

## PUBLIC RECORD

Dates: 09/09/2024 - 25/09/2024

Medical Practitioner's name: Dr Peter CANNON

GMC reference number: 3260142

Primary medical qualification: BM BCh 1987 Oxford University

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Consideration of impairment not reached

## Summary of outcome

No warning

## Tribunal:

Legally Qualified Chair	Mrs Emma Gilberthorpe
Lay Tribunal Member:	Mrs Sue Wadham
Medical Tribunal Member:	Dr Pavan Rao

Tribunal Clerk:	Mr Andrew Ormsby, (Ms Kanwal Rizvi - 12/09/2024)
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## Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Scott Ivill, Counsel, instructed by the MDU
GMC Representative:	Mr Alan Taylor, Counsel

### **Attendance of Press / Public**

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

### **Overarching Objective**

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

### **Determination on Facts - 24/09/2024**

#### **Background**

1. Dr Cannon qualified as a doctor in 1987 at the University of Oxford. At the time of the alleged events Dr Cannon was practising as a General Practitioner (GP), and was a Partner, at the Bridge Street Medical Practice (the Practice) in Loughborough.
2. The alleged conduct that has led to Dr Cannon's hearing included an accusation that he engaged in sexually motivated conduct towards two colleagues.
3. It is alleged he engaged in sexually motivated conduct towards Miss B, a colleague, in or around November or December 2015 at the Practice.
4. It is also alleged that Dr Cannon engaged in sexually motivated conduct towards Ms C, a colleague, XXX on or around 7 October 2017.
5. Further, it is also alleged that Dr Cannon made comments to Miss A, in relation to her XXX, and whilst in the Practice pointed at and swore at Ms C.
6. The initial concerns were raised with the GMC on 19 January 2018 following an email from Ms C.

#### **The Allegation and the Doctor's Response**

7. The Allegation made against Dr Cannon is as follows:

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

1. On a date/dates after September 2015 you made the following comments to Miss A, XXX:
  - a. XXX; **To be determined**
  - b. XXX, I; **To be determined**
  - c. XXX; **To be determined**or words to that effect.
2. On a date in or around November or December 2015 you were sat in your office at Bridge Street Medical Practice in Loughborough ('the Practice') with Miss B and you:
  - a. wheeled your chair in front of Miss B so that your legs were positioned either side of Miss B's right leg; **To be determined**
  - b. put your hands interlocked on to Miss B's right leg and started rubbing her right knee area up and down with your thumbs. **To be determined**
3. On a date in or around 2015 or 2016 [Ms] C approached you at the Practice to ask if you were okay because reception staff were becoming stressed by your behaviour, or words to that effect, and you pointed in her face and said "how do you think you're making me fucking feel knowing this, I am on call", or words to that effect. **To be determined**
4. On a date in or around June 2016 you said to Miss A, "XXX", or words to that effect. **To be determined**
5. On a date during summer 2017 [Ms] C messaged you to ask for some advice and you told her to pop into your office, or words to that effect. When she arrived you:
  - a. had your shirt off; **To be determined**
  - b. told [Ms] C you were having a "shirt off moment", or words to that effect. **To be determined**
6. On or around the evening of 7 October 2017, at XXX you:
  - a. put your hand on [Ms] C's left knee; **To be determined**
  - b. squeezed [Ms] C's left knee on one or more occasion; **To be determined**
  - c. rubbed your hand up and down [Ms] C's inner thigh, into her groin, on one or more occasion. **To be determined**
7. Your actions as set out at paragraphs 2 and 6 were 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**

## Witness Evidence

8. The Tribunal received oral evidence via video link on behalf of the GMC from the following witnesses:

- Miss A, XXX at the Practice;
- Miss B, XXX at the Practice;
- Ms C, XXX at the Practice; and
- Dr D, GP Partner at the Practice.

9. The Tribunal also received written evidence on behalf of the GMC which included witness statements from the following witnesses:

- Miss A, dated 4 June 2019 and supplemental statements dated 17 June 2020 and 31 August 2021;
- Miss B, dated 12 June 2019 and supplemental statements dated 27 July 2020 and 20 August 2021;
- Ms C, dated 24 May 2019 and supplemental statements dated 29 June 2020 and 26 August 2021;
- Dr F, GP Partner at the Practice, dated 17 June 2019;
- Dr D, GP Partner at the Practice, dated 18 June 2019;
- Dr E, former Senior GP Partner at the Practice, dated 2 July 2019, and supplemental statement dated 24 August 2021.

10. Dr Cannon provided his own witness statement, dated 4 May 2021, and also gave oral evidence at the hearing.

11. In addition, the Tribunal received oral evidence via video link from the following witnesses on Dr Cannon's behalf:

- Ms G, director of the charity 'The Carpenters Arms' that runs a drug treatment centre;
- Mr H, former Receptionist at the Practice;
- Ms I, former Administrator at the Practice; and
- Ms J, Administrator at the Practice.

12. The Tribunal also received evidence on behalf of Dr Cannon in the form of witness statements from the following witnesses:

- Ms G, dated 3 May 2021;
- Mr H, dated 27 April 2021;
- Ms I, dated 30 April 2021; and
- Ms J, dated 4 May 2021.

## Documentary Evidence

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

- Email from Ms C to the GMC attaching Ms C's complaint to the Practice, dated 19 January 2018;
- Ms C's Record of Recorded interview with Leicestershire Police, dated 26 January 2018;
- Photographs, various dates;
- Seating plan of XXX, undated;
- Miss A's Police witness statement, dated 11 February 2018;
- Miss A's Letter to Drs E and Dr D, dated 21 November 2017;
- Miss B's Record of Recorded interview with Leicestershire Police, dated 1 February 2018;
- Sketch of Dr Cannon's office prepared by Miss B, undated;
- Sketch of Dr Cannon's office prepared by Dr Cannon at the hearing;
- Dr Cannon's Police witness statements, dated 14 March 2018;
- Dr Cannon's CV; and
- Text messages, various dates.

## Further Background

### Dr Cannon

14. Dr Cannon joined the practice on 1 February 1996. Dr Cannon was employed by and worked alongside Dr K, XXX. He became a Partner at the Practice in 1997.

### Miss A

15. Miss A was employed XXX at the Practice at the time of the Allegation. She began this role in XXX.

16. On 21 November 2017 Miss A provided a statement to the Practice relating to two alleged incidents of touching by Dr Cannon, one concerning XXX, Miss B, and the other concerning XXX Ms C.

17. On 18 December 2017 Miss A attended a meeting about the alleged events with a HR company (XXX) which was employed to assist the Practice in its investigation.

18. On 11 February 2018 Miss A provided a statement to the Police regarding these alleged incidents.

19. Miss A also described how Dr Cannon had made inappropriate comments to her in the past. She alleged that Dr Cannon made comments such as 'XXX'. She also described one alleged occasion, when as she exited the toilet, Dr Cannon said to her 'XXX'.

