or reliability respectively.

69. The Tribunal considered that the following matters were not in dispute:

1. Neither Ms A nor Dr Arowojolu knew each other particularly well prior to the incident on 22 July 2013. At this time, Ms A had only been working at the Surgery for approximately 6 weeks. Ms A and Dr Arowojolu had only come across each other on a few occasions whilst working in the Surgery and their interactions had been unremarkable. The Tribunal noted from the audio recordings of a telephone call made following the incident that Ms A did not apparently even know Dr Arowojolu's first name.

2. Shortly before 01:00 am Dr Arowojolu saw and subsequently spoke to Ms A at the reception desk as he was preparing to go home. He had finished his shift and having remained at the surgery to complete some other work.

3. When Dr Arowojolu saw Ms A, she was looking at her mobile telephone and viewing diet pill related material.

4. Dr Arowojolu spoke to Ms A, she told him she was looking at slimming pills as she was not happy with the appearance of her 'flabby tummy'. Dr Arowojolu reassured her in terms that she should not worry or be considering taking slimming pills.

5. Dr Arowojolu and Ms A then left the reception area and walked to one of the Surgery consultation rooms.

6. The route they took to the consultation room is shown on CCTV footage. Ms A followed Dr Arowojolu. They both entered the consultation room where they remained for approximately 10 minutes. It is during this time that the examination which is the subject of the Allegation occurred.

7. CCTV showed Ms A leaving the room closely followed by Dr Arowojolu and they both went to the main reception area of the Surgery taking a different and more

direct route. Ms A returned to the reception desk and Dr Arowojolu left the Surgery. From the moment of leaving the consultation room to Dr Arowojolu leaving the Surgery, there did not appear to be any significant interaction or conversation between them.

8. Within minutes of Ms A having returned to the reception a number of telephone calls to which Ms A was a party followed. The Tribunal had audio recordings and transcripts of some but not all of these calls.

70. The Tribunal found the timing of the telephone calls and their content, where available, provided significant and compelling evidence.

71. At 01:01am, approximately 4 minutes after CCTV footage shows Ms A and Dr Arowojolu leaving the consultation room (00.57), Ms A telephoned Mr B, her husband, on her mobile telephone.

72. At 01:02am, Mr B called Ms A's mobile telephone which was answered, but was not recorded. Both Ms A and Mr B gave evidence as to this telephone call. Their accounts differed as to how much detail Ms A gave to Mr B as to what she had said Dr Arowojolu had done. Ms A stated that she gave relatively brief detail of Dr Arowojolu having touched her inappropriately. In a police statement, dated 1 August 2013, Mr B described Ms A as having given considerable detail as to what she was saying Dr Arowojolu had done. The Tribunal noted that the telephone call was no longer than 3 minutes in duration. It considered, more likely than not, Ms A had not given as much detail as Mr B recalled at that time. Rather, it was more likely that the detail in his statement had been gleaned by Mr B in the intervening period between 22 July 2013 and 1 August 2013. However, the Tribunal considered that there was little doubt that Ms A had reported to Mr B that she had been assaulted by Dr Arowojolu within 4 minutes of the event having occurred.

73. At 01:05am, a driver employed by the Surgery called reception. This call was recorded. The driver was telephoning Ms A to make enquires as to the whereabouts of a particular doctor. Ms A was audibly distressed and crying whilst she attempted to deal with the driver's inquiry. It was apparent that this distress was evident to the driver because he enquired of Ms A 'what is the matter'. Ms A whilst still crying, said she would talk to the driver later when he returned [to the Surgery].

74. At 01:08am, there was a connected call from Dr Arowojolu to Ms A, which was not recorded (reference to this call is made later in this determination).

75. At 01:28am, a District Nurse telephoned the reception and spoke to Ms A. This call was recorded. It was immediately apparent to the District Nurse that Ms A was upset and she could be heard to be crying. The District Nurse asked her 'what is the matter, mate?'. Ms A went on to say that Dr Arowojolu has 'touched me' clarifying moments later that she meant she had been touched 'inappropriately'. The District Nurse then explained that she had a further patient to see but would return to the Surgery to see Ms A when she had finished.

76. There is then a further telephone call, on this occasion from the on-call Clinical Manager together with the District Nurse, to Ms A. The time of this call was unknown but it evidently occurred whilst Ms A was still on-duty at the Surgery that night. This call was also recorded. During the call, the Clinical Manager stated that she had been informed by the District Nurse that something had occurred involving Dr Arowojolu and asked Ms A to tell her what had happened. Thereafter, Ms A gave a detailed account of the events of that night of what she was saying Dr Arowojolu had done to her.

77. The account Ms A gave during this call, in the Tribunal's judgement, was coherent, detailed, credible and compelling.

78. It did not appear to the Tribunal that, at the time Ms A made the call, she was relishing the opportunity to make a complaint. On the contrary, it appeared that Ms A was anxious about the possible consequences of making a formal complaint, that it might reflect badly on the reputation of her employers and that she might herself be suspended during any subsequent investigation.

79. In the event Ms A having been reassured by the Clinical Manager, reported the matter to the police in a telephone call from the surgery. The time of the call to the Police is unknown but it was before the end of Ms A's shift that night.

80. Again, the Tribunal had an audio recording and transcript of the call to the Police. The Tribunal again found the account Ms A had given to the Police to be credible and it was consistent with that which she had given previously and had maintained ever since.

81. In relation to the recordings of the telephone calls, the Tribunal considered the possibility that Ms A was feigning distress or, as Mr Janner submitted, crying 'crocodile tears.' The Tribunal did not form the impression that Ms A's apparent upset was anything other than

genuine.

The Tribunal's Assessment of Ms A as a Witness and Her Evidence Before the Tribunal

82. During the course of the hearing, the Tribunal heard evidence in relation to the allegations made by Ms A in 2003 which it was submitted by Mr Janner, demonstrated a propensity on her part, to tell lies. Accordingly, before considering Ms A's evidence in detail with regard to the current Allegation, the Tribunal gave consideration to this issue.

83. In 2003, Ms A, who was then 14 years of age, made an allegation against XXX that she had been regularly sexually abused by him over a period of approximately 2 years ('the 2003 Allegation'). It was submitted by Mr Janner that these allegation were demonstratively false and the fact that they had been made established that Ms A had a propensity to tell lies generally and, in particular, to make false allegations of a sexual nature against 'men in positions of authority'.

84. In support of the submission, Mr Janner made a number of forensic points which, it was said, should lead the Tribunal to conclude that the 2003 Allegation was false. They included the following:

1. Not charged: Despite a police investigation and Ms A and XXX having been interviewed, XXX was not charged with any offences.

2. Delay: Ms A had alleged that the abuse had been ongoing, and persistent, for approximately 2 years before she disclosed the same in a letter to her father. This was despite the fact, it was submitted, that there were people within XXX Ms A's household to whom she could have complained.

