

## PUBLIC RECORD

Dates: 07/08/2023 - 11/08/2023

Medical Practitioner's name: Dr Satyajeet Ghatge

GMC reference number: 4684576

Primary medical qualification: MB BS 1990 Poona

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	No facts found proved	Consideration of impairment not reached

## Summary of outcome

Case concluded

## Tribunal:

Legally Qualified Chair	Mr Zia Nabi
Medical Tribunal Member:	Dr Alan Smith
Medical Tribunal Member:	Dr Ranjana Rani

Tribunal Clerk:	Ms Maria Khan – 07 August 2023 Mr Josh Dayco – 08 August 2023 Miss Hinna Safdar – 09 – 10 August 2023 Mr Sewa Singh – 11 August 2023
-----------------	---

## Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Chris Gillespie, Counsel, instructed by the Medical Defence Union

GMC Representative:	Mr Nigel Grundy, Counsel
---------------------	--------------------------

### Attendance of Press / Public

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

### Overarching Objective

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

### Determination on Facts - 11/08/2023

#### Background

1. Dr Ghatge qualified from the University of Pune, India with a MBBS in 1990 and an MD in Anaesthetics in 1993. He moved to the UK in 1997, obtaining full registration with the GMC and Fellowship of the Royal College of Anaesthetists in 2000. He joined the University Hospitals of North Midlands NHS Trust ('the Trust') as a locum Consultant Anaesthetist in November 2004 and as a substantive Consultant Anaesthetist in December 2004.
2. Ms A is a XXX working at the same hospital as Dr Ghatge. On 21 July 2021, Ms A complained to her Manager, Ms B, that Dr Ghatge had behaved inappropriately to her on 18 July 2021 when they were both working together. She was asked to prepare a written statement of incident which she did on the same day. She was then interviewed on 12 August 2021 by Dr C and Ms D, Deputy HR Business Partner. After carrying out an investigation, the Trust determined that there was a case to answer and referred the matter to the GMC.
3. It is alleged that on 18 July 2021, Dr Ghatge engaged in unwanted contact with his colleague, Ms A, on three occasions in that he pressed his genitals against her left thigh;

about 30 minutes later he took hold of her around the upper arms and pressed his genitals against her left thigh; and sometime later he slid his arm around her waist, moved his arm from her waist up to her shoulder and lowered his head to her face to speak with her. These actions are said to amount to unlawful sexual harassment contrary to section 26(2) of the Equality Act 2010.

4. Dr Ghatge denies the allegations.

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

5. The Allegation made against Dr Ghatge is as follows:

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

1. On 18 July 2021 you engaged in unwanted contact with your junior colleague Ms A in that on the:

- a. first occasion you pressed your genitals against her left thigh;  
**to be determined**
- b. second occasion you:
  - i. took hold of her around the upper arms; **to be determined**
  - ii. pressed your genitals against her left thigh; **to be determined**
- c. third occasion you:
  - i. slowly slid your arm around her waist; **to be determined**
  - ii. moved your arm from her waist up to her shoulder;  
**to be determined**
  - iii. lowered your head to her face to speak with her.  
**to be determined**

2. Your actions described in paragraph 1 were carried out without Ms A's consent;  
**to be determined**
  
3. Your actions as described at paragraphs 1(a), 1(b) and 1(c) amounted to unlawful sexual harassment by virtue of Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. **to be determined**

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

### The Facts to be Determined

6. The Tribunal is required to determine whether Dr Ghatge engaged in unwanted contact with Ms A on one or more of the three occasions alleged, and if he did, whether his actions amounted to unlawful sexual harassment contrary to section 26(2) of the Equality Act 2010.

### Witness Evidence

7. The Tribunal received the following evidence on behalf of the GMC:
  - Witness statements from Ms A dated 23 June 2022 and 6 February 2023 with exhibits xx1 (statement of incident prepared by Ms A on 21 July 2021) and xx2 (a redacted transcript of a recording of an investigation meeting on 12 August 2021 with Ms A);
  - Oral evidence from Ms A.
  