20. Miss A gave further details about the alleged comments that Dr Cannon would say whilst XXX. In her supplementary statement Miss A stated that she had initially withdrawn this allegation because she *'did not want to be going up against Dr Cannon on her own'*.

21. In her supplementary statement, dated 31 August 2021, Miss A stated that although she got on with Dr Cannon *'absolutely fine'* she believed the alleged comment regarding XXX was *'absolutely inappropriate'*.

22. Miss A, XXX, also provided evidence relating to Ms C's allegation regarding Dr Cannon.

#### Miss B

23. Miss B started working at the Practice as XXX in XXX. She was XXX.

24. On 20 November 2017 Miss B submitted a written complaint to the Practice regarding an alleged incident, that occurred in or around November or December 2015, in which Dr Cannon allegedly rubbed her knee. In her complaint she stated that she regarded the alleged behaviour as sexual harassment and that, although she could not remember the date and time of the alleged incident exactly, the incident took place during a XXX meeting in Dr Cannon's room when discussing XXX. Miss B stated that thereafter she asked Miss A to be present when she was in a room with Dr Cannon.

25. On 1 February 2018 Miss B was interviewed by Leicestershire Police regarding the alleged incident.

#### Ms C

26. Ms C first met Dr Cannon when she was XXX at the Practice in XXX. XXX.

27. Ms C referred Dr Cannon to the GMC on 19 January 2018. She reported an incident that was alleged to have taken place on 7 October 2017. She claimed that Dr Cannon had sexually assaulted her during XXX. Also present at the XXX was Miss A, Miss B, Dr E, Dr D and Dr F.

28. In her Record of Recorded interview with the Police Ms C claimed that, whilst she was sitting next to Dr Cannon at XXX, he had put his hand on her knee and began rubbing her thigh up to her pubic area. Ms C stated that she did not say anything at the time as she believed that Dr Cannon could be quite volatile and intimidating. She also referred to an alleged incident when she asked Dr Cannon for XXX advice and he told her to *'pop into his office'*, and upon entering the room Dr Cannon had his shirt off.

29. Ms C also referred to an alleged incident when she went to speak to Dr Cannon about him upsetting members of staff at the Practice. Ms C explained that Dr Cannon was upset that she had approached him. Ms C said he reacted aggressively, pointing and swearing in her face.

### The Tribunal's Approach

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

31. Paragraph 7 is an allegation that the matters set out in paragraphs 2 and 6 of the Allegation, if proved, amounted to sexual motivation.

32. The Tribunal had regard to the definition of the term 'motive' 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'.

33. The Tribunal noted that it must be satisfied on the balance of probabilities that sexual motivation can be inferred from all the circumstances. The circumstances of the acts alleged, and the doctor's explanation should all be considered.

34. The Tribunal also took into account the advice of the Legally Qualified Chair which included a direction on the good character of Dr Cannon.

### The Tribunal's Analysis of the Evidence and Findings

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

#### Paragraph 1(a) of the Allegation

36. The Tribunal considered whether, on a date/dates after September 2015, Dr Cannon made the following comment to Miss A, namely, 'XXX, or words to that effect, to Miss A, XXX.

37. The Tribunal noted that Dr Cannon denied this allegation and disputed Miss A's evidence.

38. The Tribunal took account of Miss A's witness statement, dated 4 June 2019, in particular:

*'I XXX and Dr Cannon [...] make remarks about this and the fact that XXX.'*

39. The Tribunal also bore in mind Miss A's oral evidence in which she claimed that Dr Cannon would frequently make such comments. She was unable to give specific dates and times because *'they would be said regularly.'* Miss A said she was *'sure others were there when comments were made'*.

40. Further, the Tribunal also took account of Ms C's oral evidence during which she stated that she remembered Miss A telling her about the alleged comment.

41. The Tribunal was mindful of Miss B's oral evidence during which she stated that she had not witnessed the comment or similar comments. It considered that this was noteworthy in light of XXX.

42. The Tribunal also bore in mind that other witnesses who worked at the Practice did not witness the alleged comment, or similar comments, though Miss A had claimed that such comments were *'frequent'*, and *'there was no specific time because they would be said regularly.'*

43. Further, the Tribunal noted that the witnesses, Ms G, Mr H, Ms I and Dr D had considered Dr Cannon to be professional and did not share the view that he would make unprofessional or inappropriate comments, and none had witnessed such comments.

44. The Tribunal considered that, in the circumstances, and in light of the lack of corroborative witness evidence, it could not consider that it was more likely than not, that on a date/dates after September 2015, Dr Cannon made the following comment to Miss A, namely, 'XXX, or words to that effect, to Miss A, XXX.

45. Therefore, the Tribunal concluded that the GMC had failed to discharge its burden of proof.

46. Accordingly, determined that paragraph 1(a) of the Allegation was not proved.

#### Paragraph 1(b) of the Allegation

47. The Tribunal considered whether, on a date/dates after September 2015, Dr Cannon made the following comment to Miss A, namely, 'XXX', or words to that effect, to Miss A, XXX.

48. The Tribunal noted that Dr Cannon denied this allegation and disputed Miss A's evidence.

49. The Tribunal took account of Miss A's witness statement, dated 4 June 2019, in particular:

*'He would also make comments such as XXX'. These comments would be made frequently.'*



50. The Tribunal bore in mind Miss A's oral evidence in which, in response to having been asked if other people were present when the comments were made, she said *'I am sure there were other people there'*.

51. The Tribunal noted Miss B's oral evidence during which Miss B stated that she had not witnessed the comment or similar comments. It considered that this was noteworthy in light of XXX.

52. The Tribunal also bore in mind that other witnesses who worked at the Practice did not witness the alleged comment, and did not witness similar comments, though Miss A had claimed that such comments were frequent.

53. The Tribunal considered that, in light of the evidence, it could not consider that it was more likely than not, that on a date/dates after September 2015, Dr Cannon made the following comment to Miss A, namely, 'XXX', or words to that effect, to Miss A, XXX.

54. Therefore, the Tribunal concluded that the GMC had failed to discharge its burden of proof.

55. Accordingly, determined that paragraph 1(b) of the Allegation was not proved.

#### Paragraph 1(c) of the Allegation

56. The Tribunal considered whether, on a date/dates after September 2015, Dr Cannon made the following comment to Miss A, namely, 'XXX', or words to that effect, to Miss A, XXX.