3. Inherent implausibility: Mr Janner submitted that the allegations were inherently implausible in that the abuse was alleged to have occurred in properties in which others were present at the time and in rooms that were unlocked. One of the allegations was that XXX had assaulted Ms A whilst wearing a leopard skin thong.

4. Lack of support from other family members: It was submitted that no family members had raised or had had any concerns at the time or observed any resentment or animosity by Ms A towards XXX.

5. Ms A's unreliability as a child: At the time of the investigation Ms A's mother had reported that her daughter had told lies in the past (not of a sexual nature). It was also recorded that she had been suspended from school for a period and, as Ms A accepted, she had been 'a bit of a handful'.

85. The Tribunal carefully considered the evidence of Ms A with regard to the 2003 Allegation, the agreed statement of facts in relation to the matters established during the 2003 investigation (a document agreed between both Counsel during the criminal proceeding) and the submissions made by Mr Janner.

86. The Tribunal determined that, on the evidence before it, it was unable to reach a definitive conclusion as to the truth or otherwise of the 2003 Allegation either on the balance of probabilities or at all.

87. The Tribunal did not consider that the matters relied upon by Mr Janner necessarily led to the conclusion that the 2003 Allegation was false.

88. The fact that, despite a Police investigation, XXX was not charged did not, in the Tribunal's judgement demonstrate that the 2003 Allegations were false. It had no evidence as to why, or in what circumstances, the decision not to charge was made. Even assuming that a view had been formed by the Police / CPS that the evidence was not sufficient to afford a reasonable prospect for conviction, in the Tribunal's judgement, this would fall a long way short of an assessment that the allegations were false.

89. The Tribunal did not consider the fact that a 14-year-old girl delayed making a complaint against XXX, or that the abuse had occurred continuously for two years at times or places when XXX were nearby or, that XXX family members did not suspect that any abuse was occurring, were remarkable. The Tribunal considered that such features might be present in many situations where a child is being sexually abused by XXX.

90. Further, the Tribunal did not find that the fact that at the relevant time Ms A was a teenager who had lied to her mother on other matters, had been suspended from school and/or was a 'bit of a handful', led to the conclusion that her allegations against XXX were, or must have been, false.

91. The Tribunal acknowledged, given the incomplete picture it had of events in 2003, that it was entirely possible that the 2003 Allegations were false. However, equally, it was entirely possible that they were true.

92. In these circumstances, the Tribunal did not consider that the 2003 Allegations or the evidence in relation to the same, assisted on the issue of Ms A's credibility with regard to the current Allegation.

93. Furthermore, the Tribunal considered that even if it had been satisfied that Ms A's 2003 Allegations were false, it would not have found that this established a propensity or tendency to make false allegations. The Tribunal did not accept that there were any significant similarities or parallels to be drawn between Ms A's allegations against XXX in 2003 and those allegations made against Dr Arowojolu in 2013.

94. The only similarity, or parallel, that Mr Janner relied upon was the bare fact that both allegations were made against 'older men in authority'. In the Tribunal's judgement, it would be by no means unusual that the perpetrator of a sexual offence would be a man and in a position of authority over his victim either by reason of age, status or both. Furthermore, the Tribunal considered the differences between the 2003 Allegations and the 2013 Allegations to be stark. In 2003, Ms A was a 14 year-old child, the allegation she made was of constant sexual abuse over a lengthy period of time at the hands of XXX, and in respect of which she did not make any complaint for a considerable period of time.

95. The 2013 Allegations were made by a mature married 24-year-old woman, XXX employed in a responsible job. The alleged perpetrator, Dr Arowojolu, was a work colleague and a person she barely knew. The allegation Ms A made against Dr Arowojolu related to a single incident of sexual assault and was reported within minutes of its alleged occurrence.

96. Accordingly, the Tribunal did not consider that the 2003 Allegation impacted upon its assessment of Ms A's credibility in any way.

97. With regard to the Tribunal's assessment of Ms A as a witness, the Tribunal found her to be both credible and reliable. The Tribunal did not agree with Mr Janner's submission that she gave the appearance of someone with a 'complex', possibly 'disordered' personality. On the contrary, the Tribunal found Ms A to be an ordinary individual who gave a clear and consistent account of an incident which she said she experienced. The Tribunal was unable to identify or detect any obvious motive that Ms A might have had to invent such a serious allegation against a comparative stranger against whom she did not appear to bear any ill will.

98. The Tribunal did not consider, as it had been submitted by Mr Janner, that it was wholly implausible that Ms A having been assaulted on the examination couch and stood up,

would then have laid down again at Dr Arowojolu's request thereby giving him the opportunity to assault her in the same manner again. The Tribunal accepted that in the circumstances Ms A would have been completely shocked, and no doubt confused as to what Dr Arowojolu was doing or indeed what she should do in the circumstances. She had no reason to expect a doctor to put his hand on her vagina and touch her in the manner and circumstances that she said he had done. The Tribunal accepted that she would not necessarily have appreciated at the time the enormity of Dr Arowojolu actions and it would have taken time for her to process in her own mind what he was doing. The Tribunal found that having done so, it would not been surprising for her telephoned her husband and speak to others as she did.

99. It had been submitted by Mr Janner that there was a significant inconsistency between Ms A's evidence and that which could be observed on the CCTV footage. Ms A's evidence was that the route that Dr Arowojolu had taken as he led her to the consultation room from the reception area was not the quickest or most convenient. But, she said it was a route that took them past the Primecare office where, if any staff were in the building, they would be expected to be. Ms A stated that as Dr Arowojolu walked past this office, he appeared to look towards the door and, although she was not to know this at the time, Ms A now believed that Dr Arowojolu was checking to see if anyone was there before leading her into the consultation room.

100. The Tribunal considered the CCTV footage carefully where Dr Arowojolu and Ms A can be seen to be walking past the Primecare office. The camera angle and quality of the CCTV was not such as to give a clear impression of what occurred as they walked past the office. However, the Tribunal was unable to discern any movement of Dr Arowojolu's body or head such as to suggest that he had looked into the office as described by Ms A. The Tribunal considered that it might well have been that Ms A was mistaken in this regard but this did not in its judgement reflect upon either her veracity or the reliability of her evidence in other respects.

101. The Tribunal concluded that Ms A was a truthful and reliable witness.

<u>The Tribunal's Assessment of Dr Arowojolu as a Witness and His Evidence Before the Tribunal</u>

102. Dr Arowojolu is now 60 years-old, a man of good character, a devout Christian, active in his church and community, and a good doctor.

