PUBLIC RECORD

Dates: 11/04/2023 - 05/05/2023,
15/05/2023, and
02/10/2023 – 04/10/2023.

Medical Practitioner's name:	Dr Richard BASKERVILLE
GMC reference number:	3483152
Primary medical qualification:	MB BS 1990 University of London

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

Case concluded

Tribunal:

Legally Qualified Chair	Mr Graham White
Lay Tribunal Member:	Mr John Elliott
Medical Tribunal Member:	Dr Jeffrey Phillips

Tribunal Clerk:	Mr John Poole, 11/04/2023 – 05/05/2023, Ms Rachel Horkin, 15/05/2023, Mx Nate Caruso-Kelly, 02/10/2023 – 04/10/2023.

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Stephen Brassington, Counsel, instructed by Weightmans
GMC Representative:	Mr Nicholas Walker, Counsel, 11/04/2023 – 5/05/2023 and 15/05/2023 Mr Julian Goode, Counsel, 02/10/2023 – 04/10/2023

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 - 15/05/2023

Background

1. Dr Baskerville qualified as a doctor in 1990 from the University College of London. He originally trained in surgery before transferring to general practice in 1998. From 2004 he was a partner at Beaumont Medical Practice ('the Practice') in Oxford, specialising in Diabetes. The matters giving rise to this hearing relate to Dr Baskerville's treatment of Patient A. Dr Baskerville first saw Patient A at the Practice in October 2018 as her usual doctor had not been available, and she had requested an urgent appointment because of her deteriorating mental health.

2. Patient A was born on XXX. She had been a student at XXX University since XXX studying for a degree XXX. She was assigned to the Practice where her named GP was Dr Baskerville's partner, Dr A. Patient A had mental health problems and had been diagnosed with anorexia nervosa, dependant personality disorder and recurrent depressive disorder. Her university studies were disrupted by admissions to a psychiatric hospital. She had been sectioned in XXX and spent XXX months as an inpatient. Over the 2018 Christmas period she started to make plans to kill herself, having become increasingly hopeless about her long-term prospects, her health and body weight. She had stopped taking her prescribed medication and, according to the College Welfare Officer (CWO), was stockpiling it.

3. In January 2019, the CWO had asked Patient A to go in to see her because she had not attended for her examinations. Patient A declined as she found it too stressful to be around people. A GP visit was therefore arranged, and Dr Baskerville visited her at home. Patient A was subsequently admitted to XXX Psychiatric hospital on XXX 2019 and discharged two days later on XXX. Dr Baskerville continued to treat her in his GP capacity until 13 September 2019 after which she stopped contacting him.

4. Patient A then made complaints about Dr Baskerville's conduct which were investigated by Thames Valley Police and, in accordance with standard protocol, they referred the matter to the GMC in late 2019. As part of the criminal investigation, the police interviewed Dr Baskerville under caution in November 2019 and, in May 2020, they decided to take no further action.

5. The Allegation which Dr Baskerville faces can be summarised as follows. Between October 2018 and November 2019 (the 'Treatment Period'), Dr Baskerville treated Patient A as the General Practitioner assigned to the University XXX where she was studying. It is alleged that, during the Treatment Period, Dr Baskerville knew Patient A was vulnerable, that he failed to adequately and appropriately manage her health and that he behaved inappropriately towards her. It is further alleged that some of Dr Baskerville's actions were in pursuit of an improper emotional relationship and that some of them were sexually motivated.

The Outcome of Applications Made during the Facts Stage

6. The Tribunal granted an application made by Mr Walker, Counsel on behalf of the GMC, to amend the Allegation pursuant to Rule 17(6) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). The Tribunal's full decision on the application is included at Annex A. Some parts of the Allegation were withdrawn and others were amended.

7. At the close of the GMC's case, Mr Brassington, Counsel, on behalf of Dr Baskerville, made an application of 'no case to answer' in respect of various paragraphs of the Allegation. The Tribunal's full decision in respect of that application is included at Annex B.

The Allegation and the Doctor's Response

8. The Allegation made against Dr Baskerville is as follows:

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

1. Between October 2018 and November 2019, you treated Patient A as the GP assigned to Patient A's XXX university (the 'Treatment Period'). Admitted and found proved

2. During the Treatment Period, you failed to adequately and appropriately manage Patient A's health in that you:

a. failed to weigh Patient A, as part of the management of her anorexia nervosa; To be determined

b. gave advice to her that was undermining of the specialist advice she was receiving from the XXX Hospital ('the Hospital Team') including encouraging Patient A to:

i. stop taking Venlafaxine as prescribed by the Hospital Team; To be determined

ii. lie to the Hospital Team about stopping taking Venlafaxine; To be determined

iii. make up how much she weighs to the Hospital Team; To be determined

~~c. prescribed the drugs as set out in Schedule 1 to Patient A on one or more occasion:~~

~~i. without challenging her about her need for, or use of, sleeping tablets; To be determined~~

~~ii. in inappropriate quantities; To be determined~~

~~d. in the alternative to paragraph 2.c.i., failed to make an adequate record of challenging Patient A about her need for or use of sleeping tablets; To be determined~~

~~e. incorrectly diagnosed Patient A with polycystic ovarian syndrome ('PCOS'); To be determined~~

Deleted in accordance with Rule 17(6)

c. ~~f.~~ failed to provide appropriate treatment to Patient A, in that you:

i. continued to treat Patient A for 'Polycystic Ovarian Syndrome' PCOS, when there was a lack of evidence that Patient A had PCOS; To be determined

Amended in accordance with Rule 17(6)

ii. prescribed Patient A metformin on 9 July 2019 when it was not clinically indicated to do so; To be determined

iii. gave Patient A empaglifozin on 19 August 2019 to treat PCOS:

1. when it was not clinically indicated to do so; Admitted and found proved

2. without issuing a prescription for Patient A; Admitted and found proved

3. from a supply of empaglifozin which had been prescribed for another patient; Admitted and found proved

iv. (in the alternative to paragraph ~~2.g.iii.2.~~ 2.c.iii.2 you did not record any prescription for empagliflozin in Patient A's medical records; Deleted)

Amended in accordance with Rule 17(6)

3. During the Treatment Period, you:

a. communicated with Patient A:
   iii. using your private email address; Admitted and found proved
   iv. using WhatsApp messenger; Admitted and found proved
   v. outside of the usual times of availability of NHS General Practitioners; To be determined
b. sent in excess of 100 text and/or WhatsApp messages which were not clinically related; To be determined
c. made inappropriate comments in the WhatsApp messages sent to Patient A To be determined
d. shared information about your personal life in the WhatsApp messages you sent to Patient A; Admitted and found proved
e. met up with and/or visited with Patient A outside of a clinical setting on one or more occasions at:
   i. her home address; To be determined
   ii. the Tate Modern on 1 April 2019 To be determined
   iii. public or social locations; To be determined
f. hugged Patient A on one or more occasion; To be determined
g. put your hand on Patient A's thigh on 1 April 2019; To be determined
h. on one or more occasion:
   i. kissed Patient A's:
      1. neck; To be determined
      2. forehead; To be determined
   ii. pressed your face into her breasts; To be determined
   iii. stroked her body over her clothing; To be determined
   iv. held Patient A's hand; To be determined
   v. gave gifts to Patient A; Admitted and found proved
i. threatened to withhold treatment if Patient A did not see you every day; To be determined
j. failed to keep adequate medical records, in that you failed to record the content of your consultations with Patient A; Admitted and found proved
k. on or around 26 August 2019, you gave £10.00 to Patient A to pay for a prescription; Admitted and found proved

l. in respect of your actions at paragraph ~~3.h~~ 3.k above, you made the comment that it is 'nice to feel naughty sometimes', or words to that effect; Admitted and found proved Amended in accordance with Rule 17(6)

m. went to Patient A's home address on more than one occasion in January 2019 and you:

~~i. said that you would be destroyed if Patient A died, or words to that effect;~~

Deleted in accordance with Rule 17(6)

~~iii.~~ i. said that you would not tell her psychiatrist that she was having suicidal thoughts, or words to that effect; To be determined

~~iv. said that you were going to treasure a picture that Patient A drew of how she really felt, or words to that effect;~~

~~v. talked about her creative writing and asked her to send you some by email;~~

Deleted in accordance with Rule 17(6)

~~vi.~~ ii. told her not to tell anyone about your visits, as it would look bad because:

1. she had been diagnosed with dependant personality disorder; To be determined
2. it would make her look more dependent on health professionals;

or words to that effect; To be determined

n. consulted with Patient A at the Beaumont Medical Practice ('the Practice') and you:

i. on one or more occasion locked the door to the consultation room during the consultation; Admitted and found proved

ii. on one or more occasion stroked Patient A's face; To be determined

iii. advised her to use the rear entrance of the Practice; Admitted and found proved

iv. got a wet cloth and cooled Patient A's forehead down on 12 March 2019; Admitted and found proved

v. on one or more occasion placed her hand on your crotch when she was lying on your couch; To be determined

vi. on one or more occasion told Patient A to sit on your desk and you:

1. wheeled your chair forward towards Patient A and you cuddled her lower abdomen area; To be determined

2. placed her hand on your crotch, when your penis was erect. To be determined

4. During the Treatment Period, you knew Patient A to be vulnerable because of her: Admitted in relation to the stem

   a. anorexia nervosa; To be determined
   b. dependant personality disorder; To be determined
   c. recurrent depressive disorder. To be determined

5. Your actions as described at paragraphs 2 and 3:
   a. were in pursuit of an improper emotional relationship; To be determined
   b. amounted to controlling behaviour. To be determined

6. Your actions as described at paragraphs 3.g. – 3.h.iii. and 3.n.v to 3.n.vi. were sexually motivated. To be determined

The Admitted Facts

9. At the outset of the hearing, Dr Baskerville made admissions through his counsel to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

10. In light of Dr Baskerville's response to the Allegation made against him, the Tribunal is required to determine the remainder of the Allegation.

Witness Evidence

11. The Tribunal received oral evidence on behalf of the GMC from the following witnesses in addition to their respective witness statements:

- Patient A, in person;
- Ms B, Sexual Health Advisor at the XXX Sexual Health Service ('OSHS'), by video link;
- Ms C, Academic Administrator at XXX, by video link.

