PUBLIC RECORD

Dates: 25/03/2024 - 08/04/2024

Medical Practitioner's name:	Dr Pawan RAWAT
GMC reference number:	6058969
Primary medical qualification:	MB BS 2001 Kasturba Medical College (Manipal)

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

Summary of outcome
Suspension, 3 months.

Tribunal:

Legally Qualified Chair:	Mrs Claire Lindley
Lay Tribunal Member:	Ms Karen Naya
Medical Tribunal Member:	Dr Laura Florence

Tribunal Clerk:	Miss Emma Saunders

Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Adam Kirke, Counsel, instructed by Hempsons LLP
GMC Representative:	Ms Elizabeth Dudley-Jones, Counsel

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

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

Determination on Facts - 03/04/2024

Hearing in Private

1. The Tribunal agreed, in accordance with Rule 41 of the General Medical Council (GMC) (Fitness to Practise Rules) 2004 as amended ('the Rules'), that parts of this hearing should be heard in private where the matters under consideration are confidential, namely where they relate to Ms A's identity, health, or the health of her family. As such, this determination will be read in private but a redacted version will be published following the conclusion of this hearing, with those matters relating to Ms A's identity, health, or the health of her family removed.

Background

2. Dr Rawat is a specialist registrar. He qualified with a MBBS from Manipal University, India, in 2001, and obtained further postgraduate training in Trauma and Orthopaedics in 2009. He arrived in the UK in 2010 and started work as a registrar in the Accident and Emergency Department at Chase Farm Hospital in London. Between 2010 and July 2016, Dr Rawat worked in various hospitals in substantive posts across the UK.

3. From July 2016, Dr Rawat started to work as a locum at different hospitals, and in 2019 he started working in that capacity as a Senior House Officer (SHO) in Orthopaedics at the James Paget Hospital ('the hospital').

4. The allegations that led to this hearing related to Dr Rawat's conduct toward a work colleague, Ms A. Dr Rawat and Ms A were travelling in a car together on or around 1 April 2019 XXX. It was alleged by the GMC that Dr Rawat made sexualised comments during the car journey to and from XXX, and while on a beach which they visited together. It was further alleged that Dr Rawat grabbed Ms A's shoulders, pulled her toward him, and kissed her without her consent. It was also alleged that, further, on or around 2 April 2019, Dr Rawat contacted Ms A on one or more occasions to suggest that he go with her to her XXX training and stay with her overnight. The GMC alleged that this conduct constituted sexual harassment and was sexually motivated.

5. The initial concerns were raised with the GMC by Ms A on 9 November 2021 via a call to the GMC confidential helpline. Ms A then contacted the police the same day. Dr Rawat was interviewed by the police in April 2022. The police closed its investigation with *'no further action'* in April/May 2022 as the matter did not meet the evidential threshold for a Crown Prosecution Service decision.

6. Ms A had reported her concerns to the hospital by telephone and then an email on 8 April 2019. She spoke with a member of HR at the hospital about these matters, and the Trust made a call to Dr Rawat and he was contacted by bleep regarding the concerns, but no further action or investigation appears to have taken place.

The Outcome of Applications made during the Facts Stage

7. On day one of the hearing, Ms Dudley-Jones, counsel for the GMC, made two preliminary applications. She requested that Ms A be given anonymity. This application was not opposed by Mr Kirke, counsel for Dr Rawat. She also made an application that parts of Dr Rawat's statement be redacted. This application was opposed. The Tribunal considered both of these preliminary issues and the outcome of the applications is attached at Annex A.

8. On day two of the hearing, Ms Dudley-Jones made an application for Witness B to be given anonymity. This application was made on two bases, both of which were opposed by Mr Kirke. The Tribunal considered both bases of this application and the outcome is attached at Annex B.

9. On day three of the hearing, Ms Dudley-Jones objected to Mr Kirke being allowed to ask extensive questions of Dr Rawat as evidence in chief. Mr Kirke made an application to do so. The Tribunal considered the Civil Procedure Rule Part 32.5 which states:

> *'…*
> *(2) 'Where a witness is called to give oral evidence under paragraph (1), his witness statement shall stand as his evidence in chief unless the court orders otherwise.*
> *(3) A witness giving oral evidence at trial may with the permission of the court –*
> *(a) amplify his witness statement; and*
> *(b) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties.*
> *(4) The court will give permission under paragraph (3) only if it considers that there is good reason not to confine the evidence of the witness to the contents of his witness statement.'*

10. The Tribunal, having heard from Ms Dudley-Jones and Mr Kirke, decided that there was no *'good reason'* to allow Dr Rawat to be questioned in examination in chief in order to amplify his evidence, and that questions should relate only to *'settling in'* questions, or questions relating to any new material that had arisen since the making of his witness

statement. In the event, Ms Dudley-Jones and Mr Kirke agreed the extent of questions that could be put in examination in chief, and the Tribunal proceeded accordingly.

The Allegation and the Doctor's Response

11. The Allegation made against Dr Rawat is as follows:

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

1. On or around 1 April 2019:

   a. you said to Ms A 'Oh my god this is my first time seeing your lips they're so beautiful and pink, I would like to kiss them', or words to that effect;
   To be determined

   b. whilst in your car with Ms A , you:

      i. told Ms A that:

         1. as a student you had sex with many girls;
         To be determined

         2. 'in India you can hardly find a girl who is a virgin because you can even have sex in the car if you like' or words to that effect;
         To be determined

      ii. grabbed Ms A by her shoulders and pulled her towards you;
      To be determined

      iii. kissed Ms A on her mouth;
      To be determined

   c. after kissing Ms A on her mouth, you:

      i. told her not to answer a phone call she received on her mobile phone;
      To be determined

      ii. asked her whether she:

         1. had any friends she would tell;
         To be determined

2. would tell the police;
To be determined

iii. said to Ms A 'don't think that I'm a bad man, I love you and I wanted to be close to you', or words to that effect;
To be determined

d. after driving Ms A home, you suggested that you could:

i. stay the night with her in her flat;
To be determined

ii. take her to her work XXX training the following day, and stay with her overnight;
To be determined

2. On or around 2 April 2019, on one or more occasion you contacted Ms A and suggested that you would go with her to her XXX training and stay with her overnight.
To be determined

3. Your conduct as described at paragraph 1.b.ii. and/or 1.biii was carried out without Ms A's consent.
To be determined

4. Your actions as set out at paragraphs 1.a., 1.b., 1.c.iii, 1.d. and 2. constituted sexual harassment as defined in Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.
To be determined

5. Your conduct as described at paragraph(s) 1.a., 1.b., 1.c.iii., 1.d. and/or 2. was sexually motivated.
To be determined

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

The Admitted Facts

12. All of the paragraphs in the Allegation were denied by Dr Rawat, and so the Tribunal proceeded to determine all matters.

Witness Evidence

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

- Ms A, in person during the virtual hearing on 25 March 2024. Her witness statements were dated 29 November 2022, 28 January 2023, and 19 October 2023; and
- Witness B, in person during the virtual hearing on 26 March 2024, XXX. Her witness statement was dated 18 April 2023.

14. The Tribunal also received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Mr C, who Ms A raised a complaint to and was working in the role of Medical Workforce Officer at the Hospital at the time in question. He forwarded Ms A's complaint to Ms D. His witness statement was dated 4 September 2023;
- Ms D, Head of Medical Staff at the Hospital. Her witness statement was dated 16 October 2023; and
- Ms E, who was working as a senior HR business partner at the Hospital at the time in question. Her witness statement was dated 3 November 2023.

15. Dr Rawat provided his own witness statement dated 12 February 2024 and also gave oral evidence at the hearing on 27 March 2024.

Documentary Evidence

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

- A note of Ms A's telephone call to the GMC confidential helpline on 9 November 2021;
- Ms A's witness statement to the Police on 9 November 2021;
- Ms A's bank statement from 1 to 4 April 2019;
- Photograph of Ms A at XXX beach;
- Email from Witness B to Ms A on 7 April 2019 attaching a Rights of Women handbook for adult survivors of sexual violence document;
- Ms A's email to Mr C dated 8 April 2019;
- Email correspondence from Mr C to Ms D in April 2019, and then email correspondence from Ms D to the GMC on 9 February 2023;
- Hospital timesheet for Dr Rawat from 1 to 7 April 2019;
- Handwritten notes of Ms E, undated;

- Letter dated 24 June 2022 from Norfolk and Suffolk Constabularies attaching documentation including the police crime report and Dr Rawat's witness statement to the police;
- Dr Rawat's work timesheet for w/c 1 April and 13 May 2019 respectively;
- Dr Rawat's 2022-2023 appraisal, 360 feedback analysis, and locum agency assignment reference;
- Positive testimonials on behalf of Dr Rawat from his wife and from two colleagues, namely Dr F, Emergency Medicine Consultant at Kettering General Hospital, and Ms G, Healthcare Assistant at Kettering General Hospital; and
- Dr Rawat's certificate of Continuing Professional Development (CPD) on *'Professional Boundaries in Health and Social Care - Level 2'* dated 21 March 2024.

The Relevant Legal Principles

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

18. The Tribunal was reminded that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Rawat does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred.

19. As the case involves matters of a sexual nature, the Tribunal was cautioned against applying stereotyped images of how a complainant or an alleged perpetrator ought to have behaved at the time, or ought to present while giving evidence. People can react differently to behaviour of this sort. Some people may fully and consistently report a matter immediately, some may not, and there may be inconsistencies within their account. The Tribunal must not bring any preconceived ideas to the hearing but should judge the evidence purely on its merits.

20. Some witnesses were afforded special measures in order to facilitate them giving evidence. The Tribunal was therefore reminded that their evidence should be treated in the same way as any other evidence and should not be preferred, simply because of that special measure.

21. The Tribunal was advised that it should acknowledge the fluidity of memory and not assess a witness' credibility exclusively on his or her demeanour when giving evidence. A confident witness may give unreliable evidence. A nervous and hesitant witness may give reliable evidence. An honest witness may be making a mistake.

22. In cases involving sexual misconduct where there may be no other direct available evidence (i.e., where it is one party's word against the other's word), the Tribunal was informed that it may take into account aspects of a witness' demeanour. It was advised that it should also consider the witness' consistency - over time and under cross-examination - when it is assessing truthfulness. The Tribunal should note any gaps and discrepancies and give reasons for its evaluation and conclusions in relation to them.

23. Bearing the above in mind, the Tribunal was directed to navigate the evidence by looking at contemporaneous documentary material as a starting point, although actual corroboration of a witness account is not legally necessary.

24. The Tribunal was reminded that there was a witness in this case, Witness B, who stated that Ms A told her about the incident within a week of it having taken place, and that there were witnesses from the hospital that state that Ms A reported the incident to the hospital on 8 April 2019. Evidence of distress is direct evidence, but evidence of what was said is not. It is hearsay, but the Tribunal was advised that if it accepts its substance, then it can corroborate Ms A's account because it shows that she gave a previous consistent account closer to the time of the incident, and it could for example rebut a suggestion that the incident was not reported until 2021 because it did not happen as described. Whether to accept this evidence, what inconsistencies there are, and what weight to give it, is a matter for the Tribunal.

25. The Tribunal was advised that it should take into account the testimonial evidence received and the statement from Dr Rawat's wife. The Tribunal was told that Dr Rawat is a man of good character and that it should bear this in mind when considering the evidence. He has no criminal convictions or cautions, or adverse misconduct related regulatory findings. The Tribunal was reminded that Dr Rawat is therefore more likely to be telling the truth in his evidence, and less likely to have behaved in a way as set out in the Allegation. However, good character of itself does not amount to a defence and its significance should not be over inflated. The primary focus should be on the evidence related to the wrongdoing.

26. Unless otherwise directed in this advice, the Tribunal was directed that it should give the words in the paragraphs their ordinary meaning, as would be described in an English dictionary. The Tribunal should however consider specific definitions of some terms as set out below:

27. The Tribunal was informed that the definition of 'consent' is defined in statute as follows: *'a person consents if he or she agrees by choice and has the freedom and capacity to make that choice'*.

28. The LQC confirmed that neither the GMC nor counsel for Dr Rawat were suggesting that there were issues of freedom and capacity in this case. The Tribunal was therefore asked to consider whether the incident took place as described and, if it found that it had, whether Ms A agreed to the kiss and had the unfettered choice to do so. The Tribunal was advised that the case is centred around a factual dispute. Ms A has given evidence that a kiss took place without her consent. Dr Rawat states that there was no kiss. It is a matter for the Tribunal to decide, on the balance of probabilities, whether it was more likely than not that the matters as alleged took place.

29. The Tribunal was informed that the definition of the term 'sexual harassment' is set out in Section 26(2) of the Equality Act 2010. Sexual harassment is when a perpetrator engages in unwanted conduct of a sexual nature which has the purpose or effect of violating the dignity of a complainant, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for a complainant.

30. In determining whether the conduct has such an effect, the Tribunal was directed to consider a complainant's perception, whether that perception was reasonable, and all the other circumstances of the case.