103. Dr Arowojolu gave evidence and denied putting his hand in Ms A's knickers during his examination, touching her vagina in anyway, whether deliberately or inadvertently, or

behaving in any sexually motivated way towards her. Dr Arowojolu maintained, as he has done throughout, that he was simply taking a compassionate interest in someone who appeared to be troubled by the appearance of her tummy, and tried to offer reassurance and assistance to her in conducting an examination to check the elasticity of her skin and tone of her abdominal muscles and showing her how to perform sit-ups.

104. The Tribunal gave careful consideration to Dr Arowojolu's evidence as to the events of the night in question. It accepted, as was his evidence, that his initial engagement with Ms A in the reception area may well have been borne of a genuine concern for Ms A and a desire to provide reassurance. However, with regard to that which subsequently occurred in the consultation room and thereafter, the Tribunal preferred the evidence of Ms A.

105. Dr Arowojolu explained that he had taken Ms A to the consultation room because after she had spoken briefly about the appearance of her stomach she had spontaneously lifted her top in front of him exposing her bare stomach and this was whilst they were still in the reception area. Dr Arowojolu stated he thought that this was inappropriate and this was one of the reasons he led her to a consultation room for the examination. Given Ms A's evidence, which the Tribunal accepted, as to how self-conscious she was of the appearance of her tummy, the Tribunal considered it unlikely that she would have exposed it to a comparative stranger in a public place and did not accept Dr Arowojolu's account in this regard.

106. Furthermore, the Tribunal, found it difficult to understand why Dr Arowojolu would have considered it necessary, or indeed appropriate, to take Ms A to a consultation room with a view to conducting an abdominal examination and showing Ms A how to perform sit-ups, without at least taking some sort of medical history, asking her whether she exercised, or indeed whether she had performed, or knew how to perform, sit-ups. Or even, asking Ms A whether she wanted him to examine her or show her how to do sit-ups, none of which Dr Arowojolu accepts he did.

107. The Tribunal also noted that the account Dr Arowojolu gave to the Police in his written statement on 22 July 2013, the day of his arrest, was subtly, yet significantly different to the account that he gave in evidence.

108. In his prepared statement, Dr Arowojolu appeared to accept that during the course of his examination of Ms A his fingers may have gone under the waistband of her underwear but he said that he would not have touched Ms A below the top of her pubic hair. However, in evidence, Dr Arowojolu did not maintain this position rather he was

categoric that his fingers would not have gone beneath Ms A's underwear. The Tribunal was of the view that had Dr Arowojolu's hand gone beneath Ms A's underwear, he would have realised that it had. The Tribunal considered the equivocation apparent in his statement to the Police on the day of his arrest significant.

109. The Tribunal also considered the evidence given by Dr Arowojolu with regard to his telephone conversation with Ms A, when compared with that which he said in his written statement, was significant.

110. Dr Arowojolu made two telephone calls to Ms A shortly after leaving the Surgery whilst driving home in his car. The first call made by Dr Arowojolu was not answered. There was a second call which was answered. For reasons unexplained, no audio recording for this call was recovered. However, Dr Arowojolu stated in evidence that he had telephoned Ms A solely to reiterate his advice regarding her need to perform sit-ups. The Tribunal considered that, if true, this was surprising given that, on Dr Arowojolu's own account, he had already repeatedly given this advice and spent some time showing Ms A how she could perform sit-ups.

111. The Tribunal noted the contents of Dr Arowojolu's written statement to the Police. In this he had stated that he had telephoned Ms A in order to 'check she was alright because she was alone in the building and to reiterate my advice [regarding sit-ups]'. Yet in evidence, Dr Arowojolu emphatically denied that he had telephoned Ms A to check on her because she was alone. He explained that he would not have done this because the fact of Ms A being alone in the surgery was not an unusual matter or cause for concern, as this was necessarily part of her job XXX at the Surgery.

112. However, Ms A gave evidence that when Dr Arowojolu telephoned her, he had said that he 'hoped that he had not stressed her out too much' and then he had said 'just keep up with your tummy exercises…'.

113. The Tribunal accepted the evidence of Ms A that Dr Arowojolu had said this and, whereas it did not amount to an admission of having acted in a sexually inappropriate way, it was at the very least a recognition by Dr Arowojolu that he believed that he may have done something to 'stress her out'. On Dr Arowojolu's account of the examination, if true, there would have been nothing he had done which would have caused Ms A to be 'stressed out' or for him to believe that she had been 'stressed out'.

114. The Tribunal, having considered the evidence of Ms A, Dr Arowojolu, the CCTV footage and, in particular, the various recorded telephone calls and Dr Arowojolu's

statement to the Police, where there existed significant dispute between the account respective accounts of Ms A and Dr Arowojolu, it preferred the evidence of Ms A. Accordingly the Tribunal found the substance of Ms A's account of the events on 22 July 2013, in particular the events in the consultation room, to be true on the balance of probabilities.

Findings

115. The Tribunal next went onto consider its findings on the specific Allegation:

Paragraph 1(a) of the Allegation

116. The area of the reception where this incident is said to have occurred, was not covered by CCTV. However, in the light of the Tribunal's previous finding in relation to Ms A, the Tribunal preferred her evidence on this issue over that of Dr Arowojolu. The Tribunal determined that after Ms A had told Dr Arowojolu of her concerns regarding the appearance of her tummy he did ask her to show him her stomach. This she did to the extent of standing up and smoothing her top down over her tummy with her hands so as to demonstrate its appearance albeit keeping her stomach covered by her top. The Tribunal considered it improbable that Ms A would have spontaneously exposed her bare stomach to Dr Arowojolu in the public reception area given the fact that she was self conscious as to its appearance. Ms A said in evidence, which the Tribunal accepted, that, at that time she did not even like her husband seeing her bare stomach.

117. Accordingly, the Tribunal found on the balance of probabilities, Paragraph 1(a) of the Allegation proved.

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

118. The Tribunal heard a considerable amount of expert evidence from Dr H (on behalf of the GMC) and Dr K (on behalf of Dr Arowojolu) as to what constituted an 'intimate examination' and therefore, an examination in respect of which a patient should be offered the presence of a chaperone.

119. GMC ethical guidance: *Intimate examinations and chaperones* ('the Guidance'), dated 25 March 2013, provides that an intimate examination includes not only an examination of breasts, genitalia and rectum, 'but could also include any examination where it is necessary to touch or even be close to a patient'.

120. The Guidance further emphasises that intimate examinations can be embarrassing or distressing for patients and highlights the need for doctors to be sensitive to what the patient might regard as intimate.

121. The respective opinions of Dr H and Dr K were predicated upon the basis of whether the examination of Ms A as described by Dr Arowojolu should have been regarded as an 'intimate examination', namely an examination which was limited to pinching the skin of the tummy to determine elasticity and an examination of the abdominal muscle tone coupled with a demonstration of how to perform sit-ups. Both doctors were agreed that an examination involving the touching of Ms A's vagina would, by definition, be intimate as the Guidance makes clear.