12. Dr Baskerville provided his own witness statement dated 10 February 2023 and also gave oral evidence at the hearing.

13. In addition, the Tribunal received oral evidence via video link from the following testimonial witnesses on Dr Baskerville's behalf in addition to their respective witness statements:

- Mrs D, Assistant Practice Manager at the Practice
- Dr E, former Partner at the Practice
- Ms F, Receptionist at the Practice
- Dr G, GP Partner at a neighbouring Practice

14. The Tribunal also considered written statements from 54 further testimonial witnesses as follows:

- Professor H, Professor and Consultant in Endocrinology at the University of Oxford;
- Ms I, Patient of the Practice;
- Professor J, Patient of the Practice;
- Ms K, Patient of the Practice;
- Mr L, Patient of the Practice;
- Ms M, Patient of the Practice;
- Ms N, Patient of the Practice;
- Mr O, Patient of the Practice;
- Dr P, Patient of the Practice;
- Ms Q, Patient of the Practice;
- Professor Sir R, former Provost of Worcester College, University of Oxford;
- Mr S, Patient of the Practice;
- Dr T, Patient of the Practice;
- Ms U, Patient of the Practice;
- Professor V, Patient of the Practice;
- Professor W, Patient of the Practice;
- Ms X, Patient of the Practice;
- Ms Y, Patient of the Practice;
- Ms Z, Patient of the Practice;
- Professor AA, Clergyman and Patient of the Practice;
- Professor BB, Patient of the Practice;
- Mr CC, Patient of the Practice;

- Mr DD, Former Dean of Worcester College, University of Oxford;
- Professor EE, Patient of the Practice ;
- Professor FF, former Dean of Worcester College, University of Oxford;
- Ms GG, Patient of the Practice;
- Professor HH, Acting Senior Partner in the Practice and University of Oxford Professor of Primary Care Research;
- Professor II, Solicitor and Patient of the Practice;
- Dr Professor JJ, Professor and Honorary Consultant in Mitochondrial Genetics at the University of Oxford;
- Professor KK, Professor of Empathetic Healthcare at the University of Leicester and Patient of the Practice;
- Ms LL, former Librarian and Harassment Officer Oxford University and Patient of the Practice;
- Dr MM, Patient of the Practice;
- NN, Patient of the Practice;
- OO, Receptionist and Administrative Assistant of the Practice;
- Professor PP, Professor Emeritus of English Literature at Oxford University and Patient of the Practice;
- Dr QQ, Bio-chemist and Associate Fellow, Green Templeton College;
- Dr RR, Retired Consultant Radiologist and Patient of the Practice;
- SS, Retired Consultant Psychiatrist, wife of Dr Baskerville;
- TT, Patient of the Practice;
- UU, Patient of the Practice;
- Baronness VV, former Chair of the Human Fertilisation and Embryology Authority and of the Bar Standards Board and Patient of the Practice;
- WW, Professor of Developmental Psychology at UCL and Patient of the Practice;
- XX, Solicitor, former Lambda Legal Defence and Education Fund and Patient of the Practice;
- YY, Patient of the Practice;
- Ms ZZ, Fertility Care Practitioner and Patient of the Practice;
- Ms AAA, Patient of the Practice;
- BBB, Patient of the Practice;
- CCC, Patient of the Practice;
- Dr DDD, Senior Tutor, Magdalene College, Oxford University

- EEE, Patient of the Practice;
- Sir FFF, OM FRS, Patient of the Practice;
- Mr GGG, Fellow of Magdalen College, University of Oxford and Patient of the Practice;
- HHH, Physiotherapist and Former Receptionist at the Practice;
- III, Patient of the Practice.

Expert Witness Evidence

15. The Tribunal heard from two experts. Dr JJJ, instructed by the GMC, and Dr LLL, instructed on behalf of Dr Baskerville. Dr JJJ provided reports dated 9 May 2021 and 29 September 2022, and Dr LLL provided a report dated 10 February 2023. Both experts also provided a joint expert report dated 3 March 2023 (the Joint Expert Report).

16. However, following concerns about Dr JJJ' conduct in seeking external advice about how to answer questions whilst subject to his oath and as a consequence of his answers during cross-examination, Mr Walker informed the Tribunal that the GMC no longer sought to rely upon his evidence as an expert witness. In particular, Dr JJJ acknowledged that he inaccurately articulated the required standards of behaviour of a practitioner, and, when he wrote his expert report, he had not considered Dr Baskerville's account when interviewed by the police. He had allowed his clinical judgment to be clouded by a pre-judgment about Dr Baskerville's behaviour. In these circumstances, the Tribunal took account only of Dr LLL's evidence as an expert.

Documentary Evidence

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

- Witness statement from Patient A dated 24 October 2020 and her exhibited MG11 Police Statement dated 19 November 2019;
- Supplemental witness statements from Patient A dated 30 August 2020, 11 October 2022, and 24 October 2022;
- Expert Report from Dr LLL dated 10 February 2023;
- Joint Expert Report dated 3 March 2023;
- Bundle of messages exchanged between Dr Baskerville and Patient A;
- Audio recordings of consultation discussions between Patient A and Dr Baskerville;

- Medical Records Bundle;
- Witness statement by Dr Baskerville dated 10 February 2023;
- Transcript of Dr Baskerville's interview by the Police on 8 November 2019.

The Tribunal's Approach

18. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proving the Allegation rests on the GMC. Dr Baskerville 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 in question occurred.

19. The Legally Qualified Chair (LQC) gave legal advice to the Tribunal. In particular, he reminded it to consider the case against and for Dr Baskerville in respect of each of the disputed facts separately and to consider the precise wording of each part of the Allegation carefully.

20. The LQC referred to Paragraph 5 of the Allegation which alleges that Dr Baskerville's actions at paragraphs 2 and 3 were in pursuit of an improper relationship. He advised that the Tribunal should first decide which, if any, of the actions not admitted have now been proved by applying the required burden and standard of proof. It should then go on to decide whether the GMC has proved on the balance of probabilities that all or any of the actions proved by admission or by a finding of the Tribunal were undertaken in pursuit of a relationship which was improper, that is to say not in accordance with accepted standards of morality.

21. Paragraph 6 alleges that Dr Baskerville's actions in respect of paragraphs 3g, 3hi(1&2), 3hii, 3hiii, 3hiv, 3hv, 3nv, and 3nvi(1&2) were sexually motivated. The LQC advised that the words "sexually motivated" should be given their literal meaning. The GMC did not have to prove that the acts alleged were sexual in themselves, although some of them, if they did happen, could have no other explanation. It would be sufficient for the GMC to prove on the balance of probabilities that there was a sexual motive on the part of Dr Baskerville which drove such actions.

22. The LQC advised that it would ordinarily be possible for a Tribunal to reach a decision one way or another on the evidence. There may, however, be matters on which a Tribunal concludes that the evidence provides insufficient ground for deciding either way in which case it should find the allegation in question not proved.

23. The Tribunal had heard from expert witnesses both in writing and orally. The GMC now no longer relies on the evidence of its own expert, Dr JJJ and the LQC advised that the Tribunal should take into account only the expert evidence of the defence expert Dr LLL. The LQC reminded the Tribunal that, at this stage, the relevance of expert evidence is limited to the disputed areas of fact.

24. The LQC reminded the Tribunal that Dr Baskerville is a person of good character in the sense that there have been no previous findings against him of any wrongdoing in his 33 years in practice. Furthermore, the Tribunal has read and heard from a number of witnesses testifying to Dr Baskerville's competence and motives as a GP and to his general good character.

25. Good character cannot in itself be a defence to an allegation, but it can assist the Tribunal in two ways. First, it may support Dr Baskerville's credibility which is something that should be taken into account when deciding about explanations he has given for his actions. Secondly, the fact that Dr Baskerville is of good character may mean that he is less likely to have carried out the acts in dispute and to have had the motivation and intent alleged. The weight to be attached to these factors is a matter for the Tribunal to decide, taking into account all the evidence it has heard.

The Tribunal's Analysis of the Evidence and Findings

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

Paragraph 3 a (iii) of the Allegation

27. The Tribunal considered whether, during the treatment period, Dr Baskerville communicated with Patient A outside of the usual times of availability of an NHS General Practitioner.

28. The Tribunal first considered the word 'usual' and applied its ordinary meaning namely 'typical or customary'.

29. The Tribunal accepted that the usual times of availability at the Practice Surgery itself would be the hours of the normal clinic sessions.

30. The Tribunal considered the Joint Expert Report, in which it was stated:

"*Dr LLL believes that whilst the contacts were frequent and included out of hours contact that this is not indicative of practice which falls below a standard. Dr LLL has managed patients who require frequent in and out-of-hours follow up in her work caring for mentally ill patients"*

31. The Tribunal took into account Dr LLL's statement in her 10 February 2023 Report that:

"For Transparency, over the years and with a small number of patients I have, and I know, that a reasonable body of GPs have at times……. Arranged visits outside the surgery boundaries or home."

32. By way of example, the Tribunal had regard to the witness statement of Professor J dated 28 February 2023 in which he confirmed he had been a patient of Dr Baskerville for 15 years. In respect of an episode in 2013, he said,

"Dr Baskerville went out of his way in the months that followed to send emails, even in the evening, out of hours, to let me know the thyroid hormone levels and TSH levels as they were measured."

33. Dr LLL acknowledged that there had been out of hours communication by Dr Baskerville.

34. The Tribunal therefore found this paragraph of the Allegation proved as a fact.

Paragraph 3b of the Allegation

35. The Tribunal considered whether Dr Baskerville sent in excess of 100 text and/or WhatsApp messages which were not clinically related.

36. The Tribunal took into account paragraph 54 of the Joint Expert Report where Dr LLL states

"…….one cannot be critical of a doctor who engages with his patient in this manner. She also disagrees that this amounted to 'gossip'. The content of the consultations were more akin to those which would take place in psychotherapy and as such more free flowing and less structured."

37. Dr Baskerville's 23 February 2023 statement referred to Patient A's suggestion to swap from using emails to the use of WhatsApp. In the transcripts of WhatsApp conversations provided for the hearing, the Tribunal noted that some of the messages sent by Dr Baskerville to Patient A were in response to questions and remarks coming from her. For example, Patient A's initiating message on 14/07/2019 at 08:38:50 was *"Good morning I am sorry"* followed by *"Are you going for a run today?"* and on 10/07/2019 at 12:04:09, it was *"Good afternoon"* followed by *"How's it hangling?"*

38. There are numerous messages by Dr Baskerville relating to subjects such as music, cycling, art, visits to parents and social activities as well as messages about how Patient A is feeling. Examples are:

[15/07/2019, 15:43:05] *Reminds me of this cycling group I volunteered in Essex…*
[15/07/2019, 21:52:03] *Did you rest ok?* to which Patient A replies *aw man I couldn't even sleep* followed by Dr Baskerville *Shucks. Maybe lots of exercise required.*
[15/07/2019, 16:20:52] *It looks a funny Twitter feed*
[15/07/2019, 20:27:14] *You ok?*
[15/07/2019, 20:27:14] Anymore?)
[19/07/2019, 16.44.16 *Did temazepam help?*
[19/07/2019, 18:37:25 from Patient A *Got another seat in my fair lady.*
In answer to Patient A on 20/07/2019, 21:34.52 *I am thinking about what you said to me about me possibly being on the autistic spectrum. Do you have any articles or information you can point me towards about this?*
[20/07/2019, *"yes, I'll send some tonight…"*
21/07/2019, 20:01:39 from Patient A *"Did you get your keyboard?"*

39. The messages should be considered in their context both in respect of the longer conversations in which they occur and in respect of the wider context referred to by Dr LLL. She referred to Patient A's overlapping Borderline Personality Disorder and Recurrent Depressive Disorder and considered in all the circumstances that, whilst these should ideally be managed by skilled specialists, this is not always possible. They will often be dealt with by their GP.

40. The Tribunal accepts Dr LLL's evidence as an expert and is satisfied that the majority of the messages are in the context of the broad treatment to which she referred.

41. The burden of proof is on the GMC. The Tribunal found it impossible to conclude on the balance of probabilities that there were in excess of 100 WhatsApp messages and texts which were not clinically related. Therefore, paragraph 3b of the Allegation is found not proved.

Paragraph 3c of the Allegation

42. The Tribunal considered whether Dr Baskerville made inappropriate comments in the WhatsApp messages sent to Patient A.

43. The Tribunal applied the standard definition of the word 'Inappropriate' namely not suitable or proper in the circumstances.