57. The Tribunal noted that Dr Cannon denied this allegation and disputed Miss A's evidence.

58. The Tribunal took account of Miss A's witness statement, dated 4 June 2019, in particular:

*'He also asked me on one occasion if XXX'*

59. The Tribunal also bore in mind the notes taken at Miss A's meeting with HR, dated 18 December 2017:

*'XXX he'd often say to me, "XXX?" and blah, blah, I think because of the way I look'*

60. Further the Tribunal also took account of Miss A's police statement, dated 11 February 2018:

*'Finally, Dr Cannon has made inappropriate comments to me in the past...He makes comments such as "XXX"'*

61. The Tribunal bore in mind that Ms C, in her witness statement dated 24 May 2019, had stated that she had been told by Miss A that Dr Cannon had asked Miss A ‘XXX’. Ms C had also provided details of Miss A’s allegation in her earlier email referring Dr Cannon to the GMC dated 19 January 2019.

62. Dr Cannon denied this allegation and stated, both in oral evidence and in his witness statement, dated 4 May 2021, that he believed that the conversation referred to in this allegation had occurred during a night out XXX:

*‘As to the specific conversations referred to at allegations 1 and 4 I believe these occurred at the same evening during a night out XXX. Miss A and B invited me to have further drinks with them XXX. Having accepted an invitation to attend I believe I and Miss A left the group for the toilet at the same time. Miss A returned shortly after me and I remarked she had been very quick. Miss A replied: “XXX”. This was typical of Miss A’s communication with me.’*

63. The Tribunal took account of Miss A’s witness statement, dated 4 June 2019, in particular:

*‘These comments would be made frequently.’*

64. It also noted that, in her oral evidence, Miss A had stated that ‘these are not isolated events’. She said Dr Cannon would make such comments ‘quite frequently’ and that there ‘could may well have been other people there too [...] I am sure there were other people there’ when the comments were made. It was ‘normalised behaviour, and we were expected to just get on with it’.

65. The Tribunal noted Miss B’s oral evidence during which Miss B stated that she had not witnessed Dr Cannon make the comment or similar comments.

66. The Tribunal also bore in mind that other witnesses who worked at the Practice did not witness the alleged comment and did not witness similar comments. Though Miss A had claimed that such comments were made frequently and witnessed.

67. Further, the Tribunal received evidence from colleagues who had worked at the Practice stating that Dr Cannon had always been professional in their experience. It considered this evidence did not support the view that Dr Cannon made the comment.

68. The Tribunal considered that, in the circumstances, it could not consider that it was more likely than not, that on a date/dates after September 2015, Dr Cannon made the following comment to Miss A, namely, ‘XXX’, or words to that effect, to Miss A, XXX.

69. Therefore, the Tribunal concluded that the GMC had failed to discharge its burden of proof.

70. Accordingly, determined that paragraph 1(c) of the Allegation was not proved.

Paragraph 2(a) and 2(b) of the Allegation

71. The Tribunal considered whether on a date in or around November or December 2015 Dr Cannon was sat in his office at Bridge Street Medical Practice in Loughborough ('the Practice') with Miss B and he wheeled his chair in front of Miss B so that his legs were positioned either side of Miss B's right leg.

72. It also considered whether on a date in or around November or December 2015 Dr Cannon was sat in his office at Bridge Street Medical Practice in Loughborough ('the Practice') with Miss B and after having wheeled his chair in front of Miss B so that his legs were positioned either side of Miss B's right leg, he put his hands interlocked on to Miss B's right leg and started rubbing her right knee area up and down with his thumbs.

73. The Tribunal noted that Dr Cannon denied this allegation and disputed Miss B's evidence.

74. The Tribunal noted Miss B's letter, dated 20 November 2017, to Dr E:

*'While I was sat on the patient chair next to his desk, Dr Cannon rolled his chair close to mine directly in front of me, he initially was so close that his knee was touching mine, which I wasn't particularly happy about, he then moved his legs so that they were either side of my leg and rolled his chair in closer'*

75. The Tribunal also took account of Miss B's witness statement, dated 12 June 2019, in particular:

*'Dr Cannon was sat on a chair initially facing his desk and I was sat on a chair to the left-hand side of his desk. We were not sat at opposite sides of the desk. [...]*

*Dr Cannon then turned towards me, to face me, and wheeled his chair right in front of me so that his knees were positioned either side of one of my legs (my right leg). Normally in such a situation, I expect that I would have wheeled my chair back, but I had a static chair and could not do this.'*

76. The Tribunal noted that Dr Cannon had stated that he had meetings with Miss B as he was the XXX at the Practice and that they would regularly go through XXX together and usually would be seated side-by-side looking at a computer screen.

77. The Tribunal considered that Miss B's description of the alleged event was feasible and there may have been a meeting regarding the Practice XXX.

78. It further noted Miss B's evidence when asked during questioning at the hearing why she had not reported the incident to which she responded that "he would have said he was doing it in a comforting way".

79. The Tribunal also bore in mind that Dr Cannon stated that he XXX and was more disposed to be empathetic. He explained that he would try to reassure her verbally when she was worried for example by XXX but would maintain a professional boundary.

80. The Tribunal considered Miss A's Letter to Drs E and Dr D, dated 21 November 2017:

*'I was in the office when [Miss B] came back from a XXX meeting with [Dr Cannon], I cannot remember the exact date but it was November/December time 2015. She was very shaken up, and proceeded to tell me that Dr Cannon had put his hands on her knee and pulled his chair right up to her blocking exits.'*

81. The Tribunal further noted that Miss A's Police witness statement, dated, 11 February 2018:

*'I mentioned earlier in my statement a previous incident between Dr CANNON and XXX [Miss B] think this was in the year 2014, however, not exactly sure on the dates. It was a XXX as Dr CANNON and [Miss B] always meet on this day to discuss XXX. On this particular day I was on my own in the office XXX. I remember [Miss B] coming back into the office and she was upset (not tearful) but speaking fast. [Miss B] told me DR CANNON had been creepy during the meeting. [Miss B] explained Dr CANNON had moved his movable chair to become seated directly in front of her. [Miss B] went on to explain Dr CANNON put his knees around one of her legs and rubbed her legs (whilst they were both still seated).*

*[Miss B] told me she couldn't move out of the way whilst Dr CANNON was rubbing her leg. [Miss B] told me we needed to get out of here. I remember leaving the Doctors Practice with [Miss B]. We either went for a cigarette or went for lunch. [Miss B] was still upset and told me she never wanted to have another XXX meeting alone with him again.'*

82. The Tribunal considered that there were inconsistencies between Miss B's account of the alleged incident and Miss A's evidence relating to what she was told about the alleged incident by Miss B.

83. The Tribunal noted that Miss A, in her letter to Dr E and Dr D, dated 21 November 2017, had claimed that Miss B had told her that Dr Cannon had been blocking her exits whilst Miss B had not stated this.

84. The Tribunal noted that Miss A had stated that Practice XXX meetings would take place on XXX whilst both Dr Cannon and Miss B had asserted that XXX meetings had taken place on an ad hoc basis and not on a designated day.

85. The Tribunal was also cognisant that neither Miss B nor Miss A had provided it with an approximate date on which this alleged incident had taken place and further noted that it had not been provided with any contemporaneous documentary evidence relating to this incident.