31. The Tribunal was advised that it should also have regard to the definition of the term 'sexual motivation', which is defined in the case of *Basson v GMC* [2018] EWHC 505 as:

> *'A sexual motive means that the conduct was done either in pursuit of sexual gratification, or in pursuit of a future sexual relationship.'*

32. The LQC explained that sexually motivated conduct is not the same as careless, reckless, or negligent conduct. Some actions or comments may be inappropriate or ill-judged, but it did not necessarily mean that they are sexually motivated. The Tribunal is entitled to conclude that the motivation was sexual if there is no plausible, alternative explanation as to why Dr Rawat engaged in conduct or actions of an overtly sexual nature.

The Tribunal's Analysis of the Evidence and Findings

Tribunal Approach

33. The Tribunal took into account the LQC advice, and the submissions from both parties, while noting that they are not evidence. It made its decisions after having heard oral evidence and having read the written witness statements and all the documentary material.

It did not bring any preconceived ideas to the hearing and judged this matter purely on its merits.

34. The Tribunal noted that the Allegation related to an incident that had taken place between Dr Rawat and Ms A on 1 April 2019 and that the contested evidence was largely *'one person's word against another'*. It noted that a number of matters were not in dispute. Ms A and Dr Rawat had travelled in a car from the hospital that they worked at, in order for Ms A to XXX. They both looked round XXX, in the presence of the XXX, Witness B, and then visited a beach a short distance away. They later went together to an XXX restaurant before Dr Rawat drove Ms A back to the hospital.

35. The Tribunal decided firstly to consider the demeanour of both Ms A and Dr Rawat when they gave their oral evidence at the hearing. Ms A was calm, concerned and came across as a witness wanting to give her account of the incident. She described the effect it had on her. She did not resile from her account under cross examination. Dr Rawat also gave oral evidence. He emphatically denied that any sexualised conversations had taken place or that he had grabbed or kissed Ms A. He did not resile from his account in cross examination. Despite the incident having taken place five years ago, both Ms A and Dr Rawat gave detail of the conversations that they recalled.

36. The Tribunal did not judge Ms A and Dr Rawat's evidence exclusively on their demeanour. It carefully considered all the other evidence that was available to it.

37. The Tribunal firstly considered the evidence of XXX, Witness B. She made a statement to the GMC and gave oral evidence at the hearing. The Tribunal found her to be a reliable and credible witness, and it accepted her evidence. It was helpful in three respects:

38. Firstly, the Tribunal accepted the evidence from Witness B in relation to the conversations she had with Ms A about the alleged incident. She said that Ms A told her that she had been sexually assaulted by a work colleague XXX. This first disclosure took place on 6 April 2019, on the day that Ms A XXX. The Tribunal noted that there were then further conversations between the two of them on different days. The Tribunal decided that Witness B's account of what Ms A had told her, although hearsay, was an early consistent account of what had taken place, and therefore this supported Ms A's account. It noted, though, that Ms A had only described the incident to Witness B in general terms and therefore Witness B did not assist in relation to the detail of the conversations had.

39. Secondly, the Tribunal noted Witness B's evidence that Ms A was distressed when she XXX. The Tribunal accepted this evidence and decided that it supported Ms A's account that

an incident had happened that had distressed her. The Tribunal also noted that there was further evidence that Ms A was distressed within the week after the incident when she reported the matter to the hospital.

40. Thirdly, the Tribunal noted the evidence that Witness B gave about a conversation that she had with Dr Rawat when he and Ms A XXX. She said in her statement, and in her oral evidence, that Dr Rawat asked whether there was alcohol on the XXX, and also if there were XXX. She was cross examined about this matter at the hearing, with Dr Rawat's counsel suggesting that she had *'made this conversation up in order to portray Dr Rawat in a bad light'*. Dr Rawat denied that this conversation took place. As the Tribunal accepted Witness B's evidence it decided that this denial went to his credibility.

41. The Tribunal also considered an email that Ms A sent to Mr C on 8 April 2019 in which she briefly set out what had happened. She described that Dr Rawat had *'touched me inappropriately'* and made some *'extremely inappropriate comments'*. The Tribunal accepted this non contested evidence and decided that, in a similar vein to the evidence from Witness B, that although hearsay, it was an early account of what had taken place, and therefore supported Ms A's account, although again, it did not assist with the details of any conversations that were had. The Tribunal noted also that the account in the email differed in some respects to Ms A's accounts two and a half years later, and further detail of these discrepancies is set out below and addressed when considering the specific paragraphs of the Allegation.

42. The Tribunal considered the consistency of Ms A's accounts and whether there were any discrepancies, allowing for the passage of time and the fluidity of memory. It noted that the accounts that Ms A had given to Witness B and to the hospital were given within a week of the incident, when it would likely be fresh in her mind. In contrast, the account given to the police and then to the GMC was two and a half years after the event. The Tribunal did not place any weight on the delay in reporting the matter, but analysed the consistencies and inconsistencies in these accounts and the gaps that there were.

43. The Tribunal noted that Ms A, when reporting the incident to Mr C by email knew Dr Rawat as Dr Pawan, which is his first name. In contrast, she said in her statement to the police in on 9 November 2021 '*I will refer to the male I knew as BOBBY. I have* ***since*** [Tribunal's emphasis] *learned his first name is PAWAN or PAVAN'.* Ms A explained in her oral evidence that she had forgotten the name in the interim period. The Tribunal also noted that Dr Rawat had maintained that he had visited Ms A's flat and eaten chicken biryani that she had brought from her sister's home XXX, and that they had been out to XXX on one occasion. Ms A said in her statements that he had never been to her flat, and that they had not been to

XXX, but when cross examined in her oral evidence, she stated that she could not recall if she had done so. Similarly, Ms A stated in the email that she asked Dr Rawat for his help by asking him to drive her to XXX, whereas in the later accounts she stated that he offered her the lift. Dr Rawat maintained that that she rang him and asked him for a lift when he finished work at 5.30pm. The Tribunal decided that it was more likely that she rang him for a lift, because she needed the help quite urgently. The Tribunal decided again that these differences in Ms A's account partly undermined her account. The Tribunal decided that Ms A may have been trying to distance herself from Dr Rawat and the extent of the friendship that they had.

44. The Tribunal considered the consistency of Dr Rawat's account. It noted that he had not been spoken to by the hospital, because they had not pursued an investigation. Ms E stated that she had bleeped and called him, but Dr Rawat explained that in busy hospitals bleeps go off all the time, and he had not been formally approached by anyone. (There were many other formal routes by which the Trust could have contacted him, for example through his locum agency, but none of these were done). Dr Rawat's first account therefore was made two and a half years after the incident, when he gave a pre prepared statement to the police as part of their investigation. In this account, Dr Rawat did not mention the detail of the conversation that he then set out in his GMC statement. Dr Rawat stated, for example, that Ms A asked him to marry her, that her family had XXX health issues and that she had XXX. The Tribunal decided that those aspects to the conversation would have been memorable, as they establish a potential motive for Ms A making a complaint. The Tribunal determined that the fact that he did not mention them to the police went to his credibility.

45. The Tribunal did not place any weight on the questions that were put to Ms A in cross examination suggesting that she leave Dr Rawat and get a taxi or, for example, report her concerns to restaurant staff. She explained in response that she had had *'felt vulnerable and quite intimidated'* and therefore, did not seek help.

46. The Tribunal took into account the fact that Dr Rawat was a man of good character. It noted that he has no criminal convictions, cautions, or adverse regulatory findings, and that goes in his favour. It also noted the content of the testimonials it had received, and the statement from Dr Rawat's wife.

47. The Tribunal considered whether there was any independent documentary evidence in this case. It did not have the benefit of a record of any text or WhatsApp messages, nor a call history on Ms A's phone. The Tribunal noted that Ms A said that she had not kept these records as nobody had asked her to do so. In terms of other documentary evidence, the Tribunal relied on a timesheet that showed when Dr Rawat was working in the week

commencing 1 April 2019, a photograph of Ms A that had been taken at the beach, and an entry on her bank statement for the XXX meal.

48. In summary, the Tribunal decided that there were some aspects of both Ms A's and Dr Rawat's evidence that were inconsistent. The Tribunal therefore looked for and placed reliance on the other witness and documentary evidence when deciding this matter. In the absence of supporting evidence, the Tribunal decided that it could not determine the detail of the conversations that were had in the car and on the beach.

49. Having considered its broad approach in this way, the Tribunal then approached each paragraph separately, considering the specific evidence relating to it.

50. The Tribunal noted that it was alleged that the incident described in paragraph 1(a) of the Allegation took place on the beach after Ms A and Dr Rawat had XXX, which was after the conversations alleged in paragraph 1(b)(i)(1) and 1(b)(i)(2) had taken place. It decided, therefore, to consider the matter in chronological order as seen below.

Paragraph 1(b)(i)(1) and (2)

51. The Tribunal considered whether, on or around 1 April 2019 whilst in his car with Ms A, Dr Rawat told Ms A that: as a student he had sex with many girls and/or 'in India you can hardly find a girl who is a virgin because you can even have sex in the car if you like' or words to that effect.

52. The Tribunal noted that the comments set out in paragraphs 1(b)(i)1 and (2) allegedly took place in the car on the way to XXX and therefore decided to consider them together.

53. The Tribunal firstly considered the accounts that Ms A had given about this part of the car journey. She gave a statement to the police on 9 November 2021, and in it, Ms A described the conversation on the way to XXX. She said:

> *'On the way XXX he was talking strangely, asking me what I thought of him, if I liked him. He was telling me about when he was a student, telling me all the girls were after him, he had sex with many girls. He also said that in India, you can hardly find a girl who is a virgin because you can even have sex in a car if you like, things like that. His sexual remarks made me feel uncomfortable, he had never behaved like that before.'*

54. Ms A adopted that evidence in her statement to the GMC dated 29 November 2022 where she confirmed that it accurately reflected the events that had taken place. Also, in her

oral evidence to the Tribunal, Ms A confirmed that the comments were made on the way to XXX.

55. Ms A also stated in the police statement that Dr Rawat had made *'demeaning remarks'* to her on earlier occasions. In a supplemental GMC statement dated 28 January 2022, she explained that for example he had used words to the effect of *'you're such a loser'*.

56. The Tribunal considered the earlier accounts that Ms A had given shortly after the incident had taken place. She first disclosed the matter to Witness B. Ms A did not recount any details of the conversations that took place. The Tribunal also noted that Witness B had not mentioned that Ms A was showing any signs of distress while XXX. (The Tribunal held no preconceived ideas about whether a complainant is likely to show signs of distress straight away after a conversation of this nature but simply noted that there was no supportive evidence from Witness B in relation to this aspect of the case.)

57. Ms A also contacted the hospital in the week after the incident had taken place. She spoke to Mr C on 8 April 2019 and followed up the conversation that she had with him by an email on the same day. In the email she said:

> *'He had behaved very decently until that day when he suddenly changed his attitude after we had XXX, which came as a shock to me. He touched me inappropriately, tried to become intimate with me, invaded my personal space and made extremely inappropriate comments. I was in a state of shock and did not know how to react'.*

58. Dr Rawat made a statement to the police dated 12 April 2022, after he had been asked to attend the police station for a voluntary interview. In it, Dr Rawat denied that this conversation had taken place. He said:

> *'I recall driving Ms A to XXX but deny that I began any sexualised conversation with her in the car on the way to XXX about people having sex in cars and discussions about whom I had sexual relationships with.'*

59. Dr Rawat made a statement for these proceedings dated 29 November 2022. He described the conversation that he said had taken place on the way to XXX:

> *'On the drive we had a general discussion about how things were at work and professionally. I do not remember the exact conversation but there was nothing controversial and certainly nothing sexual as alleged.'*

60. The Tribunal considered the account of Ms A and the denials made by Dr Rawat. It noted that, in the email that Ms A sent to the hospital a week after the incident, she had said that Dr Rawat's attitude changed only after the XXX and that he had behaved decently before then. The Tribunal noted that this account was at odds with the later accounts given to the police and the GMC, when Ms A said that the conversation was had before XXX and that he had made demeaning remarks to her on earlier occasions. The email was sent when the matters would have been fresher in Ms A's memory and that Tribunal concluded that this therefore undermined her later accounts.

61. Accordingly, the Tribunal determined, on the balance of probabilities, that both paragraphs 1(b)(i)(1) and (2) of the Allegation were not proved.

Paragraph 1(a)

62. The Tribunal considered whether, on or around 1 April 2019, Dr Rawat said to Ms A *'Oh my god this is my first time seeing your lips they're so beautiful and pink, I would like to kiss them'*, or words to that effect.

63. The Tribunal noted that the comments set out in paragraph (1)(a) allegedly took place when Ms A and Dr Rawat visited the beach after having XXX, and therefore decided to consider it chronologically at this stage.

64. The Tribunal firstly considered the accounts that Ms A had given about what had happened and been said at the beach. In her police statement, Ms A said:

> *'The XXX was two minutes from the beach. He suggested we went to the beach, and we did. He suggested taking a picture of me, which he did on my phone. He said, "I have never noticed your beauty before" and made comments about my lips. He said it was cold, and we should get in the car. He offered me his jacket. I didn't take it. I suggested we went back.'*

65. In a supplemental statement to the GMC dated 28 January 2022 Ms A described the comments in more detail. She said:

> *'I have been asked by the GMC if I remember exactly what Dr Rawat said about my lips, and I recall he said something like "Oh my god this is the first time seeing your lips, they are so beautiful and pink, I would like to kiss them. He said this to me when we were at XXX beach, and I don't think that I said anything in response as I was disturbed by what he said.'*

66. The Tribunal considered the earlier accounts that Ms A had given. Witness B, while noting Ms A's distress and hearing about the alleged sexual assault, was not told any detail of the conversation that Ms A and Dr Rawat had while on the beach or in the car.