44. The Tribunal considered the log of text messages between Patient A and Dr Baskerville and noted, as examples, the following:

[11/07/2019, 20:44:35 from Dr Baskerville] – *'Didn't realise how joyous a degree could be. He's survived & he's so happy. I've never been to a degree ceremony before. The grades irrelevant.*

[22/07/2019, 07:44:28] from Dr Baskerville in response to Patient A's message *"Goob morning"* – '*Tis certainly a morning for goobs. Spotted several harmonising & giggling. What is it with these small furry creatures'*

[24/07/2019, 12:25:55] – *'Sleep yay. Meet would be good but can only do 3.30…*

[27/07/2019, 17:40:30] – *'Can you bring your violin tomorrow? & I won't speak*

45. The Tribunal concluded that, from certain texts, Dr Baskerville could be seen as initiating a conversation.

46. Dr Baskerville was cross-examined by Mr Walker on behalf of the General Medical Council, and was taken to specific texts such as:

[15/07/2019, 21:52:03] *Did you rest ok?*

[15/07/2019, 22:04:40] from Dr Baskerville *V. tired. Nn*

[15/07/2019, 22:05:43 from Patient A in reply *sweet dreams*

[15/07/2019, 22:09:49 from Dr Baskerville in response *U2*

[16/07/2019, 21:49:42] from Dr Baskerville *Nn,*

[17/07/2019, 22:54:26 from Dr Baskerville *Nn sd*

[21/07/2019, from 20:01: after Patient A initiates with *"Did you get your keyboard?"* there is an exchange during which Dr Baskerville asks what she is doing, she replies "*lying in bed, you?*", he responds *"same"* and *"sleep is a cool cloth on your forehead and a breeze"* and concludes with *"nn".* At 23:10:20 Patient A sends "*The dream. Night night!"*

47. Dr Baskerville accepted that *"sd"* meant "sweet dreams" and agreed that certain texts he had sent could be seen as being inappropriate and were way over boundaries. He conceded that he had gone a little too far in his remarks and in *"joking playfulness"*. He explained that nonetheless he was trying to keep his patient happy and engaged.

48. In all the circumstance, the Tribunal found Paragraph 3c of the Allegation proved.

Paragraphs 3e i, ii and iii of the Allegation.

49. The Tribunal considered whether Dr Baskerville met up with and/or visited Patient A outside of a clinical setting on one or more occasions at: her home address; the Tate Modern on 1 April 2019; and public or social locations;

50. There was no dispute that Dr Baskerville met Patient A as alleged. The issue to be determined in each case was whether it was outside a clinical setting.

51. The Tribunal considered Dr LLL's Expert Report where she says:

> "*I am unclear what 'professional permission' Dr JJJ (*Dr JJJ) *is referring to. As a GP I have over the years consulted with patients in the local park, walked with them, met them off site (so when caring for mentally ill doctors might meet them in cafes if we could not meet in a clinical site). If one assumes, which I do, that Dr B was not providing standard general practice care, rather care more akin to mental health nurse, then meeting in a non-clinical setting is not unusual."*

52. The Tribunal also considered the Joint Expert Report at paragraph 59 which states:
"Dr LLL disagrees with Dr JJJ; she is more circumspect. She believes as stated in her report that increasingly clinicians and social prescribers are advised to take a less biomedical approach to care and include the 'psych and the social'. This means using non-medical means to address health (especially mental health) needs."

53. The Tribunal accepted Dr LLL's expert evidence. It has concluded that, in each case, the location could be regarded as a clinical setting because of Patient A's needs and the way in which Dr Baskerville was attending to and treating her. In the context of this case a clinical setting was not confined to the surgery.

54. In these circumstances, the Tribunal has determined that paragraphs 3 i, ii and iii of the Allegation have not been proved.

Paragraph 3 f of the Allegation

55. The Tribunal considered whether Dr Baskerville hugged Patient A on one or more occasions.

56. The Tribunal noted Patient A's witness statement where she says,
"*He would also initiate hugging me when I was upset and also when he said goodbye to me. The hug would last a few seconds initially but got longer as time went on and our bodies would touch when he hugged me."*

57. Dr Baskerville denied ever initiating a hug with Patient A. He told the Tribunal that she would hug him without warning in the nature of a "thank you very much" gesture when she stood up and that he did no more than respond with a polite reciprocating hug.

58. The Tribunal took into account the oral evidence of Ms F when she said,
"Dr Baskervilles behaviour towards female patients seemed to be the same as towards a male patients. He was not someone who appeared to be comfortable with hugging or touching when introduced to someone new, and I remember his surprise when I did hug him first"

Ms F went on to say *" I think he was very shocked and I frightened him a bit".*

59. The Tribunal also considered a clinic letter to Dr Baskerville about Patient A, which states at Paragraph 2,
"*I noted an entry on care notes by a team member regarding a phone call from a friend of Patient A expressing concern about her mental health. The message states Patient A has been 'behaving inappropriately, attempting to hug and kiss her."*

60. Furthermore, in her statement OO described Patient A having inappropriately put an arm through hers.

61. The Tribunal accepts Dr Baskerville's evidence about the matter. On balance of probabilities it does not find that he initiated the hugging with Patient A. It does not accept that Patient A questioned Dr Baskerville about hugging her as she said in her statement dated 24 October 2020. The Tribunal concluded that it would have been Patient A who initiated hugging him herself, unprompted, and that Dr Baskerville simply reciprocated in an uncomfortable and incomplete way.

62. Therefore, the Tribunal finds this allegation not proved.

Paragraph 3g of the allegation

63. The Tribunal considered whether Dr Baskerville put his hand on Patient A's thigh on 1 April 2019.

64. In her MG 11 statement dated 19 November 2019, Patient A said that Dr Baskerville took her to London. In fact, as she later says in the statement, she travelled herself and met up with him at the Tate Museum. Patient A went on to state,

> *"He held my hand surreptitiously when we were sitting down in the café and on the bus on the way home. He was quite cuddly on the bus XXX. We were sat side by side, he put his hand on my thigh. I didn't think much about him doing that and I didn't ask him to move. I don't really remember what I thought about him doing that and I didn't ask him to move. I don't really remember what I thought about him doing this. We parted at the station and I went home."*

65. Dr Baskerville denied placing his hand on Patient A's thigh on that or any other occasion.

66. The Tribunal took into account the Oxford Domestic Abuse Service discussion sheet and in particular the entry dated 06/08/2019 as follows,

> "*Patient A stated that he* (Dr Baskerville) *is constantly making sexual comments and stating that he would like to have sex with her and admitting to be jealous of her. Patient A also stated that while "examining her" he has touched her thighs, when I explained that this was sexual assault if not consensual Patient A stated that he was just making sure that she wasn't self-harming – I asked Patient A why did he had to actually touch and not just observe if he has a concern, Patient A had no answer."*

67. Although this entry does not relate specifically to the alleged touching of the thigh on 1 April 2019, the Tribunal considered that it was an example of Patient A's inconsistency and self-contradiction in her various accounts of Dr Baskerville's behaviour.

68. In all the circumstances the Tribunal finds paragraph 3 (g) not proved.

Paragraphs 3 h i 1. 2, ii, iii, iv of the Allegation.

69. The Tribunal considered whether, on one or more occasions, Dr Baskerville kissed Patient A's neck or forehead; pressed his face into Patient A's breasts; stroked her body over her clothing; and held Patient A's hand.

70. In her MG11 statement to the police, Patient A said,

"*There were many occasions where after taking medication that he had instructed me to take prior to attending the surgery or when I was attending the surgery I would be sleepy. Dr Baskerville would kiss my neck, press his face into my breasts and stroke my body over clothing and stroke my face. He would kiss my forehead and at times he would tell me to sit on his desk and he would wheel forward in his chair and he would cuddle me around my lower abdomen area. He would also place my hand on his crotch and I could feel his penis was erect. He would keep his hand on top of my hand so I couldn't move it away. It made me feel sick and confused and latterly I felt it was my fault. It would last minutes and I didn't know why or how it would stop. If I was lying on his couch he would sit near to me and place my hand on his crotch area and I could feel his erect penis.*"

71. There was a lack of detail in Patient A's evidence about when and in what circumstances these incidents were alleged to have taken place. She repeated them in her statement dated 24 October 2020 but did not provide any further details. She did not expand on her written statements when giving her oral evidence.

72. In his evidence to the Tribunal, Dr Baskerville categorically denied ever behaving in the way alleged.

73. There is no reference by Dr Baskerville to any form of sexual activity in any of the many conversations between him and Patient A which she recorded without him being aware of it. Nor is there any such reference in the text and WhatsApp messages. In none of these communications are there any remarks or suggestions of a sexual nature.

74. The Tribunal heard from a witness who had been the victim of a sexual assault. She said that consequently she had a "radar" which warned her of potentially inappropriate sexual behaviour towards her. She told the Tribunal that her "radar" had never been activated in extensive contact she had with Dr Baskerville.

75. The Tribunal also decided that it was appropriate to take into account the extensive evidence of Dr Baskerville's good character it had read and heard from a wide range of witnesses, all of whom are aware of the allegations. The Tribunal concluded that this both supported the credibility of his denials and made it unlikely that he would have engaged in any of the behaviour alleged. The witnesses testified not only to his honesty and integrity, but also to his thorough professionalism, good judgment, relaxed and assuring manner and impeccable behaviour. They also mention him as going "above and beyond", "the extra mile", his pro-active approach, his respectful manner, informal style, seeing patients out of normal

hours and locations, engaging with them in social and group activities and his caring and empathetic qualities. The allegations have been described as utterly out of keeping with Dr Baskerville's character.

76. The Tribunal concluded that there was insufficient evidence to prove that Dr Baskerville ever kissed Patient A's neck or forehead, pressed his face into her breasts, or stroked her body. Such conduct would have been entirely inconsistent with the attitudes, motives and conduct of Dr Baskerville as described by the testimonial witnesses.
77. As far as holding Patient A's hand is concerned, the Tribunal had regard to the Joint Expert Report. Under Paragraph 66: *"Both agreed that holding a patient's hand can be an appropriate action, especially when a patient is upset.*

78. The Tribunal found that that the evidence about holding Patient A's hand is not clear.

79. In all the circumstances, the Tribunal finds paragraphs 3 h i 1 and 2, ii, iii and iv not proved.

Paragraph 3 i of the Allegation

80. The Tribunal considered whether Dr Baskerville threatened to withhold treatment if Patient A did not see him every day.

81. In the list of "Examples of Unprofessionalism" on the part of Dr Baskerville which Patient A exhibited to her statement dated 24 October 2020 is the following:

"Threatening to withhold medication if I didn't see him or do what he wanted"

82. The Tribunal considers this to be an assertion with no detail, context, or evidence to support it. No motive for such a threat has been established to the Tribunal's satisfaction and there is a considerable amount of evidence to the contrary. It is clear from the extensive records of messages and conversations between Dr Baskerville and Patient A that his approach was co-operative and not threatening.

83. The Tribunal therefore finds that paragraph 3 i is not proved.

Paragraphs 3mii 1 and 2 of the Allegation

84. The Tribunal considered whether Dr Baskerville went to Patient A's home address on more than one occasion in January 2019 and: told her not to tell anyone about his visits as it

would look bad because; she had been diagnosed with dependant personality disorder and it would make her look more dependent on health professionals or words to that effect.

85. In her MG11 statement to the police dated 19 November 2019, Patient A said as follows:

> *" In January 2019 I was in my flat. I was supposed to be attending XXX exams at the XXX. I hadn't attended and I received a phone call from MMM the Welfare Officer of the XXX. She asked me to come in for a chat but I explained that I couldn't leave my flat. I had been bingeing so much and I also found it incredibly stressful to be outside and be around people. MMM said that she would arrange a GP to do a home visit. I think that they tried to arrange Dr A to visit me but I think she was busy. Dr Baskerville came to my flat. At this point I was feeling very low. I had lost contact with my friends. Dr Baskerville arrived at my flat. He sat on one sofa and I on the other. He said that he had come to talk about how I was feeling. He then came and sat next to me and held my hand……..Following this visit he came to visit me daily until I was admitted to hospital….During that week when he visited me he said that he would not tell my psychiatrist that I was having suicidal thoughts."*

86. In his oral evidence, Dr Baskerville agreed that there were occasions in January 2019 when he visited Patient A and he accepted that he told Patient A he would not himself inform the psychiatrist that she was having suicidal thoughts.