122. Dr H was of the opinion that in the circumstances of this case, and on the basis that an examination as described by Dr Arowojolu had occurred, this would have been an 'intimate examination'. Conversely, Dr K's opinion was that such an examination would not necessarily have been an intimate examination and what would, or would not be an intimate examination depends on the circumstances and the examining doctor's exercise of judgement. This is a matter upon which reasonable medical practitioners opinions may differ. Dr H agreed with Dr K to the extent that in an examination other than one involving breast, genitals or anus, much would largely depend on the judgement of the individual doctor as to whether it constituted an intimate examination.

123. In the event the Tribunal did not have to reconcile the differences of opinion, such as they were, between Dr H and Dr K.

124. The reason being that the Tribunal had found that the examination performed by Dr Arowojolu was not limited to that described by him. The Tribunal had found that Dr Arowojolu had, on two occasions, put his hand inside Ms A's knicker's and touched her vagina and clitoris.

125. Further, the Tribunal found that the context in which Dr Arowojolu had touched Ms A's vagina was when he was purporting to carry out medical examination and although Ms A was not formally a patient of his, she was the subject of the examination and, in this sense, Dr Arowojolu's patient.

126. Accordingly, the Tribunal found that Dr Arowojolu performed an intimate examination on Ms A and as such, he should have offered a chaperone to her prior to the examination in accordance with the Guidance.

127. The Tribunal acknowledged that there was a degree of unreality to this finding given that it considered that Dr A had not touched Ms A's vagina for any legitimate medical purpose and, in the circumstances, it would have been surprising had he offered a chaperone at this time.

128. Nevertheless, for the reasons outlined above, the Tribunal found Paragraphs 1(b) and (c) of the Allegation proved.

Paragraph 2 of the Allegation

129. It was the opinion of Dr H that, given that Ms A was a work colleague of Dr Arowojolu and not his patient, and that she was not in need of emergency medical attention, it was inappropriate for Dr Arowojolu to conduct any medical examination on Ms A.

130. Dr H directed the Tribunal's attention to paragraph 16(g) of Good Medical Practice (2013 edition) ('GMP') that states 'wherever possible avoid providing medical care to yourself or anyone with whom you have a close personal relationship'.

131. Dr H also opined that this guidance is reinforced by all the medical defence unions advice that treating work colleagues is generally discouraged. He was unable to direct the Tribunal to the specific defence union advice to which he was referring.

132. Dr K was not as dogmatic as Dr H in relation to the provision of medical attention to work colleagues in non-emergent situations. He emphasised that it would very much be dependant on the circumstances of the individual case and the nature of the medical attention being provided.

133. The Tribunal noted that GMP does not specifically prohibit or advise against provision of medical care to 'work colleagues'.

134. In these circumstances, whereas the Tribunal considered that it would frequently be unwise or imprudent to provide medical attention to a work colleague other than in an emergency situation, the Tribunal preferred the evidence of Dr K that there maybe circumstances where it is appropriate or at least acceptable to do so.

135. Further, the Tribunal concluded that had the circumstances been as Dr Arowojolu described them to have been, his examination would not have been inappropriate even though Ms A was a work colleague who was not suffering from a medical emergency.

136. Therefore, the Tribunal found Paragraph 2 of the Allegation not proved in its entirety.

Paragraph 3 of the Allegation

Paragraphs 3(a)(b)(c)(d)(e)(g)(h)(i) of the Allegation

137. By reason of the Tribunal's findings in relation to Ms A and Dr Arowojolu's evidence (as set out above), the Tribunal accepted Ms A's evidence with regard to the First Part of the Examination on the balance of probabilities.

138. Accordingly, with the exception of Paragraph 3(f) of the Allegation, the Tribunal found Paragraphs 3(a) to (i) of the Allegation proved (Paragraphs 3(b) and (c) had been proved by way of admission).

Paragraph 3(f) of the Allegation

139. With regard to Paragraph 3(f) of the Allegation, the Tribunal found it unclear on Ms A's evidence whether Dr Arowojolu had moved his left hand during the course of the examination lower down Ms A's back. It maybe that he did so at some point during the examination but whether this was deliberate, or the manner in which it was done, was not clear, therefore, the Tribunal found Paragraph 3(f) of the Allegation, not proved.

Paragraph 4 of the Allegation

140. For the same reasons given in relation to Paragraph 3 of the Allegation above, the Tribunal accepted the evidence of Ms A in relation to this Allegation. Accordingly, the Tribunal found Paragraph 4 of the Allegation proved.

Paragraph 5 of the Allegation

141. With regard to the stem of Paragraph 5 of the Allegation, the Tribunal determined that the 'Second Part of the Examination' did constitute an 'intimate' examination for the reasons given in relation to Paragraphs 1(b) and (c) of the Allegation.

142. In relation to Paragraphs 5(a) to (g), for the same reasons given in relation to Paragraph 3 of the Allegation above, the Tribunal accepted the evidence of Ms A in relation to this Allegation.

143. In relation to Paragraph 5(d) of the Allegation, the Tribunal found that it was more likely than not that, given that Dr Arowojolu's fingers of his right hand were on Ms A's clitoris and labia during the time that Dr Arowojolu had his left hand on her back, assisting Ms A in performing sit-ups, this would have caused his fingers to rub her clitoris and labia

144. Accordingly, the Tribunal found Paragraph 5 of the Allegation proved.

Paragraph 6 of the Allegation

145. Notwithstanding that the Tribunal determined that Dr Arowojolu did not have a legitimate medical purpose in performing the examination as he did, it did in the Tribunal's judgement nevertheless constitute a medical examination.

146. The Tribunal had regard to Paragraphs 19 and 21 of the GMP which state:

> *19 Documents you make (including clinical records) to formally record your work must be clear, accurate and legible. You should make records at the same time as the events you are recording or as soon as possible afterwards.*
>
> *21 Clinical records should include:*
>
> *a. relevant clinical findings*
>
> *b. the decisions made and actions agreed, and who is making the decisions and agreeing the actions*
>
> *c. the information given to patients*
>
> *d. any drugs prescribed or other investigation or treatment*
>
> *e. who is making the record and when.*

147. The Tribunal acknowledged the opinion of Dr K that, had the examination been as described by Dr Arowojolu, he would not have considered that Dr Arowojolu should have made a record of the examinations. However, in this regard, the Tribunal preferred the evidence of Dr H and that even if the examination was limited to that described by Dr Arowojolu, it involved an examination in which he was assessing the condition of Ms A's tummy and abdominal muscles, demonstrating exercises she could perform and giving

medical advice.

148. In accordance with GMP he should have made a record of it. Although, again, the Tribunal acknowledged the slight unreality of the finding given that it had already found that it was not an examination carried out for a legitimate medical purpose.