86. The Tribunal considered that there were inconsistencies and discrepancies between the evidence of Miss B and the supporting evidence of Miss A. In the circumstances, the Tribunal considered that Miss A's supporting evidence had not corroborated this specific allegation but had created further uncertainties.

87. The Tribunal noted the good character direction in relation to Dr Cannon, which had been accepted by the GMC, his denial of the allegation, and the lack of corroborative evidence. It also bore in mind that other colleagues at the Practice had asserted that they had never witnessed Dr Cannon behave in an unprofessional manner.

88. The Tribunal considered that, in the circumstances, and on the balance of probabilities, it could not find that it was more likely than not, that on a date in or around November or December 2015 Dr Cannon was sat in his office at Bridge Street Medical Practice in Loughborough ('the Practice') with Miss B and he wheeled his chair in front of Miss B so that his legs were positioned either side of Miss B's right leg.

89. Accordingly, the Tribunal determined that paragraph 2(a) was not proved.

90. The Tribunal considered that paragraph 2(b) was reliant upon paragraph 2(a) of the Allegation being found proved as part of the alleged sequence of event. The Tribunal determined that paragraph 2(b) Allegation could not be found proved.

91. Nevertheless, the Tribunal further noted that, in any case, if Dr Cannon had wheeled his chair in front of Miss B so that his legs were positioned either side of her right leg, it would not have been physically possible for him to have put his interlocked hands on to Miss B's right leg and to rub her knee given the position demonstrated in her live evidence. In oral evidence Miss B described Dr Cannon rubbing her thigh area. The Tribunal noted the inconsistencies in Miss B's evidence.

92. Accordingly, the Tribunal determined that paragraph 2(b) of the Allegation was not proved.

#### Paragraph 3 of the Allegation

93. The Tribunal considered whether, on a date in or around 2015 or 2016, Ms C approached Dr Cannon at the Practice to ask if he was okay because reception staff were becoming stressed by his behaviour, or words to that effect, and he pointed in her face and said "how do you think you're making me fucking feel knowing this, I am on call", or words to that effect.

94. The Tribunal noted that Dr Cannon denied this allegation, stating that he had never spoken to Ms C, or a colleague in such a way, would never point in a colleague's face, and disputed Ms C's evidence.

95. The Tribunal took account of [Ms] C's witness statement, dated 24 May 2019:

*'It was a stressful period because there was building work going on in the Practice so it must have been around 2015-2016. I went to speak to Dr E to tell him Dr Cannon was upsetting the staff. I went in to see Dr Cannon and asked if he was ok because the girls in reception were becoming stressed. I recall that he pointed in my face and swore in my face. He said 'how do you think you're making me fucking feel knowing this, I am on call'. I told him his behaviour was not appropriate and the girls were doing their best. I left the room but was shaken and needed to compose myself before a meeting. Later that day he came to apologise'*

96. The Tribunal also noted Ms C's Record of the Recorded interview with Leicestershire Police, dated 26 January 2018:

*'so I went into the room with Doctor Cannon to ask him if everything was alright if there was anything we could do to support him and to let him know that the staff were upset and he was very aggressive, he was in my face he was pointing and swearing in my face. He was very upset by the fact that I'd approached him and he was reflecting how it had made him feel rather than empathy on how he'd made the staff feel. I stood my ground and said you know 'at the end of the day the staff are upset' and I left the room'*

97. Further, the Tribunal took account of Miss A's witness evidence, dated 4 June 2019, in particular:

*'There was another occasion when [Ms] C came to tell me about Dr Cannon's behaviour. She then approached Dr E. She asked Dr Cannon if anything was wrong and informed him that he had caused members of staff to be upset. Dr Cannon was verbally aggressive towards [Ms] C and was pointing in her face. I am aware of this as we were all waiting to go into a meeting afterwards when [Ms] C came out. [Ms] C was visibly shaken and upset and told me what happened'*

98. The Tribunal further noted that Miss B had also made reference to this alleged incident during her meeting with 'XXX' HR:

*'[Ms] C went in to go and speak to him and he got all up in her face and was pointing in her face and shouting at her and swearing at her'*

99. The Tribunal also noted that it had received evidence from other former colleagues at the Practice who had asserted that they had never witnessed Dr Cannon swear or be unprofessional.

100. The Tribunal was cognisant of the fact that it had not received evidence from the reception staff who were, according to the allegation, becoming stressed by Dr Cannon's behaviour, nor from any other staff that Miss A provides was waiting to go into the meeting.

101. The Tribunal noted that Miss A's evidence in relation to this incident provided it with evidence of what Ms C had told her about the alleged incident, rather than direct evidence of the actual incident. Further, it considered that Miss A's evidence regarding Ms C being '*visibly shaken and upset*' did not prove that Dr Cannon had acted in the manner alleged.

102. In the circumstances, the Tribunal considered that the supporting evidence from Miss A and Miss B, who were not present during the alleged incident, was not of a corroborative nature.

103. The Tribunal noted the good character direction in relation to Dr Cannon, which had been accepted by the GMC.

104. The Tribunal considered that, in the circumstances, and on the balance of probabilities, it could not find that it was more likely than not, that on a date in or around 2015 or 2016 Ms C approached Dr Cannon at the Practice to ask if he was okay because reception staff were becoming stressed by his behaviour, or words to that effect, and he pointed in her face and said "how do you think you're making me fucking feel knowing this, I am on call", or words to that effect.

105. Therefore, the Tribunal concluded that the GMC had failed to discharge its burden of proof.

106. Accordingly, the Tribunal determined that paragraph 3 of the Allegation was not proved.

#### Paragraph 4 of the Allegation

107. The Tribunal considered whether on a date in or around June 2016 Dr Cannon said to Miss A, "XXX", or words to that effect.

108. Dr Cannon denied this allegation and stated, both in oral evidence and in his witness statement, dated 4 May 2021, that he believed that the conversation referred to in this allegation had occurred during a night out XXX:

*'As to the specific conversations referred to at allegations 1 and 4 I believe these occurred at the same evening during a night out XXX. Miss A and B invited me to have further drinks with them XXX. Having accepted an invitation to attend I believe I and*

*Miss A left the group for the toilet at the same time. Miss A returned shortly after me and I remarked she had been very quick. Miss A replied: “XXX”. This was typical of Miss A’s communication with me.’*

109. The Tribunal noted Miss A’s Police statement, dated 11 February 2018.

110. The Tribunal took account of Miss A’s second supplemental witness statement, dated 31 August 2021:

*‘In relation to when Dr Cannon said to me “XXX”, the only time I recall him making this comment was as set out at paragraph 32 of my original statement. He definitely said it at work. It was in the new office and Miss B was there. [Dr Cannon] and I got on absolutely fine, but the comment was completely inappropriate. I am thick skinned but it is still not ok. I don’t recall ever having made any comments of this nature myself to Dr Cannon’*

111. The Tribunal also took account of the notes taken at Miss A’s meeting with XXX HR, dated 18 December:

*‘He was waiting for me outside the toilet once and I was quite quick to use the toilet and he was like, “XXX”’*

112. Further, the Tribunal noted Ms C’s email referring Dr Cannon to the GMC, dated 19 January 2018, and her witness statement, dated 24 May 2019, in which she referred to Miss A telling her that Dr Cannon had said to Miss A ‘XXX’.