87. Dr Baskerville said that he had, prior to her admission, become concerned about her increasing withdrawal. He had experienced two student suicides within the previous 5 years, and he was reminded of the earlier attempted suicide by another young patient who had thrown herself off a balcony. He therefore increased his home visits before her admission to hospital and after her discharge. He did not want her to be released too soon and cycled over to the hospital to tell them what he thought.

88. Patient A said in her MG 11 statement,

> "*After I had been discharged from the XXX Hospital, Dr Baskerville continued to visit me in my flat. Every time that Dr Baskerville came to visit me at home he had emailed me prior to this to make the appointment."*

The Tribunal noted that in none of the extensive emails provided is there reference to any arranged appointment with Patient A at her home address. The only evidence is of emails from Dr Baskerville asking for Patient A to attend the surgery.

89. The Tribunal concluded that, other than in the police statement from Patient A, there is no positive evidence in emails or conversations that this happened in January 2019.

90. During Dr Baskerville's oral evidence, he spoke about Patient A becoming increasingly withdrawn, and that he knew if the team were called, she would be admitted to the mental hospital. Whilst Dr Baskerville did visit at times in January 2019, the Tribunal is not satisfied that he told her not to tell anyone about those visits.

91. The Tribunal therefore find paragraphs 3mii 1 and 2 not proved.

Paragraphs 3n ii, v, vi 1 and 2 of the Allegation

92. The Tribunal considered whether Dr Baskerville stroked Patient A's face on more than one occasion; placed her hand on his crotch on one or more occasions when she was lying on his couch; told her on one or more occasions to sit on his desk and wheeled his chair towards her and cuddled her abdomen and placed her hand on his crotch when his penis was erect.

93. As referred to in Paragraph 69 of this Determination, Patient A said in her MG11 statement,

> *"there were many occasions where after taking medication that he had instructed me to take prior to attending the surgery or when I was attending the surgery I would be sleepy. Dr Baskerville would kiss my neck, press his face into my breasts and stroke my body over clothing and stroke my face. He would kiss my forehead and at times he would tell me to sit on his desk and he would wheel forward in his chair and he would cuddle me around my lower abdomen area. He would also place my hand on his crotch and I could feel his penis was erect. He would keep his hand on top of my hand so I couldn't move it away. It made me feel sick and confused and latterly I felt it was my fault. It would last minutes and I didn't know why or how it would stop. If I was lying on his couch he would sit near to me and place my hand on his crotch area and I could feel his erect penis."*

94. In her 11 October 2022 addendum statement, Patient A clarifies certain aspects of the list of "Examples of Unprofessionalism which she exhibited to her 24 October 2020 statement. She refers to his comment that "*I feel like I am exploding and I want you to clean up the mess"* when putting her hand on his crotch. She thought it was in the basement when she was lying down on his couch but could not remember on what exact day he said it. Patient A went on to say that Dr Baskerville told her thought of her when he orgasmed, told her she was a prick tease and that XXX.

95. There was a lack of further detail in the statements relating to these allegations and Patient A did not expand on them in her oral evidence to the Tribunal.

96. The Tribunal decided that it was appropriate to take into account the extensive evidence of Dr Baskerville's good character it had read and heard from a wide range of witnesses. Applying the advice of the LQC, the Tribunal concluded that this evidence both supported the credibility of his denials and made it unlikely that he would have engaged in any of the behaviour alleged. There is no reference by Patient A or Dr Baskerville to any form of sexual activity in any of the many conversations between them which she recorded without his being aware of it. The Tribunal considers that had behaviour of the type alleged occurred, the tenor and content of the recorded conversations would have reflected this.

97. The Tribunal found there was insufficient evidence to establish on balance of probabilities that Dr Baskerville ever asked Patient A to sit on his desk, cuddle her lower abdomen area or place her hand on his crotch.

98. The Tribunal accordingly finds paragraphs 3n iii, v, and vi 1 and 2 not proved.

Paragraphs 4 a b c of the Allegation

99. Dr Baskerville has already admitted the stem of this Allegation, namely that he knew Patient A to be vulnerable. The Tribunal considered whether, during the Treatment Period, Dr Baskerville knew Patient A to be vulnerable because of her: anorexia nervosa; dependant personality disorder; recurrent depressive disorder.

100. The Tribunal noted Dr Baskerville's letter to the XXX dated 17 January 2019 which states:

> *"Patient A had a very difficult time in recent weeks struggling with ongoing symptoms of anorexia nervosa and recurrent depression with dependant personality disorder. This culminated in her becoming suicidal and requiring voluntary hospital admission last week. She has been discharged but Dr NNN her psychiatrist thinks her mental fragility and commitments of having to attend day hospital over the coming weeks precludes continuing her studies this academic year. She recommends suspension of studies and I am therefore writing as XXX Doctor to formally request this. I would recommend returning to studies in XXX 2020."*

101. In these circumstances, the Tribunal is in no doubt that Dr Baskerville was aware that Patient A's vulnerability was derived from all of the three conditions set out in the allegation and accordingly finds paragraphs 4a,b and c proved.

Paragraph 5 a of the Allegation

102. The Tribunal considered whether Dr Baskerville actions as found proved, namely paragraphs 2. 1,2 and 3; and 3a i, ii, iii ; 3d; 3h iv; 3j; 3k; 3l; 3k; 3l; 3ni and ii, were in pursuit of an improper emotional relationship with Patient A. Paragraphs 84-86 of the Joint Expert Report state as follows:

> *"84. The experts both agree that the above depend on the context in which statements were made. They may have been made in good faith and appropriately or the opposite.*
>
> *85. Both experts agree that although a consultation is between a doctor and patient there may other significant interested parties involved in the case. In this case the university authorities are going to need accurate, factual medical information in a report so they can assess the patient's (their student's) ability to continue her studies.*
>
> *86. Dr LLL added that where one has a close therapeutic relationship with a patient and where this is one which has been intense(in the context of psychological care), a therapist/doctor might say something which taken out of context and might seem inappropriate (ie 'not to tell'). The the care of this patient was not usual medical practice – it was care which extended well into the boundaries of a psychotherapeutic relationship."*

103. Given the Tribunal's findings in relation to paragraphs 2 and 3 of the Allegation, it determined that there is no evidence to support this allegation.

104. The Tribunal therefore found paragraphs 5a and b of the Allegation not proved.

Paragraph 6 of the Allegation.

105. This paragraph falls away given that the Tribunal has found paragraphs 3.g, 3.h.iii, and 3n to 3n.vi of the Allegation not proved.

106. It follows, therefore, that paragraph 6 of the Allegation is not proved.

The Tribunal's Overall Determination on the Facts

105. The Tribunal has determined the facts as follows:

1. Between October 2018 and November 2019, you treated Patient A as the GP assigned to Patient A's XXX university (the 'Treatment Period'). Admitted and found proved

2. During the Treatment Period, you failed to adequately and appropriately manage Patient A's health in that you:

a. ~~failed to weigh Patient A, as part of the management of her anorexia nervosa~~; Withdrawn pursuant to Rule 17(6)

~~b. gave advice to her that was undermining of the specialist advice she was receiving from the XXX Hospital ('the Hospital Team') including encouraging Patient A to:~~

~~i. stop taking Venlafaxine as prescribed by the Hospital Team;~~ Withdrawn following Rule 17(2)g application

~~ii. lie to the Hospital Team about stopping taking Venlafaxine;~~ Withdrawn following Rule 17(2)g application

~~iii. make up how much she weighs to the Hospital Team;~~ Withdrawn following Rule 17(2)g application

~~c. prescribed the drugs as set out in Schedule 1 to Patient A on one or more occasion:~~

~~i. without challenging her about her need for, or use of, sleeping tablets;~~ ~~To be determined~~

~~ii. in inappropriate quantities;~~ ~~To be determined~~

~~d. in the alternative to paragraph 2.c.i., failed to make an adequate record of challenging Patient A about her need for or use of sleeping tablets;~~ ~~To be determined~~

~~e. incorrectly diagnosed Patient A with polycystic ovarian syndrome ('PCOS');~~ ~~To be determined~~

Deleted in accordance with Rule 17(6)

c. ~~f.~~ failed to provide appropriate treatment to Patient A, in that you:

~~i. continued to treat Patient A for 'Polycystic Ovarian Syndrome' PCOS, when there was a lack of evidence that Patient A had PCOS;~~ Amended in accordance with Rule 17(6)
Withdrawn in accordance with Rule 17(6)

ii. ~~prescribed Patient A metformin on 9 July 2019 when it was not clinically indicated to do so;~~ Withdrawn following Rule 17(2)g application

iii. gave Patient A empaglifozin on 19 August 2019 to treat PCOS:

1. when it was not clinically indicated to do so; Admitted and found proved
2. without issuing a prescription for Patient A; Admitted and found proved

3. from a supply of empaglifozin which had been prescribed for another patient; **Admitted and found proved**

iv. in the alternative to paragraph ~~2.g.iii.2.~~ 2.c.iii.2 you did not record any prescription for empagliflozin in Patient A's medical records; **Not proved given admission to 2.c.iii.2**
Amended in accordance with Rule 17(6)

3. During the Treatment Period, you:

a. communicated with Patient A:

i. using your private email address; **Admitted and found proved**

ii. using WhatsApp messenger; **Admitted and found proved**

iii. outside of the usual times of availability of NHS General Practitioners; **Determined and found proved**

b. sent in excess of 100 text and/or WhatsApp messages which were not clinically related; **Not proved**

c. made inappropriate comments in the WhatsApp messages sent to Patient A **Determined and found proved**

d. shared information about your personal life in the WhatsApp messages you sent to Patient A; **Admitted and found proved**

e. met up with and/or visited with Patient A outside of a clinical setting on one or more occasions at:

i. her home address; **Not proved**

ii. the Tate Modern on 1 April 2019 **Not proved**

iii. public or social locations; **Not proved**

f. hugged Patient A on one or more occasion; **Not proved**

g. put your hand on Patient A's thigh on 1 April 2019; **Not proved**

h. on one or more occasion:

i. kissed Patient A's:

1. neck; **Not proved**

2. forehead; **Not proved**

ii. pressed your face into her breasts; **Not proved**

iii. stroked her body over her clothing; **Not proved**

iv. held Patient A's hand; **Not proved**

v. gave gifts to Patient A; **Admitted and found proved**

i. threatened to withhold treatment if Patient A did not see you every day; **Not proved**

j. failed to keep adequate medical records, in that you failed to record the content of your consultations with Patient A; **Admitted and found proved**

k. on or around 26 August 2019, you gave £10.00 to Patient A to pay for a prescription; Admitted and found proved

l. in respect of your actions at paragraph ~~3.h~~ 3.k above, you made the comment that it is 'nice to feel naughty sometimes', or words to that effect; Admitted and found proved

Amended in accordance with Rule 17(6)

m. went to Patient A's home address on more than one occasion in January 2019 and you:

~~i. said that you would be destroyed if Patient A died, or words to that effect;~~

Deleted in accordance with Rule 17(6)