8. The Tribunal received the following evidence on behalf of Dr Ghatge:
  - A witness statement dated 5 June 2023 with exhibits SG1 (Dr Ghatge's CV) and SG2 (a floor plan of the operating theatre and the adjoining anaesthetic room based on his recollection);

- Oral evidence from Dr Ghatge at the hearing.

### Documentary Evidence

9. The Tribunal had regard to additional documentary evidence provided by the parties. This evidence included:

- A transcript of a recording of an investigation meeting on 26 August 2021 between Dr C, the investigator and Dr Ghatge. The transcript was signed by Dr Ghatge on 13 September 2021 as representing a true and accurate reflection of the meeting;
- Dr Ghatge’s statement on the Investigation report, dated 4 October 2021.

### Statement of Incident – 21 July 2021 (xx1)

10. This statement was prepared by Ms A on 21 July 2021 after she made a complaint about Dr Ghatge. It was her evidence, accepted by the tribunal, that 21 July 2021 was her next working day after the 18 July, that she prepared the statement unassisted, and that it took her about an hour. The statement is exhibited to Ms A’s first witness statement dated 23 June 2022.

11. In her statement Ms A said that she had been working with Dr Ghatge in the morning and they had “communicated well”. After lunch, she was working alone with Dr Ghatge, and after XXX the patient and whilst alone in the anaesthetic room, they discussed an eye injury that she had sustained a few days previously, caused by a bougie being thrown. At about 3:30 pm she agreed to Dr Ghatge taking a close look at her eye, and he held her upper arms with his arms straight, looked into her eye and then very slowly edged closer towards her body to the point where his groin was gently pressing on her left thigh. She stated that she did not say anything or react as she was not sure he knew what he was doing and that she went back into the theatre, “feeling uncomfortable and slightly confused”. About half an hour later, Dr Ghatge re-entered the anaesthetic room while Ms A was there and brought up the subject of her eye again. She stated that Dr Ghatge then “took hold of [her] around the upper arms gently but this time without asking” and whilst holding her still, he shuffled his feet “to nudge even closer, making his groin area press into [her] left thigh.” Ms A stated that she then went back into the operating theatre, and while she was sitting on a stool by the anaesthetic

machine, Dr Ghatge approached her, slowly slid his arm around her waist and up to her shoulder, lowered his head to her face and said “what have we learned today, about your eye, and how you should have got it checked”. She stated that she agreed with him, stood up and walked over to the other side of the room to where other staff were, but did not say anything to them.

#### **Investigation meeting on 12 August 2021 with Ms A (xx2)**

12. The meeting was recorded. A transcript of the recording is present in the bundle as a further exhibit to Ms A’s statement dated 23 June 2022. It is to be noted that Ms A stated that:

- She had sustained her injury the Wednesday before the 18 July 2021;
- She and Dr Ghatge had had personal chit chat in the morning, and this was quite normal. The first two incidents took place in the anaesthetic room and the third incident took place in the operating theatre. During the first two incidents she and Dr Ghatge were alone in the anaesthetic room but there were other persons present in the operating theatre;
- Dr Ghatge moved so slowly and gently during the first time while he was examining Ms A’s eye that at that point “[she] didn’t know he was doing it”.
- Ms A did not feel restrained during the first occasion;
- On the occasion of the second examination, Dr Ghatge did not ask to have a look at her eye, and she did not consent. He grabbed her and had hold of her shoulders, he shuffled his feet to get in closer and “his groin was on my thigh”;
- A female anaesthetist came into the anaesthetic room after about five seconds causing Dr Ghatge to move away. He then entered into a conversation with the female anaesthetist;
- About 10 minutes Dr Ghatge came into the operating theatre, came over to her and slid his arm around her, asking her what she had learnt about today, to which she replied to get my eye checked. She believed he had done this for everyone to see that everything was fine between them.

13. Ms A accepted that she had not used the word “genitals” in her own initial statement, but agreed with the interviewer when this was suggested. The tribunal attaches no significance to this point.