113. The Tribunal was mindful of there being no contemporaneous documentary evidence that referenced the allegation.

114. Further, the Tribunal considered Ms C’s statement relating to this evidence to be hearsay evidence of what Miss A had told Ms C about the alleged incident, this did not necessarily constitute persuasive corroborative evidence.

115. The Tribunal also noted that it had received evidence from other former colleagues at the Practice, namely Mr H, Ms I and Ms J, who had asserted that they had never witnessed Dr Cannon making such inappropriate comments.

116. The Tribunal also bore in mind Miss B’s oral evidence at the hearing, during which she stated that she had not witnessed Dr Cannon make inappropriate comments at work.

117. The Tribunal noted the good character direction in relation to Dr Cannon, which had been accepted by the GMC.



118. The Tribunal considered that, in the circumstances, it could not find that it was more likely than not, that in or around June 2016 Dr Cannon said to Miss A, “XXX”, or words to that effect.

119. Therefore, the Tribunal concluded that the GMC had failed to discharge its burden of proof.

120. Accordingly, the Tribunal determined that paragraph 4 of the Allegation was not proved.

#### Paragraph 5(a) and 5(b) of the Allegation

121. The Tribunal considered whether, on a date during summer 2017, Ms C messaged Dr Cannon to ask for some advice and he told her to pop into his office, or words to that effect and when she arrived Dr Cannon had his shirt off.

122. The Tribunal also considered whether on a date during summer 2017 Ms C messaged Dr Cannon to ask for some advice and he told her to pop into his office, or words to that effect and whether when she arrived Dr Cannon told Ms C he was having a “shirt off moment”, or words to that effect.

123. The Tribunal noted that Dr Cannon denied these allegations, stating that he had never had an interaction with Ms C where he removed his clothing in the Practice or had an interaction with [Ms] C in the manner described, and disputed Ms C’s evidence.

124. The Tribunal noted Ms C’s referral to the GMC, dated 19 January 2018, in which she stated that she had messaged Dr Cannon via the clinical system to ask for advice, he told her to pop into his office and, when she did, he had his shirt off and that he said he was having a ‘shirt off moment’.

125. The Tribunal further noted Ms C’s Record of Recorded interview with the Police, dated 26 January 2018, in particular:

*‘There was one occasion when I’d asked him for some XXX advice and messaged him, we have an instant messaging service so you can message any member of staff, I messaged him to ask if I could get some advice, he replied ‘yes pop over’ and when I got into his room he’d got his shirt off. I thought it was really odd, he called it his ‘shirt off moment’ he put his shirt back on and did it back up I walked out of the room went straight into the manager’s and reported it’*

126. It also noted Ms C’s witness statement, dated 24 May 2019:

*‘The incident when Dr Cannon had his shirt off after telling me to pop into his office to discuss a matter which he referred to as him having a ‘shirt off moment’ took place during summer 2017, although I cannot recall exactly when’*

127. Further, the Tribunal was also cognisant of Miss B's witness statement, dated 12 June 2019:

*'[Ms] C later told me that one day when Dr Cannon had a morning surgery, she messaged him and he told her to come to his office. [Ms] C said that when she went into his office he was doing his shirt up and said 'sorry, just having a shirt off moment', or words to that effect'*

128. The Tribunal noted that only Ms C and Dr Cannon were said to have been present in his office at the time of the alleged event.

129. The Tribunal further bore in mind Dr Cannon's oral evidence in which he denied the allegation and described the layout of his room in the Practice and stated that his office door opened straight on to the patient waiting area. Dr Cannon recalled removing his shirt on one occasion when a child had vomited on him, however this incident had taken place in his old office. The Tribunal noted that Dr Cannon had stated that he would never have had his shirt off in the Practice, particularly in a room next to a patient waiting area, whilst patients were nearby.

130. The Tribunal also bore in mind that it had not received any contemporaneous documentary evidence relating to this alleged incident and noted that the earliest documentary evidence consisted of the emailed referral to the GMC on 19 January 2018. It noted that the alleged incident had not been mentioned in earlier communications and reports.

131. The Tribunal also noted that Miss B's evidence relating to the alleged incident was based upon what Ms C had told Miss B about the alleged incident.

132. Further, the Tribunal noted that Miss B had claimed that Ms C had told her that Dr Cannon was *'doing his shirt up'* when she entered his office. Whereas Ms C claimed that Dr Cannon had his *'shirt off'*.

133. The Tribunal was also cognisant of the evidence it had received from former colleagues at the Practice, namely Mr H, Ms I and Ms J, who had asserted that they had never witnessed Dr Cannon behaving inappropriately or unprofessionally.

134. The Tribunal noted the good character direction in relation to Dr Cannon, which had been accepted by the GMC, and a lack of strong corroborative evidence.

135. The Tribunal considered that, in the circumstances, it could not find that it was more likely than not, that on a date during summer 2017, Ms C messaged Dr Cannon to ask for some advice and he told her to pop into your office, or words to that effect and when she arrived Dr Cannon had his shirt off, or that, as part of the same sequence of events told Ms C he were having a *'shirt off moment'*.

136. Therefore, the Tribunal concluded that the GMC had failed to discharge its burden of proof.

137. Accordingly, the Tribunal determined that paragraph 5(a) of the Allegation was not proved.

138. As the Tribunal considered that paragraph 5(b) of the Allegation was reliant upon paragraph 5(a) being found proved, it determined that paragraph 5(b) of the Allegation could not be found proved.

#### Paragraph 6(a) of the Allegation

139. The Tribunal considered whether on or around XXX 7 October 2017, at a XXX Dr Cannon put his hand on Ms C's left knee.

140. The Tribunal noted that Dr Cannon denied this allegation and disputed Ms C's evidence.

141. The Tribunal took account of Ms C's letter emailed to Dr E on 20 November 2017:

*'Shortly after this [Dr Cannon] placed his hand on my left knee and squeezed it.'*

142. The Tribunal also took account of notes from the formal meeting held on 20 November 2017:

*'She alleges that...Dr Cannon put his right hand on her left knee.'*

143. The Tribunal noted that Dr Cannon and Ms C had been sitting beside each other during XXX.

144. Dr Cannon accepted that he had been present at the XXX. He accepted that he had been seated next to Ms C XXX.

145. In his witness statement, dated 4 May 2021, Dr Cannon stated that:

*'At no stage XXX or at any other time had I placed my hand on [Ms] C's knee, squeezed it or rubbed it up and down her thigh or had any contact with her leg in the manner she has described in her various accounts'*

146. Dr Cannon further stated that after XXX Ms C did not seem upset XXX:

*'XXX.'*

*I did not witness [Ms] C upset at any point that XXX. I believe I would have noticed this, especially when it was just a few of us XXX.*

*I do not recall her moving seats during XXX either.'*

147. The Tribunal was cognisant of Dr Cannon's oral evidence at the hearing, particularly his acceptance that he was a tactile person. It also noted that he could not remember XXX clearly and that he had conceded that it was possible that he may have touched Ms C's leg.