~~iii.~~ ~~i.~~ ~~said that you would not tell her psychiatrist that she was having suicidal thoughts, or words to that effect;~~

Withdrawn in accordance with Rule 17(6)

~~iv. said that you were going to treasure a picture that Patient A drew of how she really felt, or words to that effect;~~

~~v. talked about her creative writing and asked her to send you some by email;~~

Deleted in accordance with Rule 17(6)

~~vi.~~ ii. told her not to tell anyone about your visits, as it would look bad because:

1. she had been diagnosed with dependant personality disorder; Not proved
2. it would make her look more dependent on health professionals;

or words to that effect; Not proved

n. consulted with Patient A at the Beaumont Medical Practice ('the Practice') and you:

i. on one or more occasion locked the door to the consultation room during the consultation; Admitted and found proved

ii. on one or more occasion stroked Patient A's face; Not proved

iii. advised her to use the rear entrance of the Practice; Admitted and found proved

iv. got a wet cloth and cooled Patient A's forehead down on 12 March 2019; Admitted and found proved

v. on one or more occasion placed her hand on your crotch when she was lying on your couch; Not proved

vi. on one or more occasion told Patient A to sit on your desk and you:

1. wheeled your chair forward towards Patient A and you cuddled her lower abdomen area; Not proved
2. placed her hand on your crotch, when your penis was erect. Not proved

4. During the Treatment Period, you knew Patient A to be vulnerable because of her: Admitted in relation to the stem
   a. anorexia nervosa; Determined and found proved
   b. dependant personality disorder; Determined and found proved
   c. recurrent depressive disorder. Determined and found proved

5. Your actions as described at paragraphs 2 and 3:
   a. were in pursuit of an improper emotional relationship; Not proved
   b. amounted to controlling behaviour. Not proved

6. Your actions as described at paragraphs 3.g. – 3.h.iii. and 3.n.v to 3.n.vi. were sexually motivated. Not proved

Determination on Impairment - 04/10/2023

107. 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 Baskerville's fitness to practise is impaired by reason of misconduct.

The Evidence

108. 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.

109. Dr Baskerville provided a written reflective statement dated August 2023 and gave oral evidence at the hearing. In his oral evidence, he said that he is now able to understand that Patient A's mental health conditions were beyond his medical capabilities, and she was able to *'run rings around him'*. He explained that, at the time, he had missed *'red flags'* in his treatment of Patient A because he was not specifically trained in this area and was overworked and exhausted.

110. Dr Baskerville said that as a result of structural changes in Oxfordshire mental health services for patients such as Patient A, who have complex health issues, are now solely provided by secondary care. It is recognised that their needs cannot be met within primary care. Dr Baskerville also said that, unlike his previous practice, the practice he is joining does not serve a large student group but rather a stable suburban population. Although his current role there is non-clinical, it has enabled him to maintain his experience of general practice.

111. Dr Baskerville said that he believes the changes to general practice since Covid would protect against him being in the same situation again. It is now normal to record patient contact through messages, email, etc. directly into the patient's medical records. Dr Baskerville acknowledged that, while he has received praise for his hands-on approach with patients, he would not, in the future, have such *'soft boundaries'* with patients. Dr Baskerville told the Tribunal that he has been shadowing other GPs and is learning how to practise with stricter boundaries, in particular from younger GPs. Dr Baskerville informed the Tribunal that he intends to join the GP Induction & Refresher Scheme which would involve a phased, supervised return to work, and that he eventually intends to undertake four sessions a week over two days in order to manage his workload effectively. He explained that he has a research post with Oxford Brookes University covering the remaining three days.

112. Dr Baskerville said that he has learnt a great deal about Patient A's conditions. He now understands that she is very ill and medically complex. He described going through a process akin to grief; he was initially confounded, then angry about the situation he found himself in. But he now understands that Patient A was suffering greatly at the time and his personal circumstances and stress levels meant that he was not capable of treating her effectively.

113. Dr Baskerville assured the Tribunal that he has learned the importance of managing boundaries by sharing experiences with colleagues.

114. The Tribunal was also provided with the following documentary evidence on behalf of Dr Baskerville:

- CPD Courses undertaken between 2021 and 2023;
- Letter from Dr OOO, dated 24 September 2023;
- Letter from Dr G, dated 23 September 2023;
- Statement of Dr PPP, Dr Baskerville's Responsible Officer, dated 28 September 2023;
- Letter from NHS England in regard to inclusion in the Medical Performer's List, dated 26 September 2023;

- Brochure for the GP Induction & Refresher Scheme.

Submissions

115. On behalf of the GMC, Mr Goode submitted that, although the nature of this case has changed significantly from the original Allegation, the remaining matters still represent serious misconduct. Mr Goode submitted that the allegations found proved which amount to serious misconduct are that Dr Baskerville: inappropriately treated Patient A's conditions; provided Patient A medication without a prescription; communicated with Patient A by email and WhatsApp; shared information with Patient A about his personal life; gave Patient A £10 and gifts; told Patient A it was '*nice to feel naughty*'; failed to keep adequate records; and locked the door to the consulting room.

116. Mr Goode submitted that locking the consulting room door and issuing medication without a prescription to a vulnerable patient are examples of serious misconduct and a member of the public would be concerned or dismayed by such actions. Mr Goode submitted that the locking of the door was unnecessary and there were risks associated with doing so. He further submitted that the drug Dr Baskerville gave Patient A is associated with weight loss which is dangerous for a patient who had previously been sectioned for issues with her weight. Mr Goode also submitted that Dr Baskerville's failure to record each interaction with Patient A would make it problematic for professionals who treated her in the future, and this was even more important in this case as Patient A was stockpiling medication and was particularly vulnerable.

117. Mr Goode submitted that there were instances of misconduct on more than one occasion, over a period of time, involving a vulnerable patient and they were serious. He submitted that Dr Baskerville's fitness to practise is impaired by reason of this misconduct. Mr Goode argued that Dr Baskerville has in the past and is liable in the future to act so as to put a patient at risk of harm, particularly in relation to issuing a medication without a prescription. He acknowledged that the future risk of harm could be mitigated by Dr Baskerville undertaking fewer working hours and having a reduced patient list, as well as going 'back to basics' in his training. Mr Goode accepted that Dr Baskerville has undertaken a number of relevant training courses which shows insight.

118. Mr Goode submitted that Dr Baskerville's actions do not promote and maintain proper professional standards and conduct, and therefore a finding of impairment is justified to reaffirm clear standards of professional conduct, and to maintain public confidence in the profession. Mr Goode submitted that doctors have a position of trust and privilege in society, and members of the public are entitled to place complete reliance on their doctor's

actions. Mr Goode therefore submitted that Dr Baskerville's actions could undermine public trust and confidence in the profession as a whole.

119. On behalf of Dr Baskerville, Mr Brassington suggested that Mr Goode, who had not appeared at the facts stage, had misunderstood the findings of the Tribunal. Mr Brassington submitted that there has been a significant change in the case, which has reduced from serious allegations of sexual activity with, and control of, a vulnerable patient, to the remaining facts found proved. These now show Dr Baskerville was trying to do his best to deal with an extremely vulnerable patient but fell into error. Mr Brassington submitted that any suggestion that there remains misconduct in this case on the basis of the facts found proved, fundamentally misunderstands what has happened. Mr Brassington accepted that there have been failures in Dr Baskerville's actions, but he did not accept that these amount to misconduct as they are not sufficiently serious.

120. Mr Brassington submitted that prescribing Empagliflozin did not amount to misconduct. He asked the Tribunal to consider the expert opinion of Dr LLL, the only expert on whom the Tribunal is entitled to rely, that this was below, but not far below, the standard expected of a competent GP. Therefore, Dr Baskerville's actions cannot be considered to be serious misconduct.

121. Mr Brassington submitted that none of the 'boundary transgressions', the emails, WhatsApp messages, gifts, etc. have been described by Dr LLL as being far below the standard expected of a competent GP. Mr Brassington further submitted that there is no misconduct to be found in Dr Baskerville's attempts to keep the patient happy and engaged. He has done so with other patients as described in the numerous testimonials. Mr Brassington reminded the Tribunal that Dr Baskerville accepts that the particular comment, '*nice to feel naughty sometimes'* was inappropriate, but he submitted that, in the circumstances, it does not amount to serious misconduct.

122. Mr Brassington submitted that, in the context of the evidence heard at the facts stage, there is no basis for any assertion that Dr Baskerville locking the door to the consultation room and having Patient A use the rear entrance constituted misconduct.

123. Mr Brassington confirmed that Dr Baskerville accepts he did not record each interaction in Patient A's medical notes. However, he asked the Tribunal to consider Dr LLL's opinion that this was not far below the standard expected of a competent GP, and there was no suggestion of inaccurate or misleading records being made.

124. Mr Brassington submitted that the issue of Patient A's vulnerability, by reason of her psychological conditions, simply provides context to the factual allegations found proved. It would have been more important had the serious allegations of sexual and emotional impropriety been found proved.

125. In summary, Mr Brassington submitted that, whilst there may have been some failures in Dr Baskerville's practice, these did not amount to serious professional misconduct. He reminded the Tribunal of *Shodlock v GMC* 2015 EWCA Civ 769 which advises that care should be taken not to aggregate a series of non-serious misconduct findings to reach a final conclusion of serious misconduct.

126. Mr Brassington submitted that, in Dr Baskerville's case, there is no risk of reoccurrence. The police investigation, Fitness to Practise process, and the scrutiny under which he has been placed means the idea that he would put his personal and professional practice at risk again is a vanishing possibility. Dr Baskerville intends to change the way he works so that this situation simply cannot arise again.

127. Mr Brassington submitted that Dr Baskerville's insight is complete. He asked the Tribunal to consider the depth and breadth of Dr Baskerville's CPD, as well as his detailed reflections. Mr Brassington said that Dr Baskerville admitted every factual allegation in this case and has accepted his failures without reservation. Mr Brassington said that Dr Baskerville has spent the last four years considering how he ended up in this position and has developed complete insight into all the circumstances of the case. He reminded the Tribunal that Dr Baskerville has apologised to the GMC and to Patient A through this process. He recognises that, whatever his misguided attempts to treat Patient A achieved, they should not have been made.

128. In conclusion, Mr Brassington submitted that there has been no misconduct in this case, but if there is, it has been fully remedied, the risk of repetition is zero, and there is no public interest in a finding of impairment.

The Relevant Legal Principles

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

130. In approaching its decision, the Tribunal was mindful of the two stage process to be adopted: first whether the facts as found proved amounted to misconduct and then whether

the finding of that misconduct which was serious could lead to a finding of impairment. Whether or not there was misconduct is a matter entirely for the Tribunal's own judgment and no burden or standard of proof applies.

131. Misconduct was defined in the leading case of *Roylance v GMC* 2000 as a word of general effect, involving 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 practitioner in the particular circumstances. The misconduct must be serious. In the case of *Nandi v GMC* in 2004 Mr Justice Collins adopted the observation of Lord Clyde in the 1999 case of *Rylands v GMC* that professional conduct is '*a falling short by omission or commission of the standards of conduct expected among medical practitioners and such falling short must be serious*'. The adjective "serious" must be given its proper weight and conduct which would be considered deplorable by fellow practitioners may be a helpful benchmark but is not a legal threshold.

132. Dr Baskerville would have been expected to adhere to the Good Medical Practice guidance applicable at the time of the respective events in question and the seriousness of any breach would be a relevant factor. In order to make a finding of misconduct, the Tribunal must determine that the facts found proved constitute a serious departure from the standards of conduct expected of a medical practitioner. If the Tribunal concludes that there was no misconduct on the part of Dr Baskerville, his fitness to practise cannot be found impaired.