### Investigation meeting on 26 August 2021 with Dr Ghatge

14. At this meeting Dr Ghatge had already had sight of Ms A's statement. Dr Ghatge had made some notes, to which he referred. Dr Ghatge accepted that he had examined Ms A's eye on two occasions. He said that he was concerned about the severity of her eye injury and accepted that he did not have any experience in ophthalmology. He stated that he asked Ms A if he could have a look at her eye, she agreed, he stepped closer and with one hand, he used his thumb and finger to hold her eye open. He denied holding her arm, denied holding her so that she could not move, and denied that he had touched her with his leg or groin.

15. In respect of the second occasion, Dr Ghatge said that he had brought up the subject of Ms A's eye again, she told him that she had taken a photograph of her eye on the day that the injury had occurred and that she had shown him the photo on her phone. He had then looked at the photograph, whilst Ms A held the phone in her hand, and looked at her eye for the purposes of comparison. He stated that he had lifted his hand to open Ms A's eye but that he did not hold Ms A's arm to force her to be still, and she did not say no, or resist.

16. In respect of the alleged third incident, Dr Ghatge denied this had taken place. He recalled telling Ms A in the anaesthetic room that it was important that she get her eye checked by an ophthalmologist but denied touching her.

17. Dr Ghatge accepted that on the second occasion he should have asked explicitly for Ms A's consent to examine her eye and acknowledged that he may have crossed a boundary but maintained that he had not done anything wrong intentionally.

### Dr Ghatge's statement on the Investigation Report

18. This report has not been seen by the Tribunal. Dr Ghatge's statement makes inter alia the following comments:

- There was no mention in the report about Ms A showing him a photograph of her eye before the second contact and Ms A had not mentioned this in her statement or in her investigation interview. As Ms A had willingly shown him this photograph, he

had assumed he had continuing consent to compare the photograph with the current appearance of her eye.

- Page 4 of the investigation report referred to him pointing in Ms A's eye which meant that he could not have been holding on to both of her arms.

#### **Ms A's witness statement dated 23 June 2022**

19. At paragraph 8 of her statement, Ms A states "*I have been asked by the GMC whether I can recall showing Dr Ghatge any photos of my eye on my mobile phone. Unfortunately, I cannot recall.*"

#### **Dr Ghatge's statement 5 June 2023**

20. In his written statement Dr Ghatge stated that in respect of the first occasion, Ms A removed her glasses so that he could look at her eye, that he placed his right hand on her face near her left eye and used his thumb and forefinger to hold her eye open, but that he did not hold her upper arms with either hand. He denied moving closer to her or pressing his groin against her thigh. In oral evidence, he stated that he could not remember whether Ms A had removed her glasses or not.

21. In respect of the second occasion Dr Ghatge stated that Ms A showed him a photograph of her eye on the mobile phone, he decided to carry out a comparison exercise, and as before placed one hand on her face and used his thumb and forefinger to hold her eye open whilst comparing it to the photograph on the phone, which Ms A held in her hand. He stated that he used his free hand to expand the photograph on the phone so that he could see it in greater detail. He denied pressing his groin against her thigh.

22. In respect of the third occasion, Dr Ghatge denied touching Ms A while speaking to her, and continued to maintain that the conversation took place in the anaesthetic room.

#### **Oral evidence**

23. Both Ms A and Dr Ghatge gave oral evidence to the Tribunal.



24. Ms A stated that she had brought the topic of her eye injury up as general chit chat, and she had had a light-hearted conversation with Dr Ghatge before the events of the afternoon.

25. In respect of the first incident, Ms A stated that Dr Ghatge had one hand on her shoulder, and his other hand was pointing and looking around, but did not touch her face. This evidence contradicted her initial statement where she said that Dr Ghatge had held her upper arms with his arms straight. She denied that she had taken her glasses off for the examination. In response to questions from the Tribunal, Ms A stated that Dr Ghatge had his left hand on her right shoulder, and that his right hand was looking and pointing, and did not touch her face at any point. When it was pointed out to her that this contradicted her statement, which said that Dr Ghatge had held her upper arms with his arms straight, she accepted that there was an inconsistency between what she had said in evidence and what was in her statement. She said that she was more inclined to go by what was written three days after the event as opposed to something she had said during the hearing (on oath) when two years had passed.