67. In the email to Mr C, Ms A had said that Dr Rawat had made *'extremely inappropriate comments'* to her that had shocked her.

68. The Tribunal noted the photograph of Ms A at XXX beach. Ms A, in her police statement, said that Dr Rawat had taken the photograph on her phone. However, later in her GMC statement, she said that the photograph had been taken on Dr Rawat's phone, and it made her feel uncomfortable. She had therefore asked for him to delete it and send it her via WhatsApp. In her evidence to the Tribunal, Ms A said that she wanted the photograph to send to her family XXX. The Tribunal considered the photograph and decided that it must have been taken by Dr Rawat, as it would not have been possible for Ms A to take it, and there was no other person present. The Tribunal could not determine whose phone the picture was taken on.

69. In his police statement, Dr Rawat confirmed that he and Ms A had been to the beach, but he stated that he could not recall taking a photograph of her. In his statement for these proceedings, he said:

> *'After XXX, I remember that we went to the beach. I cannot remember whose idea it was. We drove there in the car. We discussed the XXX and whether or not it was worth it. I do not remember if I took a photograph of Ms A on the promenade. I have no pictures of her.'*

70. The Tribunal considered the account of Ms A and the denials made by Dr Rawat. There was no supporting evidence of either account of the detail of what was said at the beach either contemporaneous or later. The Tribunal determined that, due to some inconsistencies of Ms A's evidence about other matters as set out above, the GMC had not provided sufficient evidence that the comments were made as described.

71. Accordingly, the Tribunal determined, on the balance of probabilities, that paragraph 1(a) of the Allegation was not proved.

Paragraph 1(b)(ii) and (iii)

72. The Tribunal considered whether, on or around 1 April 2019 whilst in his car with Ms A, Dr Rawat grabbed Ms A by her shoulders and pulled her towards him and/or kissed Ms A on her mouth.

73. The Tribunal noted that Ms A alleged that, after they had visited the beach, she and Dr Rawat returned to the car, and he then grabbed her by her shoulders and pulled her toward him and kissed her on the mouth. It therefore decided to consider these two paragraphs together.

74. The Tribunal firstly considered the accounts that Ms A had given to the police. In her statement she described the incident:

> *'I then realised I had made a mistake being in the car with him. The doors were locked. He pulled me to him, and he kissed me on the mouth. I pushed him away. He had grabbed me by the shoulders to pull me towards him. I started crying.'*

75. During her oral evidence at the Tribunal hearing, Ms A stated that when Dr Rawat kissed her, he had his mouth open, and she had her mouth closed.

76. The Tribunal considered the earlier accounts that Ms A had given. She gave an account of this incident to Witness B and the Tribunal noted that Witness B had sent Ms A an email the day after she had XXX, enclosing a booklet for survivors of sexual abuse. Ms A told Witness B that the incident had taken place on the same day as XXX. Witness B said in her statement:

> *'Ms A XXX, she didn't seem quite right, and asked her if everything was OK. She didn't tell me straight away, but eventually Ms A told me she had been sexually assaulted by a colleague from work- XXX…'*

And

> *'I do not recall the exact words used but it was something like "XXX, he sexually assaulted me…"'*

And

> *'… she mentioned that he was 'handling her', but she never gave me any specific details of what had happened.'*

77. The Tribunal again relied on the email that Ms A had sent to Mr C. In it, she said:

> *'He touched me inappropriately, tried to become intimate with me, invaded my personal space and made extremely inappropriate comments. I was in a state of shock and did not know how to react.'*

78. Ms E spoke with Ms A about this incident. In her personal notes she has noted *'incident outside of work - wants to take it further'*.

79. The Tribunal also noted that there was evidence that Ms A showed signs of distress in the week after the incident. Witness B mentioned this a number of times in her statement to the GMC. She said, for example, that Ms A was *'very upset'*, *'emotionally upset'* and *'very weepy'*. She also said that *'Another time, I came home and could hear wailing from Ms A's room. This was maybe two to four weeks after she XXX*. She remarked that it was *'very saddening to see her so distressed'*. There was further evidence of Ms A's distress when she reported the matter to the hospital. In Mr C's statement to the GMC dated 4 September 2023 he said *'Ms A first called me around 15 to 20 minutes before I received the email … And I had concern for her wellbeing'*. Ms D, in her statement to the GMC dated 16 October 2023, said that Ms H, another member of hospital staff, had spoken to Ms A and she had told Ms D that Ms A was distressed.

80. The Tribunal considered the accounts given by Dr Rawat. He emphatically denied this incident when he gave oral evidence at the Tribunal hearing. In his statement to the police, he said:

> *'I categorically deny that upon returning to the car that day that I grabbed Ms A by her upper arms and pushed her towards me and kissed her on the mouth, causing her to pull away and burst into tears.'*

And

> *'I am absolutely appalled and shocked by the allegations made by Ms A and against the background of the above, I deny empathically the allegations of sexual assault by Ms A suggesting wrongdoing and inappropriate conduct by me.'*

81. The Tribunal decided that there was evidence that supported Ms A's account. She had made an early disclosure to Witness B, and then to Mr C later in the first week of April 2019. She had told Ms E that there had been an incident outside of work. The Tribunal also noted

the evidence of distress. It concluded therefore that it was more likely than not that Dr Rawat had grabbed Ms A by her shoulders, pulled her towards him, and kissed her.

82. Accordingly, the Tribunal determined, on the balance of probabilities, that paragraphs 1(b)(ii) and (iii) of the Allegation were proved.

Paragraph 1(c)(i) and (ii)(1) and (2)

83. The Tribunal considered whether, on or around 1 April 2019 after kissing Ms A on her mouth, Dr Rawat: told her not to answer a phone call she received on her mobile phone and/or asked her whether she had any friends she would tell and/or would tell the police.

84. The Tribunal noted that the comments set out in paragraphs 1(c)(i) and (ii)(1) and (2) allegedly took place in the car after Dr Rawat had kissed Ms A and before they arrived at the XXX restaurant. It therefore decided to consider them together.

85. The Tribunal considered the accounts given by Ms A. In her statement to the police, she said:

> *'…I then got a phone call from XXX, a female Doctor. He could see her picture because it was on WHATSAPP. He said not to answer it. … He asked me if I had any friends I would tell, or if I would tell the police.'*

86. In her evidence to the Tribunal, Ms A stated that she had not kept the call log and had not been asked to give the details of who it was that had called her. She disclosed the first name of the caller to the Tribunal.

87. The Tribunal noted again that, in the email to Mr C, Ms A had said that Dr Rawat had made *'extremely inappropriate comments'*.

88. Dr Rawat denied making any inappropriate comments. In his statement made for these proceedings he said that, after they had left the beach, Ms A had asked him for £10,000 because she was in financial difficulties and that he was shocked by this. He then stated that Ms A had said they had a *'good outing'* and that they should go for dinner. He was reluctant to do this because he was tired.

89. The Tribunal considered the accounts of both Ms A and Dr Rawat. There was no supporting evidence of either account of the detail of what was said in the car. There was no

call log from Ms A's phone. The Tribunal determined that the GMC had not provided sufficient evidence that the comments were made as described.

90. Accordingly, the Tribunal determined, on the balance of probabilities, that paragraphs 1(c)(i) and (ii)(1) and (2) of the Allegation were not proved.

Paragraph 1(c)(iii)

91. The Tribunal considered whether, on or around 1 April 2019 after kissing Ms A on her mouth, Dr Rawat said to Ms A *'don't think that I'm a bad man, I love you and I wanted to be close to you'*, or words to that effect.

92. The Tribunal noted that the comment set out in paragraph 1(c)(iii) allegedly took place after Ms A and Dr Rawat had left the XXX restaurant and while they were driving back to the hospital.

93. The Tribunal firstly considered the evidence given by Ms A. In her statement to the police, she explained what happened after they had left the restaurant. She said:

> *'After that he drove back. He said to me "DON'T THINK I'M A BAD MAN, I OVE YOU AND I WANTED TO BE CLOSE TO YOU".*

94. In a supplemental statement to the GMC, Ms A corrected the word *'OVE'* to *'LOVE'* and confirmed that she believed that the words in that sentence were the exact words, as she could quite clearly remember them.

95. As in the paragraphs above, the Tribunal noted that, in the email to Mr C, within a week of the event, Ms A had said that Dr Rawat had made *'extremely inappropriate comments'*.

96. The Tribunal noted that Dr Rawat's account of the conversation on the journey back from the restaurant was very different to Ms A's account. In his statement to the police, he said:

> *'I do recall that while driving back from the restaurant to the hospital accommodation that I informed Ms A that I was married and had children and remember that she appeared somewhat annoyed that I had not informed her earlier that I was married and had children, I also recall she made comment in the words to the effect of "what am I doing with you if you are married".'*

97. The Tribunal noted that Dr Rawat gave further detail of the conversation when he made a statement for these proceedings. In it he said:

> *'During the drive, Ms A started to become emotional, and she told me that she had XXX, and that there were XXX health issues in the family but did not elaborate. I was confused by her comments at the time. Ms A also told me that she was having financial issues.'*

And

> *'Ms A also told me that she had to have XXX and that her parents were trying to XXX, but that she kept getting rejected by people.'*

98. Dr Rawat further explained in this statement that he tried to reassure her about the XXX, and then he said:

> *'I remember Ms A saying words to the effect of "why am I wasting time with you if you are married" Ms A seemed to be somewhat annoyed that I had not told her about my wife and children earlier. I had not informed Ms A in the past that I was married as the subject matter had not arisen and that I had only met her on a small number of occasions in the past. I remember that the remainder of the drive was quite (sic) and there was a strange atmosphere.'*

99. In his oral evidence to the Tribunal, Dr Rawat stated that Ms A had been relaxed and happy while XXX, *'posing nicely on the beach'*, and very happy, calm, and composed on the way to the restaurant. He said they had a nice dinner. He then described Ms A changing after the meal. He said she started to become emotional and was talking about her medical condition.

100. Again, the Tribunal considered the accounts of Ms A and Dr Rawat. The Tribunal noted that Dr Rawat gave a detailed account of the conversations that took place at this part of the journey but noted that it had only been given during the GMC proceedings. The Tribunal concluded that this conversation would have been memorable and the fact that he did not inform the police went to his credibility. There was no supporting evidence of either account of the detail of what was said. In the absence of supporting evidence and considering the inconsistencies that there were in both accounts, the Tribunal decided that the GMC had not provided sufficient evidence that the comments were made as described.

101. Accordingly, the Tribunal determined, on the balance of probabilities, that paragraph 1(c)(iii) of the Allegation was not proved.

Paragraph 1(d)(i) and (ii)

102. The Tribunal considered whether, on or around 1 April 2019 after driving Ms A home, Dr Rawat suggested that he could: stay the night with her in her flat and/or take her to her work XXX training the following day and stay with her overnight.

103. The Tribunal noted the comments set out in paragraphs 1(d)(i) and (ii) allegedly took place towards or at the end of the car journey and therefore decided to consider them together.

104. Ms A, in her statement to the police, described the conversation when they were driving back to the hospital near to the end of the journey, or while they were still in the car, outside her flat. She said:

> *'He knew the XXX I shared my flat with was not home, so he suggested that he stay the night with me. He said to me it wasn't a good day for me as I had lost my money, something like that. I told him I did not want him to stay. I was still upset and crying. He said it wasn't a big deal. He left me there and drove off. '*

105. The Tribunal considered Ms A's GMC statement, in which she gave further detail. She said:

> *'Dr Rawat continued to harass me verbally in the car, offering to go in my apartment and sleep in my room, and was rather persistent, knowing that I had booked an Airbnb in XXX the next day for my XXX training. He kept on stating that he could take me down there and we could stay in the room together.'*

106. Once again, the Tribunal considered the comments that she made to Mr C in the email of 8 April 2019.

107. The Tribunal noted Dr Rawat's account of the conversation on the journey back from the restaurant as is outlined above. Again, the fact that he put forward these matters only to the GMC went to his credibility. He said that he dropped Ms A off at her accommodation, noting that Ms A did not appear happy, as he had just informed her that he was married.

108. The Tribunal considered both accounts. Again, there was no supporting evidence of either account of the detail of what was said. The Tribunal noted that Dr Rawat stated that Ms A was emotional by this stage. In the absence of other evidence and considering the inconsistencies that there were in Ms A's account, the Tribunal decided that the GMC had not provided sufficient evidence that the comments were made as described.

109. Accordingly, the Tribunal determined, on the balance of probabilities, that paragraphs 1(d)(i) and (ii) of the Allegation were not proved.

Paragraph 2

110. The Tribunal noted that Ms A alleged that, the following day, Dr Rawat contacted Ms A on one or more occasions suggesting that he could go with her to the XXX training and stay with her overnight.