133. The word "impairment" is an ordinary word in common usage and is not defined in The Medical Act. One matter the Tribunal will have to decide is whether Dr Baskerville currently has the knowledge and skills to practise his profession safely and effectively. That must be considered in the context of the particular allegations found proved.

134. There is no burden or standard of proof. It is a question of judgment by the Tribunal. Impairment may be based on historical matters or a continuing state of affairs but it is to be judged as at the present time. To do this, the Tribunal must look forward taking account of any reparation, changes in practice, behaviour or attitude since the matters found proved actually occurred. Personal mitigation is less relevant at this stage but efforts to accept and correct remediable errors should be taken into account.

135. The Tribunal should have at the forefront of its mind the overarching objective set out in S1(A) & (B) of the Medical Act 1983. This is (a) to promote and maintain the health, safety and well-being of the public (b) to maintain public confidence in the profession and (c) to promote and maintain proper professional standards and conduct for members of the

profession. It should consider that objective as a whole without giving excessive weight to any one limb.

136. The Tribunal should consider whether there is a need to protect individual patients and/or other professionals. It should consider whether there is a need to maintain public confidence in the medical profession as a whole and the declaring and upholding of proper standards of conduct and behaviour within that profession. As stated by Mr Justice Silber in *Cohen v GMC* 2008, a significant consideration at the impairment stage is (i) whether the misconduct is easily remediable, (ii) whether it has been remedied and (iii) whether there is a risk of such behaviour being repeated in the future. Is it highly unlikely to be repeated?

137. In the case *of Cheatle v General Medical Council* 2009, Mr Justice Cranston said that the issue is whether the misconduct, in the context of the doctor's behaviour both before the misconduct and up to the present time, is such as to mean that his or her fitness to practise is impaired. Viewed within the context of an otherwise unblemished record, a tribunal could conclude that, looking forward, a doctor's fitness to practise is not impaired, despite that misconduct. Mr Justice Cranston went on to say, however, that the doctor's conduct may be so egregious that looking forward a tribunal is persuaded that the doctor is simply not fit to practise medicine without restrictions or maybe not at all.

138. The case of *Shodlock v GMC* 2015 EWCA Civ 769 advises that care should be taken not to aggregate a series of non-serious misconduct findings to reach a final conclusion of serious misconduct.

139. As stated by Mrs Justice Cox in the 2011 case of *CRHE v NMC & Grant*, when considering whether fitness to practise is impaired, the level of insight shown by a practitioner is central to a proper determination of that issue. By reference to the Shipman Inquiry Fifth Report, questions for determining whether a practitioner's fitness to practise is impaired could be summarised as follows:

'Do the findings of fact in respect of the doctor show that her fitness to practice is impaired in that she has

(a) 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 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 profession and/or

(d) has in the past acted dishonestly and/or is liable in the future to act dishonestly.'

The Tribunal's Determination on Impairment

Misconduct

140. The Tribunal considered each paragraph of the Allegation which has been found proved in turn, taking into account the submissions made by each party and the evidence provided. It recognised that there would have to be clear and compelling reasons for it to reject the expert evidence of Dr LLL (*Council for the Regulation of Healthcare Professionals v GMC and Basiouny* 2005 EWHC 68 (Admin)).

Paragraph 2 (c) iii

2. During the Treatment Period, you failed to adequately and appropriately manage Patient A's health in that you:

v. iii. gave Patient A empaglifozin on 19 August 2019 to treat PCOS:

4. when it was not clinically indicated to do so;
5. without issuing a prescription for Patient A;
6. from a supply of empaglifozin which had been prescribed for another patient;

141. The Tribunal noted the opinion of Dr LLL at paragraph 104 of her initial report,

> '*with respect to dispensing a supply of medication from an unused supply (Empagliflozin) this is not good medical practice and whilst is might have been common practice in the past is now considered poor practice … this practice fell below, what would be expected from a similarly qualified GP. I come to this view (rather than well below) as it appears to be a one-off and this is not a controlled drug'.*

142. In her oral evidence, Dr LLL elaborated that she had never personally prescribed Empagliflozin. However, having heard evidence that Dr Baskerville had particular knowledge of the drug because of his expertise in diabetes, she expressed the opinion that it was below but not far below the standard expected of a competent GP.

143. The Tribunal accepted Dr LLL's opinion and determined that, while Dr Baskerville's conduct under this paragraph fell below the standard expected of a competent GP, it was not far below, and therefore did not constitute serious misconduct.

Paragraphs 3 (a) i-iii

3. During the Treatment Period, you:

b. communicated with Patient A:

i. using your private email address;

ii. using WhatsApp messenger;

iii. outside of the usual times of availability of NHS General Practitioners;

iv.

144. The Tribunal noted Dr LLL's opinion in the joint expert report, which stated,

'.. using email, WhatsApp messaging, may be appropriate for clinical care in some circumstances …

[Dr LLL] *had patients who consult this frequently during her career. All of whom have had severe, complex mental health problems including drug and alcohol misuse, borderline personality disorder and bipolar disorder. She has also (especially during covid) managed patients via text messaging. Dr LLL also is not as critical of using What's App or text messaging patients, as discussed in her* [original] *report.'*

145. The Tribunal further took into account the extensive testimonials provided by a wide range of Dr Baskerville's patients which show that he regularly went '*above and beyond',* often communicating with them about clinical matters outside the usual hours of availability. The Tribunal was mindful that these patients considered his approach to be good patient care and were appreciative of his efforts.

146. The Tribunal accepted Dr LLL's opinion and determined that Dr Baskerville's communication with Patient A by email and WhatsApp outside the usual availability of NHS GPs was not below the standard expected of a competent GP, and therefore did not constitute serious misconduct.

Paragraphs 3 (c), (d), and (l)

3. During the Treatment Period, you:

c. made inappropriate comments in the WhatsApp messages sent to Patient A

d. shared information about your personal life in the WhatsApp messages you sent to Patient A;

…

l. in respect of your actions at paragraph ~~3.h~~ 3.k above, you made the comment that it is 'nice to feel naughty sometimes', or words to that effect;

147. The Tribunal noted the opinion of Dr LLL that, '*Dr* [Baskerville's] *communication was overly personal and informal. However, when taken overall, I do not feel that his care fell well*

below'. The Tribunal also noted the opinion provided in the joint expert report that, '*some sharing of personal experience can be useful at times'.*

148. The Tribunal considered that the comment '*nice to feel naughty sometimes'* and other comments made by Dr Baskerville to Patient A in the WhatsApp messages, went beyond the boundaries of a normal doctor-patient relationship. However, it bore in mind that it had not found proved any sexual motivation or intention to form an improper emotional relationship, and could not import such intentions into the remark.

149. The Tribunal therefore determined that, absent any ulterior motive, sexual or emotional, and taking into account the expert opinion that Dr Baskerville's conduct was below but not seriously below the standard expected of a competent GP, the inappropriate comments and discussion of Dr Baskerville's personal life did not constitute serious misconduct.

Paragraphs 3 (h) v and 3 (k)

3. During the Treatment Period, you:
   h. on one or more occasion:
      v. gave gifts to Patient A;
   …
   k. on or around 26 August 2019, you gave £10.00 to Patient A to pay for a prescription;

150. The Tribunal considered the opinion of Dr LLL who disclosed that, '*for transparency, over the years and with a small number of patients I have, and I know, that a reasonable body of GPs have at times, a) bought or given food, b) give gifts including clothes, toiletries, oyster card, c) given or lent money …*'.

151. The Tribunal accepted Dr LLL's opinion that it was not unusual or inappropriate for a GP, in certain circumstances, to give a patient a small amount of money or a gift. The Tribunal therefore determined that Dr Baskerville giving Patient A £10 on one occasion and gifts on other occasions did not constitute serious misconduct.

Paragraph 3 (j)

3. During the Treatment Period, you:
   j. failed to keep adequate medical records, in that you failed to record the content of your consultations with Patient A;

152. The Tribunal considered carefully the varying opinions given by Dr LLL on the quality of Dr Baskerville's record keeping. The Tribunal first considered Dr LLL's initial expert report, in which she said, '*I am critical that he did not record these activities in the case notes and feel this omission fell well below what would be expected from a GP*'.

153. However, the subsequent joint report states,

'Both agree that the GP medical records are appropriate and of good standard. However, the bundle of evidence shows that some communication between Dr Baskerville and Patient A has not been recorded in the medical records. These include the emails, What's app messages and telephone calls. Both experts agree that good practice means that they should form part of the medical record. Medical records are important for continuity of care.

Dr JJJ was very critical of this omission and felt that these omissions are extensive and so are seriously below the standard expected of a reasonably competent general practitioner.

Dr LLL agrees with Dr JJJ that some reference to a meeting (albeit not the details of what is discussed) should have been recorded. Not to do so falls below GMC standards.'

154. The Tribunal identified a tension between Dr LLL's initial opinion and her opinion expressed in the joint expert report. This tension was not clarified in the course of the facts stage hearing. The Tribunal therefore accepted Dr LLL's final opinion that the failure in record keeping fell below, but not seriously below, the standard expected of a competent GP.

155. The Tribunal therefore determined that Dr Baskerville's failure to keep adequate medical records did not constitute serious misconduct.

<u>Paragraphs 3 (n) i, iii, and iv</u>

3. During the Treatment Period, you:
   - n. consulted with Patient A at the Beaumont Medical Practice ('the Practice') and you:
     - i. on one or more occasion locked the door to the consultation room during the consultation;
     - ...
     - iii. advised her to use the rear entrance of the Practice;
     - vii. got a wet cloth and cooled Patient A's forehead down on 12 March 2019;

156. The Tribunal heard extensive oral evidence from Dr Baskerville on the position of the consulting room. His explained that the door was sometimes latched shut in order to prevent children from interrupting, as the consulting room faced onto a busy waiting area. He often latched the door; he did not only do this with Patient A. The Tribunal accepted Dr Baskerville's evidence on this point.

157. The Tribunal also accepted Dr Baskerville's oral evidence that the 'rear entrance' to the Practice was overlooked by windows which the reception staff could see out of, and it was therefore not a secret or secluded entrance. The Tribunal was mindful that on these occasions, Patient A's arrival and appointments were recorded in her medical records, and there was therefore no attempt to conceal that she had attended the Practice.

158. The Tribunal took into account the joint expert report, which stated,
'The experts agreed that there are times when using the rear or alternative entrance to a surgery is helpful to certain patients. Examples include a patient with agoraphobia who would struggle to sit in a crowded waiting room. Also, sometimes patients who are well known might appreciate the privacy provided by such a route.'

159. In respect of Dr Baskerville's use of a wet cloth to cool Patient A's forehead, the Tribunal accepted his oral evidence that he was comforting her after she became distressed and had a medical episode. The Tribunal also took into account that it has not found any sexual motivation or intention to form an emotional relationship. In these circumstances, it would not have been inappropriate for Dr Baskerville to have comforted Patient A in that clinical setting.

160. The Tribunal concluded that none of these incidents, when viewed in their proper context, and taking into account the lack of sexual motivation or intention to form an emotional relationship, amounted to serious misconduct.

<u>Paragraph 4</u>

4. During the Treatment Period, you knew Patient A to be vulnerable because of her:
   d. anorexia nervosa;
   e. dependant personality disorder;
   f. recurrent depressive disorder.

161. Paragraph 4 of the Allegation sets the context within which the other factual allegations were made. This had never been in dispute and was not in itself an allegation of misconduct.