148. The Tribunal was mindful of the alcohol Dr Cannon stated he had drank. It also noted that Dr D, in his oral evidence, said '*I felt [Ms] C and Miss A were drunk.*' He referred to them being noticeably loud and affected by alcohol on the XXX in question. Dr D said he did not perceive Dr Cannon's alcohol consumption '*to be excessive*'.

149. The Tribunal considered that it was feasible and plausible that Dr Cannon may have put his hand on Ms C's left knee whilst sitting beside her XXX, whether by accident or as a result of his tactile nature. It also considered that it was feasible and plausible that Ms C may have been alarmed by this.

150. In the circumstances, the Tribunal determined that it was more likely than not that on or around XXX 7 October 2017, at XXX, that Dr Cannon put his hand on Ms C's left knee. Furthermore, given that Dr Cannon had conceded that it was possible that he may have touched Ms C's leg and given his acceptance that he was a tactile person, the Tribunal considered that it was more likely than not that he had done so.

151. Accordingly, the Tribunal determined that 6(a) of the Allegation was found proved.

#### Paragraph 6(b) and 6(c) of the Allegation

152. The Tribunal considered whether, on or around XXX 7 October 2017, at XXX Dr Cannon squeezed Ms C's left knee on one or more occasion.

153. The Tribunal also considered whether on or around XXX 7 October 2017, at XXX Dr Cannon rubbed his hand up and down Ms C's inner thigh, into her groin, on one or more occasion.

154. The Tribunal noted that Dr Cannon denied this allegation and disputed Ms C's evidence.

155. The Tribunal bore in mind that Dr Cannon had conceded that it was possible that he may have touched Ms C's leg during XXX, but that he had no memory of doing so.

156. However, it also noted that Dr Cannon had flatly denied both squeezing Ms C's left knee and or rubbing his hand up and down Ms C's inner thigh, into her groin, on one or more occasion.

157. The Tribunal noted in Ms C's Record of Recorded interview to the police, dated 26 January 2018:

*'I felt the same thing again that it felt rubbing at the side of my leg and again thought he maybe was just scratching his leg and just moved my leg away and then his hand came over the top of my knee and he squeezed my knee a couple of times and then he started to rub along the length of my thigh and into my groin and back down and he did that three or four times...He went into my skin crease and into my groin area. His hand went all the way up [...] So into my pubic area basically'*

158. The Tribunal further noted Dr E's notes from the formal meeting with Ms C, dated 20 November 2017:

*'She alleges that on the XXX that Dr Cannon put his right hand on her left knee. He then squeezed the knee and rubbed up and down her thigh on at least two occasions. She states that his hand wandered up towards her pubic area but did not actually touch pubic area.'*

159. Ms C in oral evidence said that Dr Cannon *'touched to her pant line, not her pubic area.'*

160. The Tribunal was cognisant of there being uncertainty and discrepancies regarding where Dr Cannon was alleged to have rubbed Ms C. Whether it was the pubic, area, the groin or up to the groin. Given the inconsistencies Ms C's statement to the Police, dated 26 January 2018, Dr E's notes taken at the formal meeting with Ms C on 20 November 2017 and Ms C's oral evidence to the Tribunal.

161. The Tribunal also noted that Ms C had been asked, in oral evidence, about alcohol at XXX she stated that she did not feel drunk, however, when Dr D was asked whether anyone was visibly affected by alcohol during the meal. He answered that Ms C and Miss A were *'loud'* and visibly affected. It considered that the possible effect of alcohol on witnesses' memories of the evening in question could not be excluded.

162. The Tribunal was also cognisant of the fact that no one else XXX had witnessed the alleged incident and could not corroborate Ms C's evidence.

163. The Tribunal noted the good character direction in relation to Dr Cannon, which had been accepted by the GMC, and a lack of strong corroborative evidence.

164. The Tribunal considered that, in these circumstances, it could not find that it was more likely than not, on or around XXX 7 October 2017, at XXX Dr Cannon squeezed Ms C's left knee on one or more occasion.

165. Further, it also concluded that in the circumstances, it could not find that it was more likely than not, on or around XXX 7 October 2017, at XXX Dr Cannon rubbed his hand up and down Ms C’s inner thigh, into her groin, on one or more occasion.

166. Therefore, the Tribunal concluded that the GMC had failed to discharge its burden of proof.

167. Accordingly, the Tribunal determined that paragraph 6(b) and 6(c) of the Allegation were not proved.

Paragraph 7 of the Allegation by reason of Paragraph 6(a)

168. The Tribunal considered whether Dr Cannon’s actions in putting his hand on Ms C’s knee at XXX, on or around XXX 7 October 2017, were sexually motivated.

169. The Tribunal noted that it had not made a finding on whether Dr Cannon’s actions in putting his hand on Ms C’s knee at XXX, on or around XXX 7 October 2017, had been deliberate.

170. The Tribunal reminded itself of its finding of paragraph 6(a) of the Allegation that Dr Cannon may have put his hand on Ms C’s knee by accident or as a result of his tactile nature whilst sitting next to her XXX.

171. In those circumstances, the Tribunal considered that it could not be satisfied, on balance of probabilities, that Dr Cannon’s actions could be inferred to constitute conduct done either in pursuit of sexual gratification, or in pursuit of a future sexual relationship.

172. Accordingly, paragraph 7 of the Allegation by reason of paragraph 6(a) of the Allegation was found not proved.

**The Tribunal’s Overall Determination on the Facts**

173. The Tribunal has determined the facts as follows:

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

1. On a date/dates after September 2015 you made the following comments to Miss A, XXX:
  - a. XXX; **Not proved**
  - b. XXX; **Not proved**
  - c. XXX; **Not proved**or words to that effect.