111. In her statement to the police, Ms A said:

> *'The next day I was going to XXX, and he knew I was going there for my XXX. I had booked an AIR BNB to stay in, and he text me and suggested he come with me. He called me, but I did not answer. I later text him to say he had caused him enough grief, and he has not contacted me since.'*

112. The Tribunal took into account the note of the phone call that Ms A made to the GMC helpline on 9 November 2021. She said that she had been physically assaulted in the car, and then said that that *'Bobby'* had continued to sexually harass her after this. The note states that *'the caller is saying the Doctor assaulted her, threatened her and sexually assaulted her between March 2019 and July 2019 when they both worked at the same hospital'*.

113. In her statement to the GMC, Ms A clarified the conversation that she had when calling the GMC helpline. She said that, although she worked in the hospital from January to July 2019, she had worked at a different site between April and July 2019. She explained:

> *'He sent me some messages asking me to meet him and tried to contact me through the telephone for some period of time, which I never answered… But he did not try to make any physical contact with me.'*

114. In a supplemental statement to the GMC dated 28 January 2022, the Tribunal noted that she had been asked to clarify her earlier statement as regards this aspect of her complaint. She said:

'I stated that between April- July 2019 I did not see Dr Rawat at work , but he did try to contact me by phone and messages during this period. I remember that there were text messages from Dr Rawat during this period because he knew that I was going to XXX for an XXX and had booked to stay overnight somewhere. I did not respond to his messages or calls, but I later texted him to tell him to leave me alone.'

115. The Tribunal considered the email that Ms A had sent to Mr C. She told Mr C that Dr Rawat had tried to contact her from a private number:

'I want to escalate this incident for appropriate action to be taken. He has also been trying to contact me from a private number which i know is him as my call history has the record of same number when i spoke to him occasionally on this number. I hope that this will be taken further as this has affected me deeply and still is.'

116. The Tribunal noted that Dr Rawat, in his statement to the police, said that he and Ms A had *'little by way of contact'* following that day, and that he did not recall receiving a message from Ms A asking him not to contact her. In his statement for these proceedings, he denied that he made the contact as alleged.

117. The Tribunal considered the timesheet that showed Dr Rawat's rota for 2 April 2019. It showed that he was working all day. While this did not preclude Dr Rawat from contacting Ms A, it showed that it was unlikely that he would have been able to take Ms A to her XXX training that day which Ms A had said he was proposing.

118. The Tribunal noted that there was no telephone data history that supported Ms A's account. It determined that Ms A's account was inconsistent. She had informed the police that Dr Rawat did not contact her after the following day but said that he had harassed her between March 2019 and July 2019 to the GMC. The Tribunal was not clear how much contact was made if at all, and when, and whether it was made by text or missed calls from a private number.

119. Accordingly, the Tribunal determined, on the balance of probabilities, that paragraph 2 of the Allegation was not proved.

Paragraph 3

120. The Tribunal had decided that the facts as alleged in paragraphs 1(b)(ii) and 1(b)(iii) of the Allegation were proved on the balance of probabilities. It then considered whether those

acts had taken place without Ms A's consent. It considered the LQC advice as set out above, in relation to the definition of consent.

121. The Tribunal noted the account given by Ms A:

> *'I then realised I had made a mistake being in the car with him. The doors were locked. He pulled me to him, and he kissed me on the mouth. I pushed him away. He had grabbed me by the shoulders to pull me towards him. I started crying.'*

122. The Tribunal also took into account the impact that this incident had on Ms A, as described by her, and witnessed by Witness B.

123. The Tribunal was satisfied on the balance of probabilities, that Ms A did not consent to being grabbed by the shoulders, pulled towards Dr Rawat, and kissed by him on the mouth.

124. Accordingly, the Tribunal determined, on the balance of probabilities, that paragraph 3 of the Allegation was **proved** in relation to paragraphs 1(b)(ii) and 1(b)(iii).

Paragraph 4

125. The Tribunal had decided that paragraphs 1(b)(ii) and 1(b)(iii) of the Allegation were proved on the balance of probabilities. It therefore considered whether those acts constituted sexual harassment. It considered the LQC advice as set out above, and the definition of sexual harassment in s26(2) of the Equality Act 2010.

126. The Tribunal determined that grabbing Ms A by her shoulders, pulling her towards him and kissing her without her consent, as alleged in paragraphs 1(b)(ii) and 1(b)(iii), was unwanted conduct of a sexual nature.

127. The Tribunal then considered whether these acts had the purpose or effect of violating the dignity of Ms A or of creating an intimidating, hostile, degrading, humiliating or offensive environment for her. It considered the impact on Ms A, as described by her, and witnessed by Witness B. There was evidence that the behaviour had distressed her. She said she felt scared, and it had affected her mentally. The Tribunal therefore determined that the behaviour had had the effects on Ms A as set out in the definition of sexual harassment.

128. Accordingly, the Tribunal determined, on the balance of probabilities, that paragraph 4 of the Allegation was **proved** in relation to paragraphs 1(b)(ii) and 1(b)(iii).

Paragraph 5

129. The Tribunal had decided that paragraphs 1(b)(ii) and 1(b)(iii) of the Allegation were proved on the balance of probabilities. It then considered whether those acts had been sexually motivated. It considered the LQC advice as set out above, and the definition of sexual motivation as set out in the case of *Basson*.

130. The Tribunal determined that the behaviour alleged and found proved in 1(b)(ii), and 1(b)(iii) was done in pursuit of a future sexual relationship or for sexual gratification. The Tribunal had found that Dr Rawat had grabbed Ms A by her shoulders, pulled her towards him, and kissed her on the mouth. The Tribunal decided that these acts were overtly sexual in nature, and that there was no other plausible explanation for them.

131. Accordingly, the Tribunal determined, on the balance of probabilities, that paragraph 5 of the Allegation was **proved** in relation to paragraphs 1(b)(ii) and 1(b)(iii).

The Tribunal's Overall Determination on the Facts

132. The Tribunal has determined the facts as follows:

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

1. On or around 1 April 2019:

    a. you said to Ms A 'Oh my god this is my first time seeing your lips they're so beautiful and pink, I would like to kiss them', or words to that effect;
    Not proved

    b. whilst in your car with Ms A , you:

        i. told Ms A that:

            1. as a student you had sex with many girls;
            Not proved

            2. 'in India you can hardly find a girl who is a virgin because you can even have sex in the car if you like' or words to that effect;
            Not proved

ii. grabbed Ms A by her shoulders and pulled her towards you;
Determined and found proved

iii. kissed Ms A on her mouth;
Determined and found proved

c. after kissing Ms A on her mouth, you:

i. told her not to answer a phone call she received on her mobile phone;
Not proved

ii. asked her whether she:

1. had any friends she would tell;
Not proved

2. would tell the police;
Not proved

iii. said to Ms A 'don't think that I'm a bad man, I love you and I wanted to be close to you', or words to that effect;
Not proved

d. after driving Ms A home, you suggested that you could:

i. stay the night with her in her flat;
Not proved

ii. take her to her work XXX training the following day, and stay with her overnight;
Not proved

2. On or around 2 April 2019, on one or more occasion you contacted Ms A and suggested that you would go with her to her XXX training and stay with her overnight.
Not proved

3. Your conduct as described at paragraph 1.b.ii. and/or 1.biii was carried out without Ms A's consent.
Determined and found proved in respect of paragraphs 1(b)(ii) and (iii)

4. Your actions as set out at paragraphs 1.a., 1.b., 1.c.iii, 1.d. and 2. constituted sexual harassment as defined in Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct of a sexual nature which had the purpose or effect of

violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.
Determined and found proved in respect of paragraphs 1(b)(ii) and (iii)
Not proved in respect of paragraphs 1(a), 1(b)(i), 1(c)(iii), 1(d) and 2

5. Your conduct as described at paragraph(s) 1.a., 1.b., 1.c.iii., 1.d. and/or 2. was sexually motivated.
Determined and found proved in respect of paragraphs 1(b)(ii) and (iii)
Not proved in respect of paragraphs 1(a), 1(b)(i), 1(c)(iii), 1(d) and 2

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

Determination on Impairment - 04/04/2024

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

The Evidence

134. The Tribunal took into account the evidence that it received during the facts stage of the hearing, both oral and documentary.

135. No further oral evidence was given, but the Tribunal received further evidence in the form of an unredacted version of a bundle on behalf of Dr Rawat with additional appraisal and feedback documentation. The Tribunal also received a statement from Mr I, Dr Rawat's Responsible Officer, dated 11 March 2024.

Submissions

Submissions on behalf of the GMC

136. Ms Dudley-Jones submitted that Dr Rawat's actions amounted to misconduct, which was serious, and that his fitness to practise was impaired by reason of that misconduct. She stated that Dr Rawat was currently impaired because of the facts that had been found proved, and because of the wider public interest.

137. Ms Dudley-Jones reminded the Tribunal that there was no burden or standard of proof at this stage, and that misconduct had to be considered first, and distinct from impairment.

138. Ms Dudley-Jones explained the definitions of serious misconduct in the cases of *Roylance* and *Nandi,* (which mirrored the LQC advice set out below in the relevant legal principles section).

139. Ms Dudley-Jones reminded the Tribunal that it had found that Dr Rawat's actions on 1 April 2019 took place without Ms A's consent and were sexually motivated. They also constituted sexual harassment. Ms A was alone with Dr Rawat in his car, he had grabbed her by the shoulders and pulled her towards him, before kissing her on the mouth. Ms Dudley-Jones referred to Ms A's description of the incident and how she felt, including that she realised she had made a mistake being in the car with him, that the doors were locked and that she started crying after the kiss.

140. Ms Dudley-Jones accepted that the conduct took place over a short period of time but stated that Dr Rawat's conduct on 1 April 2019 was serious misconduct in a number of respects. Firstly, she pointed out that the incident involved a junior colleague XXX. Dr Rawat had probably established that she was socially isolated, because most of her family lived in XX. He was some XXX years older than Ms A. Ms Dudley-Jones submitted that the imbalance between Dr Rawat and Ms A showed that he had taken advantage of a younger colleague, and that this was serious.

141. Secondly, it was also asserted by Ms Dudley-Jones that Dr Rawat had formed a friendship with Ms A, and that this showed an element of pre planning and calculation on his part. For example, she said that the demeaning or *'jokey'* comments he made before 1 April 2019 while in the XXX were likely to have been made in order to ensure that Ms A trusted him.

142. Thirdly, Ms Dudley-Jones submitted that the Tribunal might feel that the seriousness of Dr Rawat's actions were compounded by the fact that he had alleged that Ms A was lying about what had happened. She said that there was a *'fictitious aspect'* to his defence, especially when he recounted the conversation had between the two of them in the car. Dr Rawat told the Tribunal that Ms A had spoken to him about her own XXX health, and the health of her family and that nobody wanted to marry her and instead she suggested he marry her. She had also asked him for money. Ms Dudley-Jones stated that, given the Tribunal's findings, it had plainly found that those conversations were not likely to have

occurred. She stated that the Tribunal may feel that Dr Rawat was neither contrite nor remorseful, and that he has sought to minimise his own actions and blame Ms A.

143. Ms Dudley-Jones asked the Tribunal to consider Ms A's evidence about the impact that this incident had on her. Ms Dudley-Jones stated that, before the incident happened when they were in the car, Ms A had begun to feel vulnerable and Dr Rawat's actions were distressing her. Ms A had said she was both shocked and upset. She said she never thought that Dr Rawat would do something like this to her. Ms A felt scared and had been affected mentally and she had explained that in her email to the hospital on 8 April 2019.

144. The Tribunal was asked to note that the impact on Ms A was not short lived. Witness B had said that Ms A was troubled, tired, and not sleeping well. She was *'saddened'* to see Ms A so distressed. There was also evidence that at least two to four weeks after the incident Witness B heard Ms A wailing from inside her bedroom.

145. Ms Dudley-Jones submitted that Dr Rawat's actions demonstrated a number of breaches of Good Medical Practice (2013) ('GMP'), namely of the paragraphs 1, 36, and 65, which she read out to the Tribunal.

146. Ms Dudley-Jones submitted that Dr Rawat's actions could properly be characterised as purposeful behaviour. She submitted that his actions also seriously undermined public confidence in the profession and brought the profession into disrepute. Furthermore, he has also breached one of the fundamental tenets of the profession. She submitted that his actions constituted serious misconduct.

147. Ms Dudley-Jones reminded the Tribunal that impairment has no statutory definition and directed the Tribunal's attention to *Dame Janet Smith's* comments in the *Fifth Shipman* report, (which again mirrors the LQC advice set out below in the relevant legal principles section).

148. In terms of remediation and insight, Ms Dudley-Jones reminded the Tribunal of the case of *Yeong v GMC* [2009] EWHC 1923 (Admin) which states that non-clinical misconduct is not easily remediable. She submitted, therefore, that the Tribunal may feel that Dr Rawat's serious non-clinical misconduct was not easily remediable, and, in those circumstances, it could not be satisfied that it would not be repeated were he to find himself in a similar situation in the future. She pointed out that the professional boundaries course undertaken by Dr Rawat was only undertaken on 21 March 2024, a day before the bundle was submitted to the GMC.

149. Ms Dudley-Jones submitted that the misconduct was so serious and consisted of violating such fundamental rules of the profession, that a finding of impairment was also justified to reaffirm clear standards of professional conduct, so as to maintain public confidence in the profession. She submitted that 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 these particular circumstances.