162. In all the circumstances set out above, the Tribunal has concluded that Dr Baskerville's conduct as found proved did not fall so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.

163. That concludes the case.

ANNEX A – 15/05/2023

Application to amend the Allegation

164. Mr Walker, Counsel, on behalf of the GMC, made an application to amend the Allegation pursuant to Rule 17(6) of the Rules. He advised that the application was necessary following the meeting of both experts and the production of a joint expert report.

165. Mr Walker submitted that paragraphs 2 c, d and e, and paragraphs 3m.i, iv and v, should be deleted. He submitted that in each case, the application was made on the basis that the experts agreed that either no criticism or no material criticism can be made of Dr Baskerville in the circumstances.

166. Mr Walker submitted that, as a result, schedule one should also be deleted. The experts now accept that this was a difficult situation where Dr Baskerville appropriately balanced the risks. He submitted that the criticisms by the GMC expert in respect of paragraph 2 c, d and e, have now fallen away.

167. Mr Walker further submitted that paragraph 3m.i, iv and v of the Allegation, concerning what was said by Dr Baskerville to Patient A, had been looked at by the experts who agreed that death would obviously be very distressing and so the criticism in respect of paragraph 3m.i falls away. The criticism also falls away regarding the use of the word 'treasure' or words to that effect (paragraph 3m.iv), and there was no longer any criticism of the encouragement that Patient A share her creative writing (paragraph 3m.v). The experts agreed that there can be therapeutic advantages to this.

168. Mr Walker submitted that the amendments were in the interest of justice, and that to maintain these allegations where there are no longer any criticisms, would be unjust.

169. Mr Walker also submitted that a typographical error at paragraph 3l of the Allegation should be amended so that it refers to Dr Baskerville's actions at paragraph 3k, rather than 3h.

170. Mr Brassington, Counsel, on behalf of Dr Baskerville, did not oppose the application.

The Tribunal's Decision

171. The Tribunal considered Rule 17(6) of the Rules which states:

'Where, at any time, it appears to the Medical Practitioners Tribunal that—

(a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and

(b) the amendment can be made without injustice,

it may, after hearing the parties, amend the allegation in appropriate terms.'

172. The Tribunal was satisfied that the proposed amendments reflected the correct position in light of the joint expert report and could be made without injustice. Accordingly, it granted the application.

173. The Tribunal also considered that PCOS should be defined where it first appears in the Allegation. Accordingly, it inserted the words 'Polycystic Ovarian Syndrome' at paragraph 2c.i of the Allegation.

174. On 13 April 2023, the Tribunal brought to the attention of parties a typographical error at paragraph 2c(iv) of the Allegation which referred back to 2g.iii.2 rather than 2.c.iii.2. This was accordingly amended pursuant to Rule 17(6) of the Rules.

ANNEX B – 26/04/2023
Application pursuant to Rule 17(2)(g)

175. Following the conclusion of the GMC's case, Mr Brassington, Counsel, on behalf of Dr Baskerville, made an application of 'no case to answer' in respect of various paragraphs of the Allegation. This was made pursuant to Rule 17(2)(g) of the Rules, which provides:

'17(2) …

(g) the practitioner may make submissions as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed no further as a result, and the Medical Practitioners Tribunal shall consider any such submissions and announce its decision as to whether they should be upheld;'

Submissions

Submissions on behalf of Dr Baskerville

176. Mr Brassington referred the Tribunal to *R v Galbraith [1981] 73 Cr. App. R. 124* where the Court of Appeal Criminal Division held:

> *"(1) If there is no evidence that the crime alleged has been committed by the defendant there is no difficulty—the judge will stop the case. (2) The difficulty arises where there is some evidence, but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge concludes that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a Submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury (per Lord Lane CJ at p. 127)."*

177. Mr Brassington also relied on the case of ***R v Shippey (1988) Crim LR 767*** in which it was stated that prosecution evidence at its highest does not mean 'picking out the plums and leaving the duff behind'.

178. In respect of paragraph 2 of the Allegation, Mr Brassington submitted that the GMC had presented its case on the basis that there was expert evidence to support the matters alleged. The stem was that *'During the Treatment Period, you failed to adequately and appropriately manage Patient A's health in that you…*'. Mr Brassington argued that a failure necessarily implied a duty on the practitioner to have adequately and appropriately managed Patient A's health. Mr Brassington submitted that to make judgments as to whether or not the treatment of the patient was appropriate or adequate or fell below a standard requires expert evidence. The GMC had already confirmed that it no longer relied on the evidence of its expert, Dr JJJ. He submitted that consequently there is no evidence before the Tribunal to enable it to determine the adequacy or appropriateness of the matters set out in paragraphs 2bi-iii and 2cii. Accordingly, they must fail. He submitted that it would be unfair and improper for these charges to persist in the absence of any expert evidence to support them.

179. In respect of paragraph 3aiii of the Allegation, Mr Brassington invited the Tribunal to conclude that, in the absence of expert evidence from a General Practitioner as to what could properly be regarded as the usual times of availability, it could not find the allegation proved. He submitted that the GMC sought to rely on expert evidence from Dr JJJ about the usual times and availability of the General Practitioner, but the Tribunal no longer has the benefit of his evidence. Similarly, Mr Brassington submitted that in respect of paragraph 3b of the

Allegation, there was now no expert evidence that Dr Baskerville's exchanges were not clinically related. Again, in respect of paragraph 3e, there is no evidence that defines a clinical setting. He submitted that, in the absence of expert evidence, the Tribunal could not find paragraphs 3aiii, 3b and 3e of the Allegation proved. He submitted that they should fail under limb one of *Galbraith.*

180. Mr Brassington submitted the paragraph 6 of the Allegation should also fail. In so doing, he submitted that there was no case to answer in respect of the underlying allegations (paragraphs 3.g. – 3.h.iii and 3.n.v to 3.n.vi) in respect of which sexual motivation is alleged.

181. Mr Brassington further submitted that, apart from Patient A's own evidence, there is no evidence before the Tribunal of sexually motivated behaviour. He submitted that Patient A is not a witness upon whom the Tribunal can safely rely.

182. Mr Brassington argued that Patient A's credibility has been entirely undermined. He submitted that there is not a single piece of corroborative evidence from other witnesses of fact or from any other source. However, his submission was not based on there being no corroborative evidence but rather on the fact that all the evidence points away from sexually motivated conduct. He submitted that the emails from Dr Baskerville contain absolutely nothing that could be regarded as sexual or in pursuit of a sexual relationship, or flirtatious in any way.

183. Mr Brassington submitted that there had been no change in the tone or content of Dr Baskerville's messages to Patient A when he moved from using his work e-mail address to his private e-mail address. He further submitted that the WhatsApp messages similarly contain nothing that could be regarded as sexual or flirtatious.

184. Mr Brassington submitted that Patient A's credibility regarding the sexual allegations is so fundamentally flawed that they should not continue.

185. Mr Brassington submitted that the consistency of Patient A's evidence with the real evidence contained in the messages is stark and complete. He submitted that there was nothing in the messages that support her contentions. He submitted that the recordings, made over multiple occasions over a length period of time and without Dr Baskerville being aware, show no change of tone over time. He submitted that they contain nothing that could be regard as sexual. He submitted that they might be regarded as unusual but that was irrelevant as a sexually motivated case cannot be found on something being unusual when there is a complete lack of evidence of there being anything sexual.

186. Mr Brassington argued that Patient A had demonstrably told untruths in her evidence to the Tribunal. He submitted that there were no sexual texts or pictures when she said there were. He submitted that she had also repeated lies to healthcare professionals in her interactions with them.

187. Mr Brassington went on to address the Tribunal in relation to a statement which the GMC had taken from Patient A on 21 April 2023.

188. By way of background, in this statement disclosed by the GMC, Patient A stated that five days after she concluded her evidence she had a flashback regarding a question she had been asked during the hearing. She stated:

> *'I had a visual and auditory flashback of Dr Baskerville's face saying that I gave him 'a semi'. This flashback triggered me to remember the meaning of the semicolon punctuation mark that he used in a lot of our email and WhatsApp correspondence. He said that the semicolon was a symbol that I gave him a semi…'*

Exhibited to the statement was a photograph of a book, 'Birthday Letters' by Ted Hughes which Patient A said was a gift from Dr Baskerville, and a photograph of the inside page showing a semicolon in the top righthand corner of the title page. Also exhibited to the statement was a document in which Patient A stated that her understanding of a 'semi' is a 'penis that is half soft and half hard'.

189. Mr Brassington submitted that this statement is fanciful and further destroys Patient A's credibility. He drew to the Tribunal's attention Patient A's statement that:

> *'In giving evidence, I had spoken about things I have not spoken about or even wanted to think about for the past four years'.*

190. Mr Brassington submitted that this statement was plainly untrue because in the last four years Patient A has provided four witness statements to the GMC and a lengthy statement to the police. She has also been engaged with various organisations regarding the events in question. Mr Brassington submitted that when Patient A says she has not spoken or wanted to think about these events in the last four years, she is lying.

191. Mr Brassington also submitted that when giving evidence, Patient A had no answer in evidence as to why there were no sexualised messages, sexually explicit photographs, or anything that could be described as flirty. He submitted that whilst she mentioned something about a semicolon she had not been able to develop it. He further submitted that she had

never mentioned its meaning before, and if it were true that a semicolon indicated a semi-erect penis, then Dr Baskerville had had one for nearly 12 months and had been priapic at every point he interacted with Patient A. He added that there are no messages within the documentation where it could be properly said that the use of a semicolon indicates a semi-erect penis.

192. Mr Brassington further submitted that the book given to Patient A was by a man writing about the suicide of his wife. He asked the Tribunal to consider whether the use of a semicolon on the inside cover was an indication that Dr Baskerville had a semi-erect penis in respect to the distressing and harrowing poetry of Ted Hughes? He submitted that it was ridiculous and that the use of a semicolon cannot be shoehorned now as being code for a semi-erect penis.

193. Mr Brassington submitted that Patient A's latest statement clearly demonstrates a total lack of credibility. He submitted that her credibility was so undermined on the second limb of Galbraith, that the allegations of sexual motivation should not proceed further.

Submissions on behalf of the GMC

194. Mr Walker confirmed that the GMC's position was neutral in respect of paragraphs 2bi-iii and 2cii of the Allegation.

195. With regard to paragraph 3 generally, Mr Walker submitted that the Tribunal should apply common sense. Regarding paragraph 3aiii, he submitted that when the Tribunal sees that messages were sent last thing at night and past midnight, it can conclude that this was outside the normal hours of general practice. He submitted that it was not a matter for an expert alone.

196. Mr Walker submitted that the same applies to paragraph 3b and 3e of the Allegation. He submitted that there were no technical aspects to the phrases 'clinically related or 'clinical setting'. He submitted that it was common sense drafting of a common sense allegation and that these messages do not relate to medical discussions between the patient and the doctor.

197. Mr Walker submitted that the Tribunal was entitled to find that *'a pub, café or cinema or a rubbish tip'*, are not clinical settings. They were not, for example, the walking or running groups which Dr Baskerville arranged for patients. He submitted that the Tribunal was entitled to find these places were not clinical settings without relying on expert evidence.

198. In regard to paragraph 6 of the Allegation, Mr Walker submitted that there is ample evidence that supports sexual motivation at this stage.