149. Therefore, the Tribunal found Paragraph 6 of the Allegation proved in its entirety.

Paragraph 7 of the Allegation

150. The Tribunal had already found that there was no legitimate medical reason for Dr Arowojolu putting his hand inside Ms A's knickers and touching her vagina and examining her in the manner it had found proved. The Tribunal also excluded as a possibility that Dr Arowojolu had touched Ms A's vagina either inadvertently or by mistake. In these circumstances, the Tribunal was driven to the conclusion that the only possible motivation for this conduct was sexual.

151. The Tribunal also had regard to Ms A's evidence that during the second examination Dr Arowojolu said words to the effect 'yes it's nice' whilst his hand was on her vagina.

152. However, in relation to Paragraph 1(a) of the Allegation, which related to Dr Arowojolu asking Ms A to show him her stomach in the reception area, the Tribunal was unable to conclude that Dr Arowojolu had formed any sexual intent or motivation at this point in time.

153. Accordingly the Tribunal found:

Paragraphs 1(b)(c), 3, 4 and 5 of the Allegation proved; and
Paragraph 1(a) of the Allegation not proved.

The Tribunal's Overall Determination on the Facts

154. The Tribunal has determined the facts as follows:

1. On 22 July 2013, you:

a. asked Ms A to show you her stomach in the reception area of XXX Health Centre;
Determined and found proved

b. performed an intimate examination ('the First Part of the Examination') on Ms A; **Determined and found proved**

c. failed to offer a chaperone prior to, or any time during, the First Part of the Examination. **Determined and found proved**

2. The First Part of the Examination was inappropriate in that Ms A was:

a. a work colleague; **Determined and not proved**

b. suffering from a non-emergent problem. **Determined and not proved**

3. During the First Part of the Examination, you:

a. lifted Ms A's top and exposed her stomach;
Determined and found proved

b. placed your left hand on Ms A's back and your right hand on her stomach and assisted in manoeuvring her up and down a number of times in a sit up motion; **Admitted and found proved**

c. asked Ms A 'can I just put my hand here?' or words to that effect;
Admitted and found proved

d. placed your right hand under Ms A's trousers and Underwear, touching her pubic bone; **Determined and found proved**

e. applied pressure to Ms A's pubic bone with the palm of your right hand;
Determined and found proved

f. moved your left hand lower down Ms A's back;
Determined and not proved

g. touched Ms A's clitoris with the middle finger of your right hand;
Determined and found proved

h. placed the two fingers either side of your middle finger of your right hand on either side of Ms A's clitoris; **Determined and found proved**

i. continued to move Ms A into a sit-up position and place your finger on her clitoris after she repeatedly said 'no I want to get up now, I want to stop now,' or words to that effect.
Determined and found proved

4. After the First Part of the Examination, you said to Ms A to 'lay back down, I will show you how to do an exercise that will help,' or words to that effect.
Determined and found proved

5. You continued an intimate examination on Ms A ('the Second Part of the Examination') in which you:

a. placed your left hand on Ms A's lower back and your right hand underneath her Underwear; **Determined and found proved**

b. pushed the palm of your right hand against her pubic bone;
Determined and found proved

c. rested the three middle fingers of your right hand on her clitoris and labia;
Determined and found proved

d. rubbed Ms A's clitoris and labia with your right hand;
Determined and found proved

e. moved your left hand from Ms A's lower back to her left breast and stroked it; **Determined and found proved**

f. said 'yes, it's nice,' or words to that effect;
Determined and found proved

g. stopped the Second Part of the Examination only after Ms A has asked you to repeatedly. **Determined and found proved**

6. You failed to make a record of the:

a. First Part of the Examination; **Determined and found proved**

b. Second Part of the Examination. **Determined and found proved**

7. Your conduct as detailed at paragraphs 1 – 5 above was sexually motivated.

Determined and found proved in relation to:
Paragraphs 1(b)(c), 3, 4, 5 of the Allegation

Determined and not proved in relation to:
Paragraph 1(a) of the Allegation

Determination on Impairment - 11/11/2020

Impairment

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

The Evidence

2. The Tribunal had regard to all of the evidence, both oral and documentary, adduced during the course of these proceedings.

3. The Tribunal heard further oral evidence from Dr Arowojolu. It also heard oral evidence via Telephone Link from the following witnesses called on Dr Arowojolu's behalf:

- Ms D, Dr Arowojolu's daughter;
- Ms E, Dr Arowojolu's daughter;
- Mr F, Dr Arowojolu's son;
- Mrs G, Dr Arowojolu's sister;
- Dr L, a retired GP;
- Dr M, a GP;
- Mr N;
- Mrs O;
- Dr P, a GP and a GP Trainer;
- Mrs Q, an Out of Hours service Administrator;
- Dr R, a retired Consultant Radiologist.

Submissions

4. The following is a non-exhaustive synopsis of both Counsels submissions at the close of this stage.

Submissions on behalf of the GMC

5. Ms Hudson submitted that Dr Arowojolu's fitness to practise is currently impaired by reason of his misconduct. She directed the Tribunal's attention to Good Medical Practice (2013 edition) ('GMP'), specifically paragraphs 1, 47, 53 and 65 when making its determination.

6. Ms Hudson submitted that Dr Arowojolu's actions were in breach of numerous paragraphs of GMP and his conduct, as found proved by this Tribunal in terms of his sexually motivated conduct towards a patient, had the potential to seriously undermine confidence in the medical profession and she submitted that it is difficult to remediate sexual impropriety.

7. Ms Hudson acknowledged that Dr Arowojolu's actions were not premeditated and represented an isolated incident. However, she submitted that Dr Arowojolu's actions had abused the trust placed in him as a doctor and which had had a detrimental impact on Ms A. Ms Hudson submitted that, as well as being in the position of a patient, Ms A was younger than Dr Arowojolu and also a junior colleague. Accordingly, she submitted, that Dr Arowojolu was in a position of authority over Ms A and his actions constituted a significant breach of trust.

8. Ms Hudson submitted that Dr Arowojolu's sexually motivated actions towards Ms A on the early hours of 22 July 2013, were persistent and prolonged. She stated that Dr Arowojolu had touched Ms A in her private areas, she had asked him to stop, nevertheless he had continued. She stated that Ms A repeated to Dr Arowojolu that she wanted him to stop but he had persisted ignoring the signs of Ms A's distress.

9. Ms Hudson submitted that Dr Arowojolu attempted to cover his tracks by telephoning Ms A shortly after the event in an attempt to assess her reaction.

10. Ms Hudson submitted that, notwithstanding the fact this incident took place 7 years ago, Dr Arowojolu is otherwise of good character and the testimonial evidence presented during this stage of the proceedings, a finding of impaired fitness to practise is warranted in this case given the serious breaches of GMP and the need to maintain public confidence in the profession.