150. In summary, Ms Dudley-Jones submitted that Dr Rawat's fitness to practise is currently impaired as of today.

Submissions on behalf of Dr Rawat

151. Mr Kirke stated that he had discussed the Tribunal's findings with Dr Rawat. He stated that Dr Rawat was disappointed and emotional about the outcome of the hearing. Mr Kirke stated that although Dr Rawat maintained his innocence, he accepted the Tribunal's decision and recognised the impact of the facts found proved on Ms A and the harm caused to her.

152. Mr Kirke did not seek to argue that the facts as found proved did not constitute serious misconduct but did submit that the Tribunal could find that Dr Rawat's fitness to practise was not currently impaired. He submitted that the balance in terms of the public interest fell in favour of Dr Rawat continuing to practise.

21. Mr Kirke stated that Dr Rawat was entitled to defend the Allegation. The fact that he had done did not mean that he is unable to display insight or cannot remedy this type of behaviour.

153. With regard to remediation, Mr Kirke stated that this case now dated back five years and there had been no complaints against Dr Rawat since. He pointed out that Dr Rawat had provided the Tribunal with a comprehensive character reference bundle which contained positive references from a number of sources. The references spoke about his ability to manage professional boundaries, and to show respect and compassion to patients and colleagues. Mr Kirke made specific reference to the testimonials from Dr F and Ms G, and to the appraisal documentation. He stated that the appraisals showed that Dr Rawat was consistently performing well in his professional life and actively supporting junior colleagues and medical students. Mr Kirke submitted that this highlighted that Dr Rawat was able to respect professional boundaries and treated his colleagues with respect.

154. Mr Kirke referred to Ms Dudley-Jones' submissions regarding the suggestion that Dr Rawat must have targeted Ms A by attempting to, for example, gain her trust by making

demeaning or jokey comments. He pointed out that the other comments alleged by Ms A were found not proved. He also questioned whether such comments could be seen to amount to an attempt to build trust.

155. Mr Kirke submitted that these events were *'a one-off'* incident in a long and unblemished career. There had been no complaints before or since and Dr Rawat has been able to practise without restrictions since the incident. He stated that Dr Rawat had been working at Kettering as a bank doctor working in the Emergency department and as a specialist registrar. He had taken a career break from around November 2023 to focus on this case and because of the emotional toll that it had on him.

156. Mr Kirke stated that Dr Rawat has expressed a desire to continue practising and, to assist with this, he had completed two courses on professional boundaries and attained a 100% pass rate. He stated that, whilst completed relatively recently, this was on the basis that Dr Rawat was advised to take them. Mr Kirke stated that this was evidence that Dr Rawat was capable of listening to advice and of understanding the areas he must address and acting upon that. He stated that Dr Rawat had learned from those courses. He intends to complete further courses now that the facts have been found proved.

157. Mr Kirke submitted that, due to the fact that there have been no further complaints, there is no risk of repetition. There was direct evidence to show insight which would entitle the Tribunal to conclude that Dr Rawat's fitness to practise is not impaired.

158. While not minimising the seriousness of this matter, Mr Kirke submitted that this incident had not involved violence, or touching in an intimate area. It was extremely short lived and could be seen as being at the *'lower end'* of sexual incidents of this nature. He submitted that, in contrast to what Ms Dudley-Jones suggested, there had not been a significant degree of planning and it was an isolated incident. Mr Kirke submitted that it could not be said that Dr Rawat was acting with a long standing sexual motivation to engage in this behaviour or to act beyond the kiss.

159. Mr Kirke submitted that, if the public were to know all of those facts and understand Dr Rawat's character as a whole, they would be in a position to understand that a doctor with that integrity and who was so supported by colleagues and patients, need not have a finding that his fitness to practise was currently impaired. Mr Kirke submitted that, whilst there was a need to promote and maintain proper professional standards, in the exceptional circumstances of this case and the way in which the facts had been found proved in an otherwise unblemished career, the Tribunal could find that Dr Rawat's fitness to practise is not currently impaired.

The Relevant Legal Principles

160. The LQC gave advice to the Tribunal which is summarised below:

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

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

163. The LQC stated that *'misconduct'* has no statutory definition and was a matter for the judgement and experience of the Tribunal. However, in the case of *Roylance v GMC [No 2]* [2000] 1 AC 311 it was said that *'misconduct'* should be *'serious misconduct'* before the Tribunal should move to consider fitness to practise. The word *'serious'* should be given its ordinary meaning. This case stated that misconduct is:

> *'some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances.'*

164. The Tribunal should therefore take into account whether Dr Rawat has departed from the standards set out in GMP.

165. There was also the case of *Nandi v GMC* [2004] EWHC where *Collins J* said that misconduct is conduct which would be regarded as *'deplorable'* by fellow practitioners.

166. If, having decided that there is misconduct as defined, then the Tribunal should consider whether its findings of fact show that Dr Rawat's fitness to practise is currently impaired.

167. Whilst there is no statutory definition of impairment, the Tribunal is assisted by the guidance provided by Dame Janet Smith in the Fifth Shipman Report, as adopted by the High Court in *CHRE v NMC & Grant (2011) EWHC 927 (Admin).* Dame Smith sets out some features that are likely to be present when impairment is found, as follows:

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

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

37. The LQC stated that it was not necessarily the case therefore that having found misconduct, impairment must follow.

168. The Tribunal was reminded that allegations of sexual misconduct may be more difficult to remediate than, for example, clinical errors, where further practice and/or teaching would be likely to improve performance. Having said that, the Tribunal must note that each case is on its facts - impairment does not necessarily follow findings of sexual misconduct. The Tribunal should look at the circumstances of the case, the need to uphold public confidence, and what has been done to remediate.

169. The Tribunal must determine whether Dr Rawat's fitness to practise is impaired today, taking into account Dr Rawat's conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

170. The Tribunal must determine where the doctor has demonstrated insight and, if so, to what extent. A doctor could show that they have insight if they:

1. demonstrate that they have reflected on their own performance or conduct and understand what went wrong.
2. accept they should have behaved differently in the circumstances.
3. demonstrate that they understand the impact or potential impact of their performance or conduct.
4. demonstrate empathy for any individual involved.

5. take timely steps to remediate and identify how they will act differently in the future to avoid similar issues arising.

171. The LQC advised the Tribunal that it should not necessarily equate the maintenance of innocence at the Facts stage with a lack of insight. A doctor is entitled to defend himself, so if a doctor does no more than put the GMC to proof, then that stance should not be held against them during the impairment and sanctions stages. If, on the other hand, a doctor defends an allegation of primary fact by giving dishonest evidence and by deliberately seeking to mislead a Tribunal then that conduct is relevant to consideration of impairment and fitness to practise in the future (*Sayer v General Osteopathic Council* [2021] EWHC 370 (Admin)). It is possible that a doctor can demonstrate that he fully appreciates the gravity of the matters alleged and it is proper to take into account a doctor's understanding of, and attitude toward, the underlying allegation.

172. The LQC reminded the Tribunal that it can take Dr Rawat's good character into account when considering impairment. The Tribunal should also note the appraisal documentation, the testimonials, the statement from Dr Rawat's wife, and the courses that he has attended. The Tribunal should consider these and attach such weight to them as it considered appropriate.

173. As well as considering the features set out in *Grant*, the Tribunal must also determine whether the need to uphold professional standards and maintain public confidence would be undermined if a finding of impairment was not found. It was also crucial that the Tribunal was mindful of the overarching objective in terms of the need to protect, promote and maintain the health, safety and well-being of the public; promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

The Tribunal's Determination on Impairment

Misconduct

174. The Tribunal firstly considered whether Dr Rawat's actions amounted to serious misconduct.

175. In reaching its determination, the Tribunal reminded itself of its findings. The Tribunal had found proved that, on or around 1 April 2019, Dr Rawat grabbed Ms A by her shoulders and pulled her towards him, and then kissed her on her mouth. This took place when they

were together in a car. The Tribunal had found that Dr Rawat's conduct was carried out without Ms A's consent, constituted sexual harassment and was sexually motivated.

176. The Tribunal also had regard to the impact of Dr Rawat's actions upon Ms A. It had heard from Ms A and Witness B about the distress Ms A experienced in the weeks after the incident. She was shocked and upset. She stated that it had affected her mental health. Witness B outlined Ms A's behaviour, stating that she was, for example, '*troubled'*, and *'weepy'.* Witness B stated that she had heard Ms A *'wailing'* in her room and looked as though she was not sleeping well. She remarked that she was '*saddened to see Ms A so distressed'.*

177. The Tribunal considered the submissions from both Ms Dudley-Jones and Mr Kirke about whether there was an element of pre planning or calculation on Dr Rawat's part before the day of the incident. Ms Dudley-Jones had referred to the previous conversations that Ms A and Dr Rawat had as evidence that Dr Rawat was purposefully building up Ms A's trust in him. However, the Tribunal had not made a finding as to whether these comments were said or not, and in any event, had found this area of Ms A's account to be inconsistent. It had noted that Ms A had told Mr C in the email that Dr Rawat had behaved *'very decently'* before they had XXX which is at odds with her account of the *'demeaning'* remarks. The Tribunal decided that, even if the comments were made, they did not show purposeful pre planning as described. The Tribunal accepted that this was an isolated incident.

178. Having considered the facts proved, the Tribunal considered that Dr Rawat's actions were therefore in breach of paragraphs 1,36, and 65 of GMP as set out below:

> *'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.*
>
> *36. You must treat colleagues fairly and with respect.*
>
> *65. You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.'*

179. The Tribunal also concluded that fellow practitioners would consider Dr Rawat's actions as deplorable, given the sexual nature of his conduct on a junior colleague. Dr Rawat's actions took place without Ms A's consent and had a considerable impact on her. The

Tribunal also noted the age and experience imbalance between Dr Rawat and Ms A, and the fact that Ms A was XXX.

180. The Tribunal therefore concluded that Dr Rawat's actions fell so short of the standards of conduct reasonably expected of a doctor as to amount to serious misconduct. The Tribunal determined that the conduct would undermine public confidence and did not uphold the standards of the profession.

Impairment by reason of misconduct

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

182. The Tribunal considered that limbs *b* and *c* of the test set out by Dame Janet Smith, above, were applicable in this case in that Dr Rawat had brought the medical profession into disrepute and had breached one of the fundamental tenets of the medical profession.

183. The Tribunal did not consider that limb *d* of the test applied. It accepted that Dr Rawat was entitled to put his defence, and it had not made any finding in relation to the detail of the conversations that were had between Dr Rawat and Ms A. The Tribunal did not consider that limb *a* of the test applied, as there was no actual or future risk to patients.

184. The Tribunal then went onto to consider whether Dr Rawat's conduct was remediable, whether it had been remediated, and any likelihood of repetition.

185. The Tribunal concluded that Dr Rawat's actions, while serious, were a one-off incident. Whilst it appreciated that non-clinical matters may be harder to remediate, the Tribunal agreed that his actions were, in principle, remediable.

186. In determining whether Dr Rawat had remediated his misconduct, The Tribunal considered the level of insight evidenced. It acknowledged that Dr Rawat had maintained his innocence. The Tribunal acknowledged that Dr Rawat was entitled to deny the allegations against him and put forward his defence.

187. The Tribunal had regard to any reflections and comments from Dr Rawat. Mr Kirke had submitted that Dr Rawat was disappointed but respected the Tribunal's decision. Dr Rawat had not provided any meaningful reflections, written or oral, save for, through his

counsel, recognising the impact that they had on Ms A. There had been no apology or acknowledgement of distress to Ms A.

188. The Tribunal noted Dr Rawat's Appraisal 2022-2023. He had not suggested any CPD or courses relating to this incident. He had, however, after advice, undertaken two eLearning professional boundaries courses on 21 March 2024. The Tribunal would have been assisted by evidence of what Dr Rawat had learned or understood as a result of those courses. There appeared to be limited steps both in terms of remediation and insight at this stage.

189. The Tribunal then considered whether there was any likelihood of repetition. The Tribunal noted that the incident happened five years ago and there had been no suggestion of any other concerns either before or since. It noted that Dr Rawat had cooperated with these proceedings and had a desire to continue to practise. The Tribunal had also had regard to the positive testimonials from Dr F and Ms G, who stated:

> [Dr F] *'He consistently upholds the highest standards of professionalism and integrity, earning the trust and respect of both patients and colleagues alike.'*
>
> [Ms G] *'On a personal level at work Dr Pawan is very polite and well mannered. He is very courteous and conscientious with colleagues and patients alike.'*

190. The Tribunal also noted the comments from Dr Rawat's wife that:

> *'He is a kind, trustworthy, honest and decent individual who has empathy and a conscience. He would never take advantage of others. I have never known him to be anything other than a person of integrity and good moral character.'*

191. The Tribunal noted that Dr Rawat's Responsible Officer had confirmed there were no other concerns or complaints. It also had regard to the appraisal and 360 feedback which showed that Dr Rawat was involved in teaching others and was generally marked as *'good'*. It noted the comments in the appraisal documentation that Dr Rawat works well with colleagues and is a good team member, as well as positive comments from patients.

192. The Tribunal bore in mind the positive testimonials provided on Dr Rawat's behalf and noted that there had been no other concerns identified, nor repeat of the behaviour since. However, the Tribunal was of the view that it did not have sufficient evidence of insight before it to find that no risk of repetition remained.