199. Mr Walker submitted that the allegations relate to touching of a patient by a doctor, and are inherently sexual.

200. Mr Walker submitted that the texts are part of the evidential background but are not determinative of this issue in the way Mr Brassington suggested. He submitted that there can be a sexual atmosphere without there being explicit texts. He submitted that the Tribunal does have texts that give a general sense, such as texting late at night.

201. Mr Walker submitted that Patient A has not been wholly undermined. He submitted that there was evidence of secrecy which might be consistent with the matters alleged having taken place. He noted that at one point in the covert recordings there is the phrase *'Let's go find a hidey hole'.* He also reminded the Tribunal that Dr Baskerville admitted locking the door during a consultation on one or more occasion. He further submitted that the unusual nature of the visits could be evidence of sexual motivation. Patient A gave direct examples of being sexually touched and of them watching a film together on a laptop in her flat. There is also the fact that disclosures were made to others and relate to sexual matters.

202. Mr Walker confirmed that the GMC relies on the quality and quantity of contact between Dr Baskerville and Patient A. He submitted that these are out of the ordinary; on its own this would not amount to evidence of sexual motivation but does form part of the evidential picture at this stage.

203. Mr Walker submitted that Dr Baskerville has admitted to acting in a way that he would not otherwise have done. He submitted that it is a matter of common sense that Dr Baskerville accepts Patient A can be a reliable and accurate historian, for example in relation to giving her gifts, £10 and saying that *'it is nice to feel naughty sometimes'*, as well as in relation to locked doors.

204. Mr Walker submitted that the covert recordings were unusual in their tone, circular and not clinical in the classical sense. In any event, he submitted that Patient A described an awareness that Dr Baskerville was pulling away at the time the recordings were made.

205. Mr Walker submitted that allegations of sexual misconduct are commonly found in circumstances where there are no other witnesses.

206. With regard to Patient A's 21 April 2023 statement, Mr Walker reminded the Tribunal of her evidence under cross-examination. When asked by Mr Brassington why she felt the correspondence was flirtatious she said *'I suppose we had a lot of in jokes, semicolons, the texting in bed late at night, when he gave me a jumper to wear..'.*

207. Mr Walker submitted that there are two or three occasions when only a semicolon is sent by Dr Baskerville so there are points to be made on both sides.

208. Mr Walker submitted that it should not be accepted that Patient A's evidence has been totally undermined. A tribunal can take some or all or none of what a witness says into account. A witness can tell the truth about some things and not about other things.

209. Mr Walker submitted that taking the evidence at the highest, there is a case to answer.

210. Mr Walker also referred the Tribunal to case of *R (Tutin) v. General Medical Council [2009] EWHC 553 (Admin)*, in which:

> *'McCombe J said that it was accepted that the panel was obliged to apply the criminal law relating to submissions of 'no case to answer'. The panel asked itself: was there any evidence before the panel upon which it could find each allegation proved? Was there some evidence, but of such an unsatisfactory character that the panel, properly directed as to the burden and standard of proof, could not find each allegation proved? Was there some evidence, the relative strength or weakness of which was dependent upon the panel's view of the reliability of a witness? In dismissing T's application for judicial review, the learned judge said that it was clear that the panel had adopted the correct legal test at the beginning of its ruling, referring to R v. Galbraith [1981] 1 WLR 1039, and that its formulation of its reasoning cannot be faulted. It seemed to the learned judge that the panel must have taken the view that, whatever the strength of the argument submitted, it did not at that stage go to undermine entirely Ms A's credibility. It is clearly open to a tribunal of fact to decide in respect of any witness whether it can accept all of their evidence, none of it, or only some of it. The panel must have appreciated that in taking its decision as a matter of law. It clearly took the view that the reliability of Ms A was not undermined in sufficient extent for it to be unsafe to leave it for final consideration of the facts in respect of some of the charges….'*

The Tribunal's Approach

211. The Legally Qualified Chair (LQC) reminded the Tribunal of Rule 17(2)g of the Rules and the test to be applied as laid down in the criminal case of *Galbraith*, tailored to the context of a regulatory hearing as reiterated in the case of R(Sharaf) v GMC [2013] EWHC 332 (Admin .

212. The Tribunal reminded itself that, at this stage, its purpose was not to make findings of fact but to determine whether sufficient evidence had been presented so that a properly directed tribunal could find the relevant paragraph proved to the civil standard.

213. The LQC advised that if there is no evidence to establish an alleged fact on the balance of probabilities, then the case in relation to that fact must not proceed. And if there is some evidence but it is of a tenuous character, and the Tribunal concludes that, taken at its highest, it could not find the fact proved, then it must stop the case relating to it. Where the evidence called by the GMC in relation to a particular fact is such that its strengths or weakness depend on the view to be taken of a witness's reliability and where on one possible view, there is evidence upon which a tribunal could come to the conclusion that a particular fact happened, the case relating to that fact should proceed. The LQC advised that the test is whether the Tribunal could find the fact proved on the balance of probabilities, not whether it would.

214. The LQC advised that the Tribunal should analyse the quality of the evidence received and apply it to each fact individually. The quality of the evidence must be tested holistically, looking at its strengths, whether there is supporting evidence, and what reasonable inferences may be drawn,

215. The LQC reiterated the principle in the case of *Shippey;* that the Tribunal must not pick out the plums in the GMC case and leave the duff behind. In other words, just because some parts of the evidence support the GMC's case does not necessarily mean that it should proceed.

The Tribunal's decision

216. The Tribunal considered whether sufficient evidence had been adduced such that paragraph 2bi-iii could be proved on the balance of probabilities.

> *3. During the Treatment Period, you failed to adequately and appropriately manage Patient A's health in that you:*
>
> *b. gave advice to her that was undermining of the specialist advice she was receiving from the XXX Hospital ('the Hospital Team') including encouraging Patient A to:*

iv. stop taking Venlafaxine as prescribed by the Hospital Team;
v. lie to the Hospital Team about stopping taking Venlafaxine;
vi. make up how much she weighs to the Hospital Team;

217. The Tribunal bore in mind that the GMC was neutral in relation to the Rule 17(2)g application in relation to this paragraph.

218. The Tribunal bore in mind that it was Patient A's evidence that Dr Baskerville told her to stop taking Venlafaxine and to lie to the Hospital about taking it.

219. The Tribunal also noted the transcript of the covert recording:

> *'Dr B Well, I will give you the medical support. But you're not going to be a patient forever. I'm trying to make you not a patient. Have they really help you, the XXX? Has all that venlaxfine that you've been taking regularly really helped you?'*

220. The Tribunal considered that there would be a case to answer in respect of the facts set out in sub paragraphs b(i) and (ii) of paragraph 2. In relation to sub paragraph b(iii) of Paragraph 2, the Tribunal concluded that there was no evidence that Dr Baskerville encouraged Patient A to make up how much she weighed to the Hospital Team.

221. However the Tribunal concluded that there can be no case to answer in respect of the entirety of paragraph 2 in the absence of any evidence that those facts constituted a failure to adequately and appropriately manage Patient A's health.

222. The Tribunal accordingly finds that there is no case to answer in respect of Paragraphs 2 (b) (i) (ii) and (iii) and 2 (c) (ii) of the Allegation.

223. The Tribunal considered whether sufficient evidence had been adduced to find paragraph 3a(iii) of the Allegation proved on the balance of probabilities.

3. During the Treatment Period, you:
b. communicated with Patient A:
iii. outside of the usual times of availability of NHS General Practitioners;
iv.

224. The Tribunal bore in mind that there was no evidence before it specifying what the usual times of availability of NHS General Practitioners are, however, it did note that in the joint expert report Dr LLL (instructed on behalf of Dr Baskerville) referred to out of hours contact in these terms:

'Dr LLL believes that whilst the contacts were frequent and included out of hours contact that this is not indicative of practice which falls below a standard. It could be the opposite, that Dr B was responding to Patient A's needs, preventing her from self-harming and ensuring that there was a space for her to talk about her mental health without needing to resort to unhelpful and harmful strategies. Dr LLL has managed patients who require frequent in and out-of-hours follow up in her work caring for mentally ill patients…'

225. The Tribunal considered that "out of hours" contact could equate to contact outside of the usual times of availability. Moreover, there is evidence of messages sent by Dr Baskerville late at night including past midnight.

226. Accordingly, the Tribunal considered that the evidence, taken at its highest, is such that a tribunal could find it proved on the balance of probabilities. It therefore determined that there is a case to answer in respect of paragraph 3aiii of the Allegation.

227. The Tribunal considered whether sufficient evidence had been adduced to find paragraph 3b of the Allegation proved.

3. During the Treatment Period, you:

e. sent in excess of 100 text and/or WhatsApp messages which were not clinically related;

228. The Tribunal noted that there are various examples of messages that could be said to not be clinically related. For example, in email sent from Dr Baskerville's NHS email to Patient A on 1 March 2019 he wrote: *'are you free 22-25 august? for a festival?'*

229. The Tribunal noted Dr LLL's evidence in the joint report:

'It is her view is that one cannot be critical of a doctor who engages with his patient in this manner. She also disagrees that this amounted to 'gossip'. The content of the consultations were more akin to those which would take place in psychotherapy and as such more free flowing and less structured..'

230. Notwithstanding Dr LLL's evidence, the Tribunal considered that taking the evidence at its highest, there was a case to answer in respect of paragraph 3b of the Allegation.

231. The Tribunal considered whether sufficient evidence had been adduced to establish a case to answer in respect of paragraph 3e.i,ii & iii of the Allegation.

3. During the Treatment Period, you:

e. met up with and/or visited with Patient A outside of a clinical setting on one or more occasions at:

i. her home address;

ii. the Tate Modern on 1 April 2019

iii. public or social locations;

232. The Tribunal considered that there was evidence that Dr Baskerville met with Patient A in all three settings described and that all could be considered outside of a clinical setting. It noted an email from Dr Baskerville to Patient A on 21 January 2019 in which he responded to a message from her in which she asked him if she could still see him as a GP at the surgery:

'yes ,regularly at the surgery; It's home visits that might be inappropriate…'

233. The Tribunal considered that it could be inferred this was inappropriate as Patient A's home was not a clinical setting. The Tribunal was also mindful that the Tate Modern visit was in London and not XXX.

234. The Tribunal considered, therefore, that there was a case to answer in respect of paragraph 3e i, ii and iii of the Allegation.

235. The Tribunal considered whether sufficient evidence had been adduced to find paragraph 6 of the Allegation proved on the balance of probabilities.

6. Your actions as described at paragraphs 3.g. – 3.h.iii. and 3.n.v to 3.n.vi. were sexually motivated

236. The Tribunal bore in mind that paragraphs 3g – 3h.iii and 3.n.v to 3.n.vi of the Allegation relate to allegations of physical touching by Dr Baskerville. Patient A confirmed, both in her written statements and in her oral evidence, that they had occurred and she was not cross-examined about them.

237. It is for the Tribunal to consider Patient A's credibility in respect of these allegations. It noted Mr Brassington's submission that she had told untruths about other matters in her evidence, such as in relation to receiving sexualised pictures from Dr Baskerville. However, the Tribunal was mindful that a witness may tell lies about one thing, but this does not necessarily mean they are lying in relation to others. It was not appropriate at this stage in the proceedings for the Tribunal to make an assessment of Patient A's credibility.

238. On the basis of the evidence before it, taken at its highest the Tribunal has determined that Dr Baskerville does have a case to answer in respect of paragraph 6 of the Allegation.

~~Schedule 1~~

1. ~~zopiclone;~~
2. ~~lorazepam;~~
3. ~~diazepam;~~
4. ~~prochlorperazine;~~
5. ~~amitriptyline;~~

Deleted in accordance with Rule 17(6)