Submissions on behalf of Dr Arowojolu

11. At the outset Mr Janner made clear that Dr Arowojolu did not accept the findings of facts of the Tribunal. Mr Janner however, indicated that his submissions would be based upon the determination of the Tribunal at the fact stage.

12. Mr Janner submitted that Dr Arowojolu's fitness to practise is not impaired by reason of misconduct.

13. Mr Janner, whilst not accepting the Tribunal's findings on behalf of Dr Arowojolu, submitted that the incident took place 7 years ago, that it was a brief incident, opportunistic and it was not premediated. He submitted that Dr Arowojolu had not had any previous findings against him before or since 2013, and directed the Tribunal's attention to the 'glowing' professional references from those who are close to Dr Arowojolu and know him well.

14. Mr Janner reminded the Tribunal of Dr R's evidence highlighting that Dr Arowojolu had acted as a mentor within his church for many university students both young men and women without any suggestion of impropriety. He submitted that Dr R provided powerful character evidence which strongly pointed to there being no risk of repetition.

15. Mr Janner submitted that Dr Arowojolu is a man of good character in the eyes of the law. He stated that Dr Arowojolu is surrounded by a close network of family, friends and colleagues. He submitted that this is important as they would support Dr Arowojolu as he 'finds his feet' back to work. He submitted that Dr Arowojolu should be allowed to return to his life vocation. He stated that Dr Arowojolu is a dedicated doctor and none of the Tribunal's findings adversely reflect upon his clinical judgment or abilities.

16. Mr Janner reminded the Tribunal that Dr Arowojolu had risen to the highest ranks of the profession as the Fellow of the Royal College of Obstetricians and Gynaecologists and his colleagues have attested to his care and medical excellence. He submitted that it would be a loss if Dr Arowojolu was not allowed to return as a GP to the much-stressed National Health Service in these historically exceptional times due to COVID-19.

17. Mr Janner acknowledged that the Tribunal would 'wrestle' with whether or not Dr Arowojolu would repeat his conduct. He stated that if there were any lessons to be learned, Dr Arowojolu has learned them, for example, he now keeps medical records of any examinations he undertakes and he has resolved not to conduct any informal medical examinations.

18. Mr Janner reminded the Tribunal of Dr P's evidence and the fact he maintained the position that Dr Arowojolu is 'fit to go back to work'. He reminded the Tribunal that Dr Arowojolu had kept his medical skills up to date throughout; he had passed the MCQ examinations twice in recent years and has the appropriate knowledge and skills to return to work.

The Relevant Legal Principles

19. In approaching its decision, the Tribunal was mindful of the two-stage process to be adopted: first, whether the facts as found proved amounted to misconduct that was serious and secondly, whether the doctor's fitness to practise is currently impaired by

reason of that misconduct.

20. The Tribunal had regard to the advice given by the Legally Qualified Chair and which is a matter of record.

21. At both stages of the process, the Tribunal was mindful of the overarching objective of the GMC set out in section 1 of the Medical Act 1983 (as amended) which requires the Tribunal to:

    a. Protect, promote and maintain the health, safety and well-being of the public,

    b. Promote and maintain public confidence in the medical profession, and

    c. Promote and maintain proper professional standards and conduct for members of that profession.

22. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the *Fifth Shipman Report*, as adopted by the High Court in Grant. In particular, the Tribunal considered whether its findings of fact showed that Dr Arowojolu's fitness to practise is impaired in the sense that 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 […]'

23. The Tribunal bore in mind that it must determine whether the doctor's fitness to practise is currently impaired by reason of misconduct, taking into account his conduct at the time of the events and any other relevant factors such as any development of insight, whether the matters are remediable or have been remedied and the likelihood of repetition.

24. The Tribunal also bore in mind the observations of Mrs Justice Cox in the case of Grant that *'in determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant Tribunal should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances'*.

Misconduct

25. In determining whether Dr Arowojolu's fitness to practise is currently impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amounted to misconduct.

26. The Tribunal considered the paragraphs of GMP which set out the standards that a doctor must continue to meet throughout their professional career. The Tribunal had particular regard to paragraphs 1, 47, 53 and 65 of GMP that state:

> 1 'Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law'.
>
> 47 'You must treat patients as individuals and respect their dignity and privacy'
>
> 53 'You must not use your professional position to pursue a sexual or improper emotional relationship with a patient or someone close to them'.
>
> 65 'You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession'.

27. The Tribunal found that on the facts proved, Dr Arowojolu had breached all of the duties identified in GMP above.

28. In particular, the Tribunal considered that it is a fundamental tenet of the medical profession that doctors must ensure that their conduct justifies their patient's trust in them and the public's trust in the profession. Having regard to the facts found proved, the Tribunal determined that Dr Arowojolu's sexually motivated, persistent, intimate and non-consensual touching of Ms A, a patient and junior colleague, in the early hours of 22 July 2013, was so serious as to amount to misconduct.

Impairment by reason of Misconduct

29. Having found that Dr Arowojolu's conduct amounted to misconduct which was serious, the Tribunal went on to consider whether, as a result of this, Dr Arowojolu's fitness to practise is currently impaired.

30. The Tribunal determined that Dr Arowojolu's misconduct had, in the past, brought the medical profession into disrepute and that he had breached fundamental tenets of the medical profession, namely to treat patients as individuals and respect their dignity and privacy, to act with integrity, and making sure that his conduct justified the public's trust in the medical profession.

31. In determining whether a finding of current impairment of fitness to practise is necessary, the Tribunal looked for evidence of insight, remediation and the likelihood of repetition, bearing in mind the three elements of the overarching statutory objective.

32. The Tribunal had regard to the extensive testimonial and character references during the course of this stage of the proceedings. It accepted that there was no doubt that Dr Arowojolu is a man of otherwise good character, he is held in high regard by his peers, family and friends and he is clinically a good doctor. Further, the Tribunal acknowledged the peer testimonial evidence which attested to Dr Arowojolu's professionalism and patient care. The Tribunal had not been presented with any evidence that Dr Arowojolu had repeated his misconduct since the incident in 2013. The Tribunal acknowledged that Dr Arowojolu's actions at the time of the incident represented an isolated occurrence and was not premeditated. There was no evidence before it that Dr Arowojolu had acted in any similar manner previously or subsequently.

33. The Tribunal further acknowledged that it is 7 years since the events. During which time Dr Arowojolu has not practised medicine, he has attended numerous Crown Court proceedings and proceedings before his regulator. Dr Arowojolu also served five months of a two-year prison sentence before a successful appeal against his conviction for sexual assault arising out of this matter. The Tribunal accepted Dr Arowojolu's evidence and the evidence of others that these events have had a profound impact upon him including, but not limited to, a financial pressure. That is not to say that the proceedings would not also have had a detrimental effect on Ms A.