193. The Tribunal has found that Dr Rawat's actions constituted serious misconduct. It also determined that Dr Rawat had shown only limited insight, partial remediation, and therefore there remained a risk of repetition. It concluded that a finding of impairment was necessary, therefore, in order to uphold limbs *b* and *c* of the overarching objective, namely, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of the professions.

194. In light of the above, the Tribunal determined that Dr Rawat's fitness to practise is currently impaired by reason of misconduct.

Determination on Sanction - 08/04/2024

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

196. As with its previous determinations, this determination will be handed down in private, given there may be matters that relate to Ms A's identity, or to Dr Rawat's XXX. However, as this case concerns Dr Rawat's misconduct, a redacted version will be published at the close of the hearing.

The Evidence

197. The Tribunal took into account all of the evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

198. The Tribunal considered the submissions of both Ms Dudley-Jones and Mr Kirke, summaries of which are set out below.

Submissions

Submissions on behalf of the GMC

199. Ms Dudley-Jones stated that it was a matter for the Tribunal as to which sanction, if any, to impose on Dr Rawat. She took the Tribunal through the Sanctions Guidance (5 February 2024) (SG) in detail. She reminded the Tribunal that the main reason for imposing a sanction on a doctor is to protect the public. She pointed the Tribunal to paragraph 4 of the SG, which confirmed that its purpose is to apply the overarching objective set out in s1 of the Medical Act 1983.

200. Ms Dudley-Jones referred to the mitigating factors that are set out in the SG, and how they applied to Dr Rawat's case. She said that the Tribunal had found that Dr Rawat had demonstrated only limited insight and remediation. She confirmed that Dr Rawat was hitherto a man of good character, with no previous fitness to practise history. She stated that the Tribunal had evidence that Dr Rawat was keeping up to date in terms of his knowledge and skills generally, and that he had taken two CPD courses relating to Professional Boundaries. She acknowledged that it had been five years since the incident occurred.

201. Ms Dudley-Jones acknowledged that the Tribunal had found that Dr Rawat's misconduct was remediable in principle, but highlighted paragraph 32 of the SG for the Tribunal to consider. It states:

> *'There were some cases where a doctor's failings are difficult to remediate'…*
>
> *'…This is because they are so serious that despite steps subsequently taken, there remains a current and ongoing risk to public protection and action is needed to maintain public confidence...'*

202. In terms of the paragraphs of the SG about aggravating factors, Ms Dudley-Jones stated that the facts in this case amounted to conduct of a sexual nature. She submitted that the Tribunal may also want to consider the disparity in age between Dr Rawat and Ms A, who was a junior colleague, the fact that Ms A was XXX, and the considerable impact that this incident had on her.

9. Ms Dudley-Jones stated that the Tribunal had already identified that there was no sufficient evidence of insight, and therefore a risk of repetition remained. She stated that there had been no expressions of regret or apology to Ms A and, as identified by the Tribunal, there had not been any acknowledgement of the distress that he had caused to Ms A.

203. Ms Dudley-Jones referred to paragraph 55 of the SG. This paragraph is a list of '*Aggravating factors that are likely to lead the tribunal to consider taking more serious action'*. She submitted that the Tribunal might wish to consider that *'a failure to work collaboratively with colleagues'* applied, as well as the fact that the case involved *'sexual misconduct'*.

204. Ms Dudley-Jones referred to the statement from Dr Rawat's Responsible Officer, Mr I. She stated that he had met with Dr Rawat on 25 July 2023, and that Dr Rawat had told him that he was considering enrolling in a professional boundaries course. Ms Dudley-Jones

stated that the two courses were in fact only completed as late as 21 March 2024, and there was no evidence of what Dr Rawat had learnt as a result of them. This again demonstrated that there were only limited steps taken regarding remediation and insight. There were no meaningful reflections from Dr Rawat.

205. Ms Dudley-Jones submitted that this was not a case involving '*exceptional circumstances'* such as to justify the Tribunal taking no action. She also confirmed that undertakings were not being considered.

206. Ms Dudley-Jones pointed the Tribunal to the paragraphs of the SG that relate to conditions. She submitted that this case was one of sexual misconduct, and did not relate to Dr Rawat's health, performance, or lack of knowledge of English. She said that there was only limited evidence of insight. She submitted therefore that imposing conditions on Dr Rawat's registration would not be appropriate, workable, or measurable, and neither would it be proportionate when considering the seriousness of the incident.

207. On behalf of the GMC, Ms Dudley-Jones stated, in the circumstances of this case, that a period of suspension would be appropriate and proportionate. She asked the Tribunal to consider the seriousness of the case. Paragraph 150 for example, states that *'sexual misconduct seriously undermines public trust in the profession'*. She referred to paragraph 91 of the SG which relates to suspension. It states that the suspension of a doctor's registration has a *'deterrent effect'* and could *'be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor'*.

208. With reference to paragraph 92 of the SG, Ms Dudley-Jones stated that suspension would *'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'*.

209. Ms Dudley-Jones also took the Tribunal to paragraph 97 of the SG. It lists some of the factors which *'would indicate suspension may be appropriate.'* Ms Dudley-Jones submitted that there had been a serious departure from GMP. She accepted that there was no evidence that remediation was unlikely to be successful, and there was no evidence of a repetition of similar behaviour since the incident.

210. When considering the length of a suspension, Ms Dudley-Jones asked the Tribunal to consider its original findings and its findings regarding insight. It should also allow sufficient time to ensure that Dr Rawat has adequate time to remediate.

211. In response to Mr Kirke's submissions as to delay, included below, Ms Dudley-Jones submitted that there had been no inappropriate or unreasonable delay by the GMC or MPTS, and she took the Tribunal through the chronology of the case to demonstrate this. She accepted, however, that there had been a significant lapse of time since the incident.

Submissions on behalf of Dr Rawat

212. On behalf of Dr Rawat, Mr Kirke agreed that a suspension order was the most appropriate sanction in this case. He stated that Dr Rawat recognised, given the facts found proved, that no lesser sanction would be appropriate in the circumstances. Mr Kirke submitted that the length of suspension ought to be at the lower end and suggested a period of no longer than three months.

213. Mr Kirke referred to his submissions on impairment, many of which he again relied upon, surrounding Dr Rawat's good character, his positive character references and his excellent performance in his professional life.

214. Mr Kirke addressed the Tribunal in relation to insight. He noted that the Tribunal had found that Dr Rawat's insight was limited, and only partial steps had been taken to remediate. He submitted that this should still be considered a mitigating factor.

215. Mr Kirke submitted that Dr Rawat had cooperated with this process and had the insight to act upon the advice he was given. He had taken the professional boundaries courses accordingly. He stated that the courses were plainly relevant and that the delay in taking them could be explained by the emotional toll this case had had on Dr Rawat. Mr Kirke also stated that, given the serious allegations, it may not automatically be a person's first response to undertake a variety of CPD courses. He submitted that perhaps the natural first response may be consideration of their own personal position, which Dr Rawat had done in contesting the matter as he was entitled to do.

216. Mr Kirke stated that the Tribunal had received character references that confirm that Dr Rawat ordinarily treats female colleagues with respect and dignity.

217. Mr Kirke submitted that Dr Rawat respected the decision of the Tribunal and was capable of showing a level of empathy. He was capable of understanding the harm that has been caused to Ms A.

218. Mr Kirke submitted that Dr Rawat has been performing well in his professional obligations outside of this incident and has been doing so since his arrival to the UK in 2010.

He submitted that a strong part of the mitigation for Dr Rawat was that he had been practising in the UK for nearly 15 years during which he had been an upstanding member of the profession.

219. Mr Kirke submitted that the incident dates back almost five years and the GMC had been aware of this incident since 2021. He submitted that this was a simple case factually and there was no reason given for the inexcusable delay in bringing the allegation against Dr Rawat. Mr Kirke stated that Dr Rawat had cooperated with the police, who were able to conclude their investigation promptly. He submitted that Dr Rawat was then left in a position where this matter was *'hanging over his head'* for the last 2.5 years with the threat of his livelihood being taken away from him.

220. Mr Kirke referred to the fundamental right to have a matter heard within a reasonable time and to his comments about the emotional toll this case has taken on Dr Rawat such that he had to take a career break in November 2023. Mr Kirke referred to the cases of *Langford v Law Society* [2002] EWHC 2802 (Admin) and *Selvarajan v GMC* [2008] EWHC 182 (Admin). He submitted that both cases indicated that delay was relevant to sanction and, if it were considered that there had been an inappropriate and unreasonable delay, it was possible to reflect that in the penalty imposed.

221. Mr Kirke also, whilst accepting they were criminal cases, referred to *Mills (Kenneth Anthony) v HM Advocate (No.2)* [2004] 1 A.C. 441, and *Beattie Milligan* [2019] EWCA Crim 2367. There was reference in these cases to the effect of delay on a defendant, but also on their family, such that a court could take this into account at sentence. Mr Kirke referred to the statement from Dr Rawat's wife. He highlighted that these proceedings had put a lot of XXX financial strain on Dr Rawat's whole family.

222. Regarding *Mills*, Mr Kirke stated that another reason to consider the issue of delay was that a person's life may have changed during the period between the acts alleged and the time of sanction. He confirmed that Dr Rawat had not had any complaints made against him since the incident and had been performing well professionally. He had also been tutoring junior colleagues and medical students. Mr Kirke submitted that Dr Rawat has demonstrably proven that he is capable of holding a position of trust and exercising that position with colleagues in a positive way.

223. Mr Kirke repeated his submissions that he made at the impairment stage that this incident had not involved violence or touching in an intimate area. It was extremely short lived and could be seen as being at the *'lower end'* of sexual incidents of this nature. Mr Kirke

stated that this was an isolated incident that lasted only a few seconds, with no misconduct immediately before or thereafter.

224. Mr Kirke stated that suspension would prevent Dr Rawat from earning his living as a doctor and referred to Dr Rawat's personal circumstances. He submitted that, given the limited nature of the facts found proved, and because this was an isolated incident in an otherwise unblemished career, the Tribunal could consider imposing only a short period of suspension. Mr Kirke referred to the positive references, Dr Rawat's good character, the issue of delay, the fact that there had been some insight shown, and the lack of any repeated behaviour. He suggested that a period of three months would be an adequate period of time for remediation. Mr Kirke submitted that, if the Tribunal were not with him on his primary submission as to length, it should give the shortest period commensurate with all the factors he had outlined.

The Relevant Legal Principles

225. The LQC gave advice to the Tribunal which is summarised below:

226. The Tribunal was reminded that the decision as to the appropriate sanction, if any, is a matter for the Tribunal's own judgement, which must be made independently.

227. The Tribunal was informed that it must have regard to the SG (February 2024) which gives it an authoritative steer. It should consider the least restrictive sanction first, and then move on, if needs be, to consider the other available options in ascending severity.

228. The Tribunal was advised that the reason for imposing sanctions is to uphold the overarching objective; sanctions are not imposed to punish doctors, although they may have a punitive effect. Any sanction must be appropriate and proportionate, but the reputation of the profession as a whole is more important than the interests of any individual doctor.

229. The Tribunal was reminded that it had found that Dr Rawat's actions were sexually motivated, took place without Ms A's consent, and amounted to sexual harassment. Cases involving sexual misconduct were serious.

230. The Tribunal was advised that it should again take into account Dr Rawat's good character, and the bundle of evidence containing testimonial evidence, 360 feedback and appraisals.

231. The Tribunal was reminded again, of the overarching objective of the GMC set out in section 1 of the Medical Act 1983 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.*

232. The Tribunal was asked to consider the counsel submissions regarding delay. The incident had taken place five years ago, and the significant lapse of time between the incident and sanction can be taken into account.

The Tribunal's Determination on Sanction

233. The Tribunal considered the LQC advice, and the submissions of both Ms Dudley-Jones and Mr Kirke. It noted that the decision as to the appropriate sanction was a matter for the Tribunal itself, exercising its own judgment.

234. The Tribunal reminded itself of its findings. The Tribunal had found that, on or around 1 April 2019, Dr Rawat had grabbed Ms A by her shoulders and pulled her towards him, and then kissed her on her mouth. This took place when they were together in a car. It noted that Ms A was a junior colleague, who was XXX. The Tribunal had found that Dr Rawat's conduct was carried out without Ms A's consent, constituted sexual harassment and was sexually motivated. The Tribunal noted the impact of Dr Rawat's actions upon Ms A and the distress that Dr Rawat's actions had caused her.

Aggravating and mitigating factors

235. The Tribunal first considered the aggravating and mitigating factors in this case and then moved on to consider the appropriate sanction. The Tribunal was mindful that it needed to consider and balance any aggravating and mitigating factors presented to it against the central aim of sanctions, namely, to uphold the overarching objective.

Aggravating

236. The Tribunal considered the circumstances of the case, and was assisted by paragraph 55 of the SG, which lists aggravating factors that are likely to lead the Tribunal to consider

more serious action. It identified that Dr Rawat had *'failed to work collaboratively with colleagues',* and that his actions constituted '*sexual misconduct*.'