2. On a date in or around November or December 2015 you were sat in your office at Bridge Street Medical Practice in Loughborough ('the Practice') with Miss B and you:
  - a. wheeled your chair in front of Miss B so that your legs were positioned either side of Miss B's right leg; **Not proved**
  - b. put your hands interlocked on to Miss B's right leg and started rubbing her right knee area up and down with your thumbs. **Not proved**
3. On a date in or around 2015 or 2016 [Ms] C approached you at the Practice to ask if you were okay because reception staff were becoming stressed by your behaviour, or words to that effect, and you pointed in her face and said "how do you think you're making me fucking feel knowing this, I am on call", or words to that effect. **Not proved**
4. On a date in or around June 2016 you said to Miss A, "XXX", or words to that effect. **Not proved**
5. On a date during summer 2017 [Ms] C messaged you to ask for some advice and you told her to pop into your office, or words to that effect. When she arrived you:
  - a. had your shirt off; **Not proved**
  - b. told [Ms] C you were having a "shirt off moment", or words to that effect. **Not proved**
6. On or around the evening of 7 October 2017, at XXX you:
  - a. put your hand on [Ms] C's left knee; **Determined and found proved**
  - b. squeezed [Ms] C's left knee on one or more occasion; **Not proved**
  - c. rubbed your hand up and down [Ms] C's inner thigh, into her groin, on one or more occasion. **Not proved**
7. Your actions as set out at paragraphs 2 and 6 were sexually motivated.'  
**Not proved**

#### Determination on Impairment - 25/09/2024

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

#### The Evidence

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received further evidence as follows.

## Submissions

### Submissions on behalf of the GMC

3. Mr Taylor stated that the GMC had no submissions to make in relation to the issue of impairment.

### Submissions on behalf of Dr Cannon

4. Mr Ivill submitted that Dr Cannon was not impaired by reason of misconduct as the threshold of misconduct had not been met.

5. Mr Ivill noted that the GMC was not submitting that the factual findings equated to serious professional misconduct and stated that *'one could readily understand why'*.

6. Mr Ivill stated that, what the Tribunal was now dealing with, was a single act of a hand touching a knee in a non-sexually motivated manner and, indeed, potentially accidentally. He submitted that those facts did not come close to serious professional misconduct *'as it would be divorced from reality to categorise it in such a way'*.

7. Mr Ivill submitted that, if the Tribunal were to take the position that Dr Cannon's actions in touching Ms C's knee in a non-sexually motivated manner, and potentially accidentally, did not constitute misconduct there would be no need to proceed any further with questions as to whether Dr Cannon's fitness to practise is impaired by misconduct.

8. Mr Ivill submitted that, *'only for completeness'*, if the Tribunal were to find misconduct, then it should note that any such misconduct was an isolated error on the part of Dr Cannon and that the chance of it being repeated in the future was so remote that his fitness to practise has not been impaired. Further, he emphasised that this event had been a one-off isolated incident that occurred almost seven years ago without suggestion of repetition *'during what were the remaining five years of practice'* prior to Dr Cannon's retirement in 2022.

9. Mr Ivill concluded by reiterating and emphasising his *'primary submission'* which was that the threshold of serious misconduct had plainly not been met in this case, and that, even if it had Dr Cannon's fitness to practise was not impaired.

## The Relevant Legal Principles

10. 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.



11. 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 second whether the finding of that misconduct which was serious, could lead to a finding of impairment.

12. The Tribunal must determine whether Dr Cannon's fitness to practise is impaired today, taking into account Dr Cannon'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.

13. The Tribunal also had regard to the case of *Meadow v General Medical Council* [2006] EWCA Civ 1390 in which Auld LJ quoted Collins J approvingly in the case of *Nandi v General Medical Council* [2004] EWHC 2317 (Admin) where he said that serious misconduct would be '*conduct which would be regarded as deplorable by fellow practitioners*'.

14. The Tribunal also noted the comments of Cranston J in the case of *Cheatle v. GMC* [2009] EWHC 645 (Admin) that '*the doctor's misconduct at a particular time may be so egregious that, looking forward, a panel is persuaded that the doctor is simply not fit to practise medicine without restrictions, or maybe at all. On the other hand, the doctor's misconduct may be such that, seen within the context of an otherwise unblemished record, a Fitness to Practise Panel could conclude that, looking forward, his or her fitness to practise is not impaired, despite the misconduct*'.

15. There is no statutory definition of misconduct or impairment. It was held in *Roylance v GMC (No.2)* [2000] 1 AC 311, that misconduct is '*a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances*' and that '*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*'.

16. The Tribunal also had regard to the comments of Mr Justice Warby on the case of *Khan v Bar Standards Board* [2018] EWHC 2184 (Admin):

*'The authorities make plain that a person is not to be regarded as guilty of professional misconduct if they engage in behaviour that is trivial, or inconsequential, or a mere temporary lapse, or something that is otherwise excusable, or forgivable. There is, as Lang J put it, a "high threshold". Only serious misbehaviour can qualify.'*

17. With regard to impairment, the Tribunal had regard to the principles outlined in the case of *CHRE v NMC and Grant* [2011] EWHC 927 in which the High Court endorsed the following approached as suggested in the Fifth Shipman Report:

*'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.'*

18. The Tribunal also had regard to the case of *Cohen v GMC* [2008] EWHC 581 (Admin), and took into account whether the *'conduct which led to the charge is easily remediable; that, second, it has been remedied; and, third, that it is highly unlikely to be repeated'*.

### The Tribunal's Determination on Impairment

#### Misconduct

19. In reaching its determination on whether Dr Cannon's actions amounted to misconduct, which was serious, the Tribunal first reminded itself of the findings of fact it had found, namely, that Dr Cannon had put his hand on Ms C's left knee.

20. The Tribunal further noted that it had found that Dr Cannon may have put his hand on Ms C's knee as the result of an *'accident or as a result of his tactile nature'*.

21. It also bore in mind that it had not found that Dr Cannon's actions in putting his hand on Ms C's knee had been sexually motivated.

22. The Tribunal considered that Dr Cannon's actions in putting his hand on Ms C's knee took place in the context of a social setting amongst work colleagues. The Tribunal also noted that Dr Cannon accepted that he had a tactile nature.

23. In the circumstances, and in light of there being no proven sexual motivation to Dr Cannon actions, and noting that he potentially touched Ms C's knee accidentally or as a result of his tactile nature, the Tribunal could not conclude that this was behaviour which would be regarded as deplorable by fellow practitioners who were aware of all facts of the case.

24. The Tribunal noted that Dr Cannon's conduct was not sexually motivated and concluded that his conduct did not depart from professional standards and did not amount to misconduct or serious misconduct.

25. Therefore, the prerequisite of serious misconduct was not established, and no finding of current impairment could be made.

26. Accordingly, the Tribunal did not go on to consider if Dr Cannon’s fitness to practise was impaired.

#### **Determination on Warning - 25/09/2024**

1. As the Tribunal determined that Dr Cannon’s fitness to practise was not impaired it considered whether in accordance with s35D(3) of the 1983 Act, a warning was required.

#### **Submissions**

##### Submissions on behalf of the GMC

2. Mr Taylor stated that the GMC had no submissions to make in relation to the issuing of a warning.

##### Submissions on behalf of Dr Cannon

3. Mr Ivill submitted that a warning was not appropriate and would, in fact, be disproportionate.

4. Mr Ivill stated that the Guidance of Warnings (2024) (GoW) made it clear that issuing a warning should be reserved for those concerns that fall just below the threshold for a finding of impaired fitness to practise. He stated that this case did not fall into that category.