34. In these circumstances, the Tribunal considered that, given Dr Arowojolu's experiences during the last 7 years and the substantial impact that the various proceedings have placed upon him and his family, it determined that the risk of a repetition of such conduct is low. However, the Tribunal noted that, as is his right, Dr Arowojolu still maintains that he did not act in the manner the Tribunal had found proved. In these circumstances, the Tribunal had no evidence of Dr Arowojolu having any meaningful insight into his proven misconduct. Accordingly, in the absence of evidence of insight, the Tribunal was unable to conclude that there is no risk of repetition.

35. Notwithstanding the Tribunal's finding that the risk of repetition was low, the Tribunal determined that Dr Arowojolu's misconduct was so serious that public confidence in the profession would be significantly undermined and that there would be a failure to uphold standards of professional conduct if a finding of impairment was not made.

36. In conclusion, the Tribunal determined that the public expects to be able to trust doctors. The public expects doctors to act with integrity and not act against their interests, respecting patient's dignity and privacy. They expect doctors dealing with their cases to adhere to the principles set out in GMP. Where doctors fail to do so in a significant way public trust in the profession is undermined and a finding of impairment of fitness to practise is required.

37. Therefore, the Tribunal determined that Dr Arowojolu's fitness to practise is currently impaired by reason of misconduct in order to:

    b. Promote and maintain public confidence in the medical profession, and

    c. Promote and maintain proper professional standards and conduct for members of the medical profession.

Determination on Sanction - 12/11/2020

Sanction

1. Having determined that Dr Arowojolu's fitness to practise is impaired by reason of his misconduct, the Tribunal has considered what action, if any, it should take with regard to his registration, in accordance with Rules 17(2)(n) of the Rules.

The Evidence

2. The Tribunal had regard to all of the evidence, both oral and documentary, adduced during the course of these proceedings.

Submissions

3. The following is a non-exhaustive synopsis of both Counsel's submissions made during the sanction stage.

Submissions on behalf of the GMC

4. Ms Hudson submitted that the appropriate sanction in this case is to erase Dr Arowojolu's name from the Medical Register. She directed the Tribunal's attention to the Sanctions Guidance (November 2019 edition) ('SG') when making its determination.

5. Ms Hudson submitted that making no order or imposing an order of conditions are not workable or appropriate given the Tribunal's findings they would not satisfy the requirement of maintaining the public's confidence in the profession.

6. Ms Hudson submitted that an order of suspension would not be appropriate in this case given the seriousness of the facts found proved and there being no insight and no recognition of fault by Dr Arowojolu.

7. Ms Hudson submitted that there are a number of aggravating factors present in this case, namely that: the incident took place at night; Ms A was a colleague; nobody was present at the Surgery at the time; and the conduct involved a deliberate and persistent touching

of Ms A's naked genitalia at a time when Dr Arowojolu was in a position of trust.

8. Ms Hudson submitted that whilst the Tribunal had heard from witnesses who know Dr Arowojolu (who stated that he had good medical knowledge and skills), the fate of one doctor is not as important as the interests of the profession as a whole. Ms Hudson submitted that testimonials were relevant only in so far as they confirm that Dr Arowojolu is a dedicated doctor. However, she submitted that they do not bear upon the specific findings regarding Dr Arowojolu's sexual misconduct.

9. Ms Hudson submitted that the sexual misconduct committed by Dr Arowojolu is fundamentally incompatible with continued registration.

Submissions on Dr Arowojolu's behalf

10. Mr Janner submitted that the appropriate sanction in this case would be to impose an order of conditions on Dr Arowojolu's registration.

11. Mr Janner requested the Tribunal take account of the following factors:

    1. Erasure is not automatic or inevitable, the Tribunal has a discretion.

    2. The Tribunal's role is not to punish doctors. He stated that the public was aware that Dr Arowojolu had been wrongly imprisoned and he was ultimately acquitted in the criminal proceedings. Further, it was submitted Dr Arowojolu had already been punished in the 7 years since the incident.

    3. The authorities established that the Tribunal must take into account the entirety of the evidence in relation to Dr Arowojolu's good character. He urged the Tribunal to balance this evidence carefully.

    4. The Tribunal had determined that the risk of Dr Arowojolu repeating his misconduct was low.

    5. Citing Blakeley v GMC [2019] EWHC 905 (Admin), Mr Janner submitted that the fact that Dr Arowojolu did not accept the Tribunal's findings of fact did not prevent him from showing insight which, Mr Janner submitted, Dr Arowojolu had done.

12. Mr Janner submitted that erasure is not inevitable or necessary given the circumstances of this case. He submitted that to alleviate any risk, conditions could be imposed to ensure that there is no hint of repetition, whether it be a requirement for chaperones or further training. Or, in the alternative, a period of suspension.

13. Mr Janner reminded the Tribunal of Dr Arowojolu's dedication and abilities as a doctor, and of all those who have worked with him at 'close quarters' who had attested to his

diligence and compassion.

14. Mr Janner submitted that Dr Arowojolu is 60 years old with an unblemished career. He stated that Dr Arowojolu can still provide years of service to the National Health Service and patients. He reminded the Tribunal of Dr P's evidence where he outlined that Dr Arowojolu was fit to practise and the GMC's own acknowledgement of Dr Arowojolu's skills and dedication as a doctor.

15. Mr Janner reminded the Tribunal of its finding that the risk of repetition is low.

16. Mr Janner submitted that, whilst the Dr Arowojolu had demonstrated evidence of insight, in terms of record keeping, the use of chaperones, no longer performing 'good Samaritan' examinations, and his apology at the distress he had caused to Ms A. He submitted that Dr Arowojolu had had close contact with young men and women throughout his career and through his mentoring within his church. Mr Janner stated that Dr Arowojolu comes before the Tribunal as a person of impeccable character.

17. Mr Janner submitted that Dr Arowojolu had suffered a grave injustice having been accused in criminal proceedings of a crime that he was not guilty. He stated that when Ms A's XXX evidence was brought to light, Dr Arowojolu was acquitted. He urged the Tribunal not to add to that injustice.

The Relevant Legal Principles

18. The Tribunal took into account its earlier findings, Counsel's submissions and the documentary evidence adduced during the course of these proceedings.

19. The Tribunal had regard to the advice given by the Legally Qualified Chair, which is a matter of record.

20. The decision as to the appropriate sanction is a matter for this Tribunal's own independent judgment. The sanction must be proportionate and tailored to the specific circumstances of the case. In reaching its decision, the Tribunal took into account the SG and the statutory overarching objective, which includes the need to:

    a. protect, promote and maintain the health, safety and well-being of the public,

    b. promote and maintain public confidence in the medical profession, and

    c. promote and maintain proper professional standards and conduct for members of that profession.

21. The Tribunal recognised that the purpose of a sanction is not to be punitive, although it may have a punitive effect. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Arowojolu's interests with the public interest.