237. The Tribunal also had regard to paragraph 52 that states;

> *'A doctor is likely to lack insight if they:*
>
> *a. refuse to apologise or accept their mistakes.*
>
> *b. promise to remediate, but fail to take appropriate steps, or only do so when prompted immediately before or during the hearing.'*

238. The Tribunal concluded that Dr Rawat had not demonstrated full insight. Although he had not specifically refused to apologise, there had been no expression of apology to Ms A or remorse for his actions either during these proceedings or to his Responsible Officer, Mr I. The Tribunal noted that Dr Rawat had mentioned to his Responsible Officer that he was considering taking a professional boundaries course when they met on 25 July 2023. However, the courses were only completed on 21 March 2024 after advice. The Tribunal decided that this limited remediation was not timely. It also noted that it had not been furnished with evidence to show what Dr Rawat had learnt from the courses.

Mitigating

239. The Tribunal again considered the circumstances of the case. It accepted that the sexual misconduct that it had found proved was an isolated incident and was fleeting in nature. It noted that he had not been convicted of a sexual offence, that no violence had been used, and no intimate touching had taken place.

240. The Tribunal noted paragraph 25 of the SG which sets out examples of mitigating factors. It firstly considered paragraph 25(a), which sets out an example of a mitigating factor as;

> '*Evidence that the doctor understands the problem and has insight, and of their attempts to address or remediate it...'*

241. The Tribunal noted that there was some limited insight in this case. Mr Kirke stated, on behalf of Dr Rawat, that he accepted the Tribunal's decision and understands the harm caused to Ms A. The Tribunal accepted that Dr Rawat had started to remediate his actions by attending the two professional boundaries courses, although these were only completed in March 2024.

242. The Tribunal then considered paragraph 25(b) of the SG, which describes another example of a mitigating factor;

> *'Evidence that the doctor is adhering to important principles of good practice (ie keeping up to date, working within their area of competence), and of the doctor's character and previous history...'*

243. The Tribunal took into account Dr Rawat's previous good character as a mitigating factor. It noted that there were no previous concerns about his fitness to practise. There had been no complaints about his behaviour either before or since the incident.

244. The Tribunal accepted the evidence that demonstrated that Dr Rawat was a competent doctor. His 360 feedback showed that he worked well with others and had held positions of trust working with students and junior colleagues.

245. The Tribunal had regard to Dr Rawat's positive appraisals which showed that he is well regarded by both colleagues and patients and was marked as *'good'* across most competencies. The Tribunal noted the comment from Dr Rawat's appraiser that:

> *'He [has] been actively involved in supervising the medical students and junior clinician's (sic) in the department.'*

246. The Tribunal took into account the positive testimonials from both Dr F and Ms G, which it had already quoted, in part, in the impairment determination. The Tribunal also had regard to the following comments:

> [Dr F] *'He is proactive in seeking opportunities for learning and professional development, actively participating in departmental activities and contributing valuable insights to our team.'*

> [Ms G] *'Dr Pawan has always acted in a professional and respectful manner to me and our patients'.*

247. The Tribunal also noted the comments in Dr Rawat's wife's statement that:

> *'I have never had a doubt on his character. I have had colleagues who have known and worked with both of us and no one has ever raised a question or cast a doubt on his character.'*

248. The Tribunal also received a statement from Dr Rawat's Responsible Officer. This confirmed that Dr Rawat had informed him about these proceedings, and that there were no concerns about patient safety, nor any complaints or incidents reported to him about Dr Rawat.

249. The Tribunal accepted that there was evidence that Dr Rawat was of good character, was a competent and trusted doctor, and posed no risk to patients.

250. The Tribunal also noted that, at paragraph 25(e) of the SG, it lists another example of a mitigating factor as being the *'Lapse of time since an incident occurred.'*

251. The Tribunal noted that the incident happened five years ago, and it accepted that there had been an emotional toll on Dr Rawat during these proceedings. It noted that there had been no suggestion of any other concerns either before or since.

No action

252. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Rawat's case, the Tribunal first considered whether to conclude the case by taking no action.

253. The Tribunal determined that, in view of its findings on the facts and impairment, it would be neither appropriate, proportionate nor in the public interest to conclude this case by taking no action. There were no exceptional circumstances to justify taking no action.

Conditions

254. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Rawat's registration.

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

256. The Tribunal noted paragraph 85 of the SG, which states that any conditions imposed *'should be appropriate, proportionate, workable and measurable'*. The Tribunal, having regard to the seriousness of the misconduct, determined that it was unable to formulate any workable or appropriate conditions that would adequately address the need to maintain

public confidence and uphold proper professional standards and conduct for the members of the profession.

Suspension

257. The Tribunal then went on to consider whether suspending Dr Rawat's registration would be an appropriate and proportionate sanction. In doing so, it considered paragraphs 91 and 92 of the SG which state;

> *'91. Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.*
>
> *92. Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (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).'*

258. The Tribunal also considered paragraphs 97(a), (e) and (f) which state:

> *97. Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate:*
>
> > *"a. A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.*
> > *...*
> > *e. No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.*

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

259. The Tribunal determined that there had been a serious breach of GMP, as outlined at the impairment stage. It also concluded that, while there has been limited evidence of remediation, there was no evidence that demonstrated that future remediation was unlikely to be successful. It relied on the fact that there had been no repetition of the behaviour, and that Dr Rawat was of previous good character. It also attributed significant weight to the testimonial evidence put forward on Dr Rawat's behalf.

260. The Tribunal determined that a period of suspension would sufficiently mark the seriousness of Dr Rawat's misconduct and would uphold limbs *b* and *c* of the overarching objective. It concluded that suspension would have a deterrent effect and would effectively send out a signal to Dr Rawat, the profession, and the public about what is regarded as professional conduct unbefitting a registered doctor. The Tribunal decided that suspension was appropriate and proportionate in this case to ensure the necessary action to maintain public confidence in the profession and uphold proper professional standards and conduct for the members of the profession.

Erasure

261. Whilst the Tribunal concluded that a period of suspension was the appropriate and proportionate sanction, it did go on to consider the SG in relation to erasure, because of the serious nature of the conduct. It noted that a Tribunal may erase a doctor's name from the medical register in any case *'where this is the only means of protecting the public'* (paragraph 107), or where it '*is necessary to maintain public confidence in the profession'* (paragraph 108).

262. The Tribunal considered paragraphs 109 and 138 of the SG which state:

'109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).

a. A particularly serious departure from the principles set out in Good medical practice where the behaviour is difficult to remediate.

...

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

And

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

...

b sexual harassment'

263. The Tribunal was of the opinion that Dr Rawat's misconduct, whilst a serious breach of GMP, was not fundamentally incompatible with continued registration. This was a one-off incident and there had been no concerns raised before or since. The incident constituted sexual misconduct and had an impact on Ms A, but the Tribunal determined that this was behaviour that fell lower in severity than other potential cases of sexual misconduct, due to its fleeting, isolated nature. The Tribunal considered that it would be disproportionate to erase a doctor in these circumstances especially as there were no concerns about patient safety, and in the light of the positive testimonials outlined above. It determined that there is potential for the development of insight and for further remediation steps to be shown.

264. For the reasons set out above, the Tribunal concluded that erasure would not, in this case, be necessary to maintain public confidence in the profession.

Length of suspension

265. The Tribunal had regard to paragraph 100 of the SG, which sets out the factors which are relevant when determining the length of suspension. They are:

'a. the risk to patient safety/public protection
b. the seriousness of the findings and any mitigating or aggravating factors...
c. ensuring the doctor has adequate time to remediate.'

266. The Tribunal noted that this incident did not give rise to concerns about issues of patient safety, and that there was evidence that Dr Rawat was otherwise a competent and well respected doctor. It was of the view that there were limited public protection issues. The Tribunal noted the seriousness of its findings, and the impact and distress upon Ms A. There was a departure from the principles of GMP and significant, but not sustained, misconduct. It also noted the aggravating and mitigating factors as outlined above. In terms of adequate time for Dr Rawat to remediate, the Tribunal considered that Dr Rawat needed time to reflect on his actions but was of the view that this need not take a considerable period of time.

267. The Tribunal was mindful that, as at paragraph 101 of the SG, its *'primary consideration should be public protection and the seriousness of the findings'*.

268. The Tribunal determined that a period of three months would be sufficient to allow Dr Rawat to develop his insight and provide evidence of his reflections. It also determined that a period of three months would be sufficient to uphold limbs *b* and *c* of the overarching objective, namely, to promote and maintain public confidence in the medical profession, and to promote and maintain prodder professional standards and conduct for members of that profession.

Review hearing

269. The Tribunal determined to direct a review of Dr Rawat's case. A review hearing will convene shortly before the end of the period of suspension. The Tribunal wishes to clarify that, at the review hearing, the onus will be on Dr Rawat to demonstrate how he has remediated and developed further insight. It therefore may assist the reviewing Tribunal if Dr Rawat were to provide:

- evidence of his developing insight about his actions, and the impact of them on Ms A.
- evidence of what he has learnt from the professional boundaries courses that he undertook in March 2024 (and any other courses he undertakes).

270. The Tribunal also makes the suggestion that Dr Rawat may wish to consider having a documented discussion with a mentor or senior colleague about his actions and insight.

271. Dr Rawat will also be able to provide any other information that he considers will assist.

Determination on Immediate Order - 08/04/2024

272. Having determined to suspend Dr Rawat's registration for three months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Rawat's registration should be subject to an immediate order.

Submissions

273. Ms Dudley-Jones did not request an immediate order. She confirmed that it was a matter within the Tribunal's discretion and that the SG should be considered.

274. Ms Dudley-Jones stated that there was no interim order in place on Dr Rawat's registration.

275. Mr Kirke stated that there were no submissions in respect of immediate order on behalf of Dr Rawat.

The Tribunal's Determination

276. In making its decision the Tribunal had regard to a number of paragraphs of the SG, including:

> *'172. The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.*
>
> *173. An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.*
> *...*
> *178. Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.'*

277. The Tribunal reminded itself of its findings and conclusions. It noted that the incident had taken place five years ago and there had not been any other concerns before or since. It did not consider there to be a risk to patient safety.

278. In all the circumstances, the Tribunal decided not to impose an immediate order of suspension on Dr Rawat's registration. The Tribunal considered that the substantive suspension would be sufficient to uphold limbs *b* and *c* of the overarching objective, which

are to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of the profession.

279. This means that Dr Rawat's registration will be suspended 28 days from the date on which written notification of this decision is deemed to have been served, unless he lodges an appeal. If Dr Rawat does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.

280. There is no interim order to revoke.

281. That concludes this case.

ANNEX A - 28/03/2024

Applications for anonymity and redaction

Hearing in private

1. On 25 March 2024, on day one of the hearing, Ms Dudley-Jones, Counsel for the GMC, made two applications. These were both preliminary issues, and the applications were made before the Tribunal started to hear the case.

2. The first application was for the complainant to be anonymised as Ms A, and the second related to Ms A's health and the health of her family. The Tribunal decided, therefore, that the applications should be heard in private, in accordance with Rule 41 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). As such, this determination will be read in private, but a redacted version will be published following the conclusion of this hearing, with those matters relating to Ms A's identity, health, or the health of her family removed.

282. The Tribunal was furnished with skeleton arguments from both counsel. These were considered carefully, as were the oral submissions that were made. The arguments put by both counsel are summarised below.

Anonymity application

283. Ms Dudley-Jones firstly made an application for the complainant to be anonymised to 'Dr A' for the duration of the hearing. She pointed out that the complainant had already been granted a Special Measure at a case management hearing, and that Dr Rawat's camera was due to be disabled when Ms A gave her evidence. It had been decided at that earlier hearing that the complainant should be treated as a 'vulnerable witness' under Rule 36(1)(e) of the Rules, because she was the alleged victim in a case of a sexual nature.

284. Mr Kirke, representing Dr Rawat, did not oppose the application. The Tribunal therefore granted the application, given the nature of the case. It agreed that Ms A was a 'vulnerable witness' under Rule 36(1)e, and that anonymity was an appropriate measure.

Application for redactions to the hearing bundle

285. Ms Dudley-Jones then made an application under Rule 34(1) of the Rules. She asked for a redaction to paragraphs 14 to 16 of Dr Rawat's witness statement dated 12 February

2024. There was reference, at paragraph 14, to Ms A claiming that her family had XXX health issues and, at paragraphs 15 to 16, to Ms A saying that she had XXX.

Submissions

Submissions on behalf of the GMC

286. Ms Dudley-Jones submitted that both references in the statement were entirely irrelevant, prejudicial and were potentially seeking to damage or undermine Ms A's credibility. She said that they should be ruled inadmissible, and the statement redacted accordingly.

287. The reference to Ms A allegedly informing Dr Rawat that she had XXX was addressed. Ms Dudley-Jones submitted that Dr Rawat was potentially seeking to link Ms A's alleged medical history and associated concerns around marriage, as a potential motive for her actions, or evidence of why she was being untruthful.

288. The reference to Ms A alleging informing Dr Rawat about XXX health issues in her family was also addressed. Ms Dudley-Jones stated that Dr Rawat's counsel was arguing that neither a specific family member nor specific diagnosis were being referred to. She submitted that this was precisely why the reference should be redacted, as there was no detail or elaboration other than what could be perceived as a negative slur or attack on Ms A's credibility. Ms Dudley-Jones also submitted that there was a speculative inference that the reason Ms A may have been emotional at the time was she too had, or may have, XXX health issues.