5. Mr Ivill submitted that there had been no significant departure from GMP and that, indeed, the Tribunal had found that Dr Cannon’s conduct did not depart from professional standards and did not amount to misconduct.

6. Mr Ivill submitted that the incident of touching [Ms] C’s knee was an isolated incident and there had been no repetition, and that there was no likelihood of concerns being repeated.

7. Mr Ivill further drew the Tribunal’s attention to the references and testimonials.

8. Mr Ivill concluded by stating that the primary submission was that to issue a warning would be neither necessary nor proportionate because, in short, the case did not meet the test for the issuing of a warning.

#### **The Tribunal’s Determination on Warning**

9. The Tribunal accepted the LQC’s advice.

10. The decision whether to issue a warning is a matter for the Tribunal alone to determine, exercising its own professional judgement. Throughout its deliberations, the

Tribunal bore in mind all three limbs of the statutory overarching objective. This includes to protect and promote 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 the profession.

11. The Tribunal carefully considered the submissions made as well as the *Sanctions Guidance* (2024) (SG) and the GoW.

12. Throughout its deliberations, the Tribunal applied the principle of proportionality, weighing the interests of the public with those of the practitioner.

13. The Tribunal had regard to paragraph 61 of the SG:

*‘61 Where a tribunal finds a doctor’s fitness to practise is not impaired, it cannot impose a sanction. However, it must consider, under rule 17(2)(n) whether to:*

*a take no action*

*b issue a warning if the doctor’s conduct, behaviour or performance has significantly departed from the guidance in Good medical practice.’*

14. The Tribunal considered the purpose of warnings as outlined in the GoW. It noted the following paragraphs:

*‘10 . The power to issue warnings, together with other powers available to the GMC and to MPTS tribunals, is central to their role of protecting the public which includes protecting patients, maintaining public confidence in the profession and declaring and upholding proper standards of conduct and behaviour*

*11 Warnings allow the GMC and MPTS tribunals to indicate to a doctor that any given conduct, practice or behaviour represents a departure from the standards expected of members of the profession and should not be repeated. They are a formal response from the GMC and MPTS tribunals in the interests of maintaining good professional standards and public confidence in doctors. The recording of warnings allows the GMC to identify any repetition of the particular conduct, practice or behaviour and to take appropriate action in that event. Breach of a warning may be taken into account by a tribunal in relation to a future case against a doctor, or may itself comprise misconduct serious enough to lead to a finding of impaired fitness to practise.*

[...]

*14 Warnings should be viewed as a deterrent. They are intended to remind the doctor that their conduct or behaviour fell significantly below the standard expected and that a repetition is likely to result in a finding of impaired fitness to practise. Warnings may*

*also have the effect of highlighting to the wider profession that certain conduct or behaviour is unacceptable.*

15. The Tribunal noted that a warning can be used to remind the doctor that their conduct or behaviour fell significantly below the standard expected and that a repetition is likely to result in a finding of impaired fitness. It can also serve as a formal response in the interests of maintaining good professional standards and public confidence in doctors and be viewed as a deterrent and highlight to the wider profession that certain conduct or behaviour is unacceptable.

16. The Tribunal had regard to paragraph 16 of GoW:

*'16. A warning will be appropriate if there is evidence to suggest that the practitioner's behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or by a MPTS tribunal. A warning will therefore be appropriate in the following circumstances:*

- *there has been a significant departure from Good medical practice,*
- *there is a significant cause for concern following an assessment of the doctor's performance.*

*17. There is no definition of 'significant' in the Medical Act or in the Fitness to Practise Rules. The paragraphs below are therefore intended to help decision makers, at both the investigation and hearing stages, consider whether a warning is appropriate.'*

17. The Tribunal also had regard to the GoW in relation to the factors to consider when deciding whether to issue a warning:

*'19. Once the decision makers are satisfied that the doctor's fitness to practise is not impaired, they will need to consider whether the concerns raised are sufficiently serious to require a formal response from the GMC or MPTS tribunals, by way of a warning. When doing so the decision makers must have regard to the public interest (see paragraph 10 above).*

*20. The decision makers should take account of the following factors to determine whether it is appropriate to issue a warning.*

*a. There has been a clear and specific breach of Good medical practice or our supplementary guidance.*

*b. The particular conduct, behaviour or performance approaches, but falls short of, the threshold for the realistic prospect test or in a case before a tribunal, that the doctor's fitness to practise has not been found to be impaired.*

*c. A warning will be appropriate when the concerns are sufficiently serious that, if there were a repetition, they would likely result in a finding of impaired fitness to practise. Warnings may be an appropriate response to any type of allegation (subject to the comments in paragraph 7 regarding cases solely relating to a doctor's health); the decision makers will need to consider the degree to which the conduct, behaviour or performance could affect patient care, public confidence in the profession or the reputation of the profession. If the decision makers consider that a warning is appropriate, the warning should make clear the potential impact of the conduct, behaviour or performance in question, accordingly.*

*d. There is a need to record formally the particular concerns (because additional action may be required in the event of any repetition).'*

18. The Tribunal also considered paragraph 32 of the GoW which indicated factors for a tribunal to consider when deciding if a warning was appropriate:

*'32. If the decision makers are satisfied that the doctor's fitness to practise is not impaired or that the realistic prospect test is not met, they can take account of a range of factors to determine whether a warning is appropriate. These might include:*

- a. the level of insight into the failings*
- b. a genuine expression of regret/apology*
- c. previous good history*
- d. whether the incident was isolated or whether there has been any repetition*
- e. any indicators as to the likelihood of the concerns being repeated*
- f. any rehabilitative/corrective steps taken*
- g. relevant and appropriate references and testimonials'*

19. The Tribunal noted Dr Cannon's apology sent to Dr E and Dr D on 25 November 2017:

*'25th November 2017 7am*

*For clarity, my position is:*

- 1. I have no recollection of the offending actions described by and in their allegations.*
- 2. I did not and would never sexually harass them or anyone.*
- 3. However, I have great respect for and care about both of them and their feelings towards me. Therefore, if anything I have ever done has upset or offended them, then I sincerely apologise. [...]*

20. The Tribunal also noted that Dr Cannon was of good character and that there had been no repetition of the action in seven years.

21. The Tribunal considered that a warning in this case was not necessary as Dr Cannon's conduct did not fall significantly below the standard expected and did not breach GMP.
22. It also considered that a warning was not appropriate as there had been no finding of misconduct against Dr Cannon.
23. The Tribunal concluded that it had no concerns of repetition.
24. In all the circumstances, the Tribunal was satisfied that a warning was not necessary and was not appropriate.
25. That concludes this case.