The Tribunal's Determination on Sanction

Mitigating and Aggravating Factors

Mitigating Factors

22. The Tribunal had regard to the mitigating factors in this case.

23. The Tribunal was of the view that, apart from the incident which is the subject of this determination, Dr Arowojolu is a man of positively good character, with a history of being an accomplished, committed and diligent doctor. It noted that Dr Arowojolu had an otherwise long and unblemished career before the incident. Further, there was no evidence before the Tribunal that Dr Arowojolu had repeated his misconduct albeit that he has not practised in a medical capacity since 2013. To this extent, the Tribunal determined that the misconduct could properly be described as representing an isolated incident.

Aggravating Factors

24. The Tribunal balanced those mitigating factors above, with the following aggravating factors in this case, namely:

- The Tribunal's factual findings amounted to a finding that Dr Arowojolu had sexually assaulted Ms A, a patient, and this had occurred in the context of a medical examination;
- The incident took place over the course of an examination lasting approximately 10 minutes, during which time Dr Arowojolu sexually assaulted Ms A by placing his hand on her labia and clitoris on two separate occasions;
- Dr Arowojolu's actions persisted even after Ms A had made her distress evident;
- There was a power imbalance between Dr Arowojolu (a doctor) and Ms A (a patient and a junior colleague);
- Cumulatively, Dr Arowojolu's actions amounted to a very significant breach of trust by a doctor towards his patient.

25. In relation to insight and remediation, the Tribunal acknowledged that Dr Arowojolu had demonstrated some insight into the inadvisability or inappropriateness of conducting informal examinations in non-emergent situations, and failing to keep medical records of the same. However, the Tribunal determined that Dr Arowojolu had not accepted its findings in relation to his actions toward Ms A and consequently, his ability to show meaningful insight or remediation was limited. Although the Tribunal acknowledged that

Dr Arowojolu had expressed some empathy towards Ms A to the extent that he had expressed his regret at the distress caused to her. Notwithstanding, the Tribunal determined that Dr Arowojolu had not demonstrated any significant insight or remediation into his misconduct.

The Tribunal's Decision

26. In deciding what sanction, if any, to impose, the Tribunal reminded itself that it must consider each of the sanctions available, starting with the least restrictive, to establish which is appropriate and proportionate in this case.

No Action

27. The Tribunal first considered whether to conclude the case by taking no action. The Tribunal noted paragraphs 68 to 70 of SG.

28. The Tribunal was satisfied that there were no exceptional circumstances in Dr Arowojolu's case which could justify it taking no action. It determined that, given the circumstances of this case, taking no action would be wholly inappropriate, inadequate and would not be in the public interest.

Conditions

29. The Tribunal then considered whether imposing an order of conditions on Dr Arowojolu's registration would be appropriate. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable. The Tribunal had regard to paragraphs 80, 81 and 82 of the SG.

30. The Tribunal concluded that a period of conditional registration would not be appropriate because of the seriousness of Dr Arowojolu's misconduct. Conditions would not sufficiently mark the gravity of the findings made by the Tribunal. It also considered that it could not formulate practicable and workable conditions that would address those findings.

31. In all the circumstances, the Tribunal concluded that imposing conditions on Dr Arowojolu's registration would not be sufficient to maintain public confidence in the medical profession or uphold proper professional standards for members of the profession.

Suspension

32. The Tribunal went on to consider whether a period of suspension would be an appropriate and proportionate sanction to impose on Dr Arowojolu's registration. The Tribunal noted the SG, specifically paragraph 92 of the SG, which it considered relevant in this case:

> 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)'.

33. As outlined in its determination on impairment, the Tribunal considered that Dr Arowojolu's misconduct was a serious breach of GMP and breached the fundamental tenets of the medical profession, given that he had sexually assaulted a patient who was also junior colleague in a clinical setting. The Tribunal acknowledged that Dr Arowojolu's actions, given his longstanding and otherwise unblemished career, could be regarded as an isolated incident. Nevertheless Dr Arowojolu's actions amounted to a serious sexual assault against a patient and as such, were fundamentally incompatible with continued registration.

34. In all of the circumstances, the Tribunal also considered it unlikely that even the maximum period of 12 months' suspension could change Dr Arowojolu's lack of insight into the seriousness of his misconduct, or encourage remediation.

35. Accordingly, the Tribunal determined that suspension would not be sufficient or proportionate to promote and maintain public confidence in the medical profession or uphold proper professional standards for members of the profession.

Erasure

36. In the circumstances the Tribunal determined that the only appropriate sanction in this case was one of erasure. In reaching its determination, the Tribunal had regard to paragraphs 108 and 109(a)(b)(d)(e)(f) and (j) of the SG, which state:

> 108 'Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.
>
> 109(a)(b)(d)(e)(f)(j) 'Any of the following factors being present may indicate erasure is appropriate […]:

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

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

[…]

d. Abuse of position/trust […]

e. Violation of a patient's rights/exploiting vulnerable people […]

f. Offences of a sexual nature […]

[…]

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

The Tribunal considered all of the above paragraphs of GMP to be engaged in this case.

37. In conclusion, the Tribunal determined that Dr Arowojolu's misconduct was fundamentally incompatible with continued registration and that no lesser sanction than erasure would adequately promote and maintain public confidence in the medical profession, and promote and maintain proper professional standards and conduct for members of that profession.

Determination on Immediate Order - 12/11/2020

1. Having determined that Dr Arowojolu's name be erased from the Medical Register, the Tribunal considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order.

Submissions

2. The following is a non-exhaustive synopsis of both Counsel's submissions made during the immediate order stage.

Submissions on behalf of the GMC

3. Ms Hudson submitted that, given the Tribunal's findings, it should impose an immediate order of suspension on Dr Arowojolu's registration on the grounds of public interest.

Further, she submitted that the interim order currently imposed on Dr Arowojolu's registration should be revoked.

Submissions on behalf of Dr Arowojolu

4. Mr Janner had no submission to make regarding an immediate order.

The Tribunal's Decision

5. In reaching its decision, the Tribunal has exercised its own judgment, and has taken account of the principle of proportionality. The Tribunal has borne in mind that it may impose an immediate order where it is satisfied that it is necessary for the protection of members of the public or otherwise in the public interest or is in the best interests of the practitioner. It has also borne in mind the guidance given in the relevant paragraphs of the SG relating to immediate orders.

6. The Tribunal determined that in light of the seriousness of its findings, and in the particular circumstances of this case, an immediate order of suspension was appropriate and necessary. It determined that this was necessary in order to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of the medical profession

7. The substantive direction for erasure will take effect 28 days from when the written notice is deemed to have been served upon Dr Arowojolu, unless an appeal is lodged in the interim.

8. The Interim Order currently imposed on Dr Arowojolu's registration will be revoked when the immediate order takes effect.

9. That concludes this case.

Confirmed
Date 12 November 2020 Mr Tim Bradbury, Chair