289. Ms Dudley-Jones stated that the GMC did not seek to redact other issues in Dr Rawat's account. For example, Dr Rawat was alleging that Ms A discussed financial matters with him and asked him for money. She did however seek to limit material that sought to unnecessarily attack Ms A's credibility without any foundation.

290. It was further submitted that there was no independent XXX evidence of whether Ms A did have XXX or whether there were the XXX health issues in her family as she had allegedly described to Dr Rawat.

291. Ms Dudley-Jones stated that the GMC was also concerned, given Ms A's own cultural background, that these highly personal irrelevant issues may be something that she finds very upsetting if posed to her under cross-examination. She also stated that these references

had not been referenced by Dr Rawat previously and had not been mentioned in the criminal investigation or earlier in these proceedings.

292. Ms Dudley-Jones asked the Tribunal, in the event that it decided to allow the admissibility of these two references, to hear those specific matters in private since they pertained not only to the complainant's familial XXX health but also to the complainants' own XXX health.

Submissions on behalf of Dr Rawat

293. Mr Kirke stated that the application for redaction of the two references was opposed. He submitted that the inclusion was fair and in accordance with Rule 34. He stated that Dr Rawat was facing an extremely serious allegation that had serious professional consequences if there were to be an adverse finding against him. Mr Kirke stated that Dr Rawat had a right to defend the allegation in the strongest possible terms and for his case to be considered in line with all relevant material.

294. Mr Kirke submitted that Dr Rawat did not seek to admit the evidence to prove that the content of the alleged conversations surrounding Ms A's familial XXX health, or her own physical health were true. He stated that Dr Rawat had no knowledge about whether Ms A's family had XXX health issues, or whether she had XXX other than what he alleges Ms A told him. Mr Kirke stated that Dr Rawat simply wished to adduce the fact that the conversation took place and challenge Ms A on that conversation. He submitted that the evidence was therefore not speculative, nor was it an attack on Ms A's family or own personal health.

295. Mr Kirke stated that Dr Rawat was the only person who could give evidence about this conversation having taken place. He submitted that it would be wrong, as a matter of principle, for someone to be precluded from putting forward their case, on the basis that nobody else was able to provide evidence on the topic. Mr Kirke stated that Dr Rawat had already produced a signed witness statement, containing a declaration of truth, and his account could be tested under cross-examination to understand his own credibility.

296. Mr Kirke submitted that the question of whether or not the conversation took place was highly relevant to the Allegation. He stated that a complainant's emotive state at the time was fundamental to understanding their credibility. Mr Kirke stated that, essentially, Ms A suggested that the *"sexualised"* conversations were all *"one way traffic"*. Dr Rawat was suggesting the opposite, in terms of the tone of the conversation. Mr Kirke submitted that it was therefore entirely reasonable that this should be challenged by exploring whether Ms A

made any comments herself surrounding the issue of a possible relationship and the reasons for wanting such a relationship.

297. Mr Kirke stated that, if this evidence was not admitted, Dr Rawat would be left in an extremely prejudicial position where Ms A's account could not be tested fairly. He stated that there must be an opportunity for Dr Rawat to put appropriate questions to Ms A in order to explore a potential motive for fabrication.

298. Further, Mr Kirke stated that the GMC suggested that Ms A ought not to be asked these questions on the basis that these personal issues may be something she finds upsetting. He stated that this was not the test for relevance nor admissibility, and this was why special measures existed.

299. Finally, Mr Kirke stated that the GMC also suggested that this evidence ought not to be admitted on the basis that Dr Rawat had never referenced them before. Mr Kirke submitted that this was irrelevant for considering the purposes of admissibility. He stated that the fact that inference could be drawn plainly showed that such evidence could be admitted. Mr Kirke stated that there was no objection to hearing these matters in private, and therefore any prejudice which may fall against Ms A could be mitigated by appropriate special measures.

Tribunal Approach

300. The LQC gave advice in relation to this application. She pointed out that part of the Allegation is that sexualised comments were made by Dr Rawat to Ms A in a car. Dr Rawat's statement is his account of what was said in the car and is different to the account given by Ms A. The Tribunal was reminded that it will, in due course, need to consider the different accounts, and assess both Ms A and Dr Rawat's credibility.

22. The Tribunal was advised to make their decision based on Rule 34(1), which sets out how the Tribunal should approach admissibility. It states:

> *"…a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law."*

301. The Tribunal was informed that 'relevant' means *"relevant to an issue in the case"*, and that this is a matter for the Tribunal to determine.

302. Dr Rawat is entitled to a fair trial under Article 6(1) of the European Convention on Human Rights. It means that he can put his case and is allowed to cross-examine witnesses on relevant matters. The Tribunal was also reminded that the concept of fairness goes both ways. It encompasses fairness to the GMC, and to its case.

303. The Tribunal was informed that, if a witness is distressed by a certain line of questioning, then special measures can be put in place to assist them give their best evidence, and evidence can be given in private if the Tribunal so directs.

304. The Tribunal was informed that if it decides to admit the evidence, then it must decide what, if any, weight to give it.

Tribunal determination

305. The Tribunal had regard to the skeleton arguments and oral submissions from both parties. It noted the advice from the LQC and considered Rule 34(1) of the Rules.

306. The Tribunal had regard to the specific statements at paragraphs 14 to 16 of Dr Rawat's witness statement. It decided that this material was relevant to an issue in the case, namely the conversation/s that Ms A and Dr Rawat had in the car, and to the credibility of them both.

307. The Tribunal was mindful that the allegation against Dr Rawat is a serious one and it would be fair to allow him the opportunity to give his account of what happened in the car. Further, it would also be fair for Dr Rawat, through Mr Kirke, to cross-examine Ms A about that account.

308. The Tribunal noted the suggestion by the parties that reference to these matters could be dealt with in private session. The Tribunal noted the other special measures in place and determined that hearing reference to these matters in private session, which was not opposed, would be an appropriate solution as they related to Ms A's health and the health of her family.

309. Overall, the Tribunal determined that it was fair and relevant for the two specific references, at paragraphs 14 to 16 of Dr Rawat's witness statement, to be admitted and so refused the GMC's application for redaction.

ANNEX B - 03/04/2024

Application for special measures/anonymity of a witness

310. As with Annex A, this determination will be read in private as it deals with the identity of an anonymised witness.

311. On 26 March 2024, on day two of the hearing, Ms Dudley-Jones spoke with the second GMC witness before she was due to give her evidence. In that conversation, the witness had expressed that she was uncomfortable putting her full name into MS Teams when joining the hearing link and wanted only to be known by her first name during the hearing. Ms Dudley-Jones, therefore, made an application for a special measure, namely that the witness be anonymised.

312. Ms Dudley-Jones also stated that naming this witness in public could cause the identity of Ms A to become known because of the potential for jigsaw identification and so she also made an application for anonymity for this witness to prevent this happening.

313. The Tribunal heard oral submissions from both parties on this issue before the witness gave her evidence. A summary of those submissions is set out below.

Submissions on behalf of the GMC

314. Ms Dudley-Jones expressed the concerns of the witness first. She stated that the witness did not want to have her full name in the public domain and that the potential of her name being published in the press was causing her anxiety and concern. She stated that the witness was XXX. The witness said that the situation that had arisen with Dr Rawat had made her much more cautious.

315. Ms Dudley-Jones accepted that the witness was a not a 'vulnerable witness' under the Rules but suggested that the Tribunal could still help the witness to give her best evidence by giving her anonymity. She proposed that the Tribunal hear the real name of the witness in private session and then refer to her by her first name throughout her evidence.

316. Ms Dudley-Jones also raised the issue of the potential for jigsaw identification of Ms A. This witness was XXX and Ms A had XXX. Ms Dudley-Jones said that the Tribunal should grant anonymity to the witness in order to prevent the inadvertent identification of Ms A.

Submissions on behalf of Dr Rawat

317. Mr Kirke submitted that anonymity ought not to be granted. He stated that the name of the witness had already been mentioned on the first day of the hearing and she had produced a signed witness statement using her full name. Mr Kirke referred to the wording at the end of the statement, in which the witness confirmed that she would be willing to give evidence if asked to do so. He stated that there was no mention of any fear, distress or her being uncomfortable, and suggested that she may be trying to avoid a level of scrutiny. He said that any special measures should have been discussed with her during the course of taking the witness statement.

318. Mr Kirke said that any witness may feel under pressure or nervous giving evidence but that this was not unusual. He stated that the usual starting point is for a witness to give their evidence openly and in public. He stated that the witness was not the complainant herself, she had not witnessed anything directly, and had only met Dr Rawat once. Mr Kirke submitted that the witness was not personally connected to Ms A and did not appear to be in any sort of fear or distress such that special measures should apply in this case.

319. Mr Kirke stated that it was not accepted that there was any risk of jigsaw identification as this case took place four years ago, XXX, and the witness appears to be a professional XXX who would have had XXX. Further, Mr Kirke stated that the population of XXX was some 72,000 people and the James Paget University Hospital provides care to a population of 230,000 residents across the area. Mr Kirke submitted that the witness ought to give her evidence without anonymity.

The Relevant Legal Principles

320. The LQC gave legal advice on this application. She firstly referred the Tribunal to Rule 36 of the Rules in respect of 'vulnerable witnesses' which states;

> *"(1) In proceedings before the Committee or a Tribunal, the following may, if the quality of their evidence is likely to be adversely affected as a result, be treated as a vulnerable witness-*
>
> > *(a) any witness under the age of 18 at the time of the hearing;*
> > *(b) any witness with a mental disorder within the meaning of the Mental Health Act 1983;*
> > *(c) any witness who is significantly impaired in relation to intelligence and social functioning; (d) any witness with physical disabilities who requires assistance to give evidence;*

(e) any witness, where the allegation against the practitioner is of a sexual nature and the witness was the alleged victim; and
(f) any witness who complains of intimidation.

(2) Upon hearing representations from the parties, the Committee or Tribunal shall adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness..."

321. The LQC advised the Tribunal that Rule 36 did not apply, and that the witness was not a 'vulnerable witness' under this section. However, she also advised the Tribunal that the Rules did not specifically prohibit special measures outside of that definition, and that the Tribunal could choose how to run its proceedings. The Tribunal was advised that it could take into account both the witness' concerns as articulated by Ms Dudley-Jones, and the issue concerning the potential for jigsaw identification.

322. The LQC also referred to Rule 41, which relates to whether the hearing should be held in public or private session. It states:

"(1) Subject to paragraphs (2) to (6) below, hearings before the Committee and a Medical Practitioners Tribunal shall be held in public.

(2) The Committee or Medial Practitioners Tribunal may determine that the public shall be excluded from the proceedings or any part of the proceedings, where they consider that the particular circumstances of the case outweigh the public interest in holding the hearing in public.

(3) Subject to paragraphs (4) to (6), the Committee or a Tribunal shall sit in private, where they are considering-
(a) whether to make or review an interim order; or
(b) the physical or mental health of the practitioner..."

323. The LQC reminded the Tribunal that hearings should ordinarily be held in public session to ensure that the process is open and transparent. She confirmed that the Tribunal could direct parts of the hearing be held in private if, due to the circumstances of the case, it determined that it was in the public interest to do so.

324. In response to this part of the LQC advice, Ms Dudley-Jones submitted that the Tribunal could hear the evidence of the witness in private session. Mr Kirke responded stating that the starting point should always be that a hearing be held in public, and that Rule 41(2)

requires that there is a particular circumstance which outweighs the public interest in having a public hearing. He submitted that this was a high bar. He submitted that the witness was not a vulnerable witness and that there was no risk of jigsaw identification. Mr Kirke submitted that the test was not met for hearing this evidence in private session.

Tribunal's Decision

325. The Tribunal had regard to Rules 36 and 41 of the Rules, the submissions of both parties and the LQC advice. It considered this application in relation to two aspects:

- Firstly, whether the witness should be granted anonymity because of her personal concerns that Ms Dudley-Jones had articulated; and
- Secondly, whether there was potential for jigsaw identification of Ms A if the name of the witness was used in public.

326. In terms of the first aspect, the Tribunal had regard to Rule 36 and noted that the witness did not fit within the definition of a 'vulnerable witness'. The Tribunal then went on to consider whether it should grant anonymity anyway as the Tribunal could regularise its own proceedings, or whether it should hear her evidence in private under Rule 41(2). It considered the concerns of the witness and noted that she was cautious and reluctant to have her name in public. The Tribunal decided that, while not unsympathetic to a nervous witness, she should not be granted anonymity on this basis. It also decided that her concerns did not override the fact that hearings should ordinarily be held in public.

327. With regard to the second aspect, the Tribunal considered the relationship between Ms A and the witness. The witness is XXX and XXX. The Tribunal determined that there was a possibility of jigsaw identification of Ms A because of their relationship. The Tribunal agreed that, given the possibility of jigsaw identification of Ms A, the witness should be anonymised. The Tribunal decided that, due to her anonymity, the witness' evidence should be heard in public session.

328. The Tribunal determined that this decision did not prejudice Dr Rawat. He was aware of who the witness was, and the evidence that she was likely to give. His counsel would be able to cross examine her in a public hearing.

329. As such, the Tribunal determined to grant the GMC's application for anonymisation of this GMC witness to prevent the jigsaw identification of Ms A.

330. The Tribunal decided that the witness should be referred to as 'Witness B'.