26. In respect of the second incident, Ms A accepted that she had taken a photograph of her eye on the day of the injury, this was on her phone and she had her phone with her on 18 July 2021. She stated that she did not remember showing Dr Ghatge a photo of her eye, but accepted that hypothetically she might have done this if she had been working with an anaesthetist with whom she was familiar (not Dr Ghatge). In response to questions from the Tribunal, Ms A stated that Dr Ghatge did not ask her to show him the photograph of her eye, and it would not have occurred to her to show him the photograph.

27. Ms A described the second incident in terms that Dr Ghatge burst through the door and grabbed her arm. She later revised this to say that the door had opened normally. Ms A stated that Dr Ghatge was thrusting his genitals against her thigh, but that at no time did his upper chest area come into contact with her. She said that his upper torso was arched as he was looking up into her eye whilst he was shuffling his feet towards her. She accepted that she had not mentioned Dr Ghatge's alleged exaggerated posture in her statement but said that she had mentioned it to the Trust. When asked if it was her case that Dr Ghatge had both of his hands on her upper arms, she said that she could not remember. In response to questioning from the Tribunal she stated that Dr Ghatge had displayed forceful movement

and grabbed both her upper arms. She described his movements as reckless and stated that both hands remained on her arms throughout.

28. In response to questions put by Dr Ghatge's counsel, Ms A stated that on each occasion, Dr Ghatge kept talking about her eye the whole time, he made no sexually explicit comments, and there was no change in the pitch of his voice. He did not have an erection.

29. In respect of the third incident, which Ms A stated occurred in the operating theatre, Ms A said that she was sitting on a stool, the surgeon and surgeon's assistant and the scrub nurse were standing by the patient and other persons were also present. She stated that the others had or could have seen what Dr Ghatge had done but they did not appear to be aware of anything having occurred and in any event, no one said anything to her.

30. In his evidence Dr Ghatge maintained his denial of the allegations and repeated that Ms A had shown him a photograph of her injured eye on her mobile phone which had prompted his second examination of the eye. He said that no one else had told him that there was a photo of Ms A's eye on her phone. He stated that the only time he touched Ms A was when he put his thumb and index finger around her eye. He denied pressing his leg, groin or genitals against her, and denied holding her arms, putting his arm around her waist or moving his arm up her arm to her shoulder. If Ms A felt anything it was entirely unintentional. In respect of the third alleged incident Dr Ghatge stated that a conversation occurred in the anaesthetic room, not the operating theatre. He said that he made the comments because medical persons tended to underestimate their own health issues. Dr Ghatge said he was interested in the case because the injury was unusual having been caused by a bougie which he used regularly. He added he was curious what kind of injury could have been caused by the bougie. He had no recollection of asking Ms A to take her glasses off and he could not remember if she had her glasses on or off.

### **The Tribunal's Approach**

31. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegations. Dr Ghatge does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e., whether it is more likely than not that the events occurred as alleged.

32. There is no heightened civil standard of proof in particular classes of case. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts.

33. Where an event is inherently improbable, it may take better evidence to persuade the judge that it has happened. This goes to the quality of evidence *Re B* [13] [70]. However, it does not follow, as a rule of law, that the more serious the allegation, the less likely it is to have occurred.

34. The LQC advised the Tribunal that, in relation to witnesses generally, it should bear in mind that an honest witness can be mistaken, and a mistaken witness is not necessarily wrong about every fact. The Tribunal should make a rounded assessment of a witness's reliability, rather than approaching their reliability in respect of each charge in isolation from the others: *R (on the application of Dutta) v GMC* [2020] EWHC 1974 (Admin) [47].

35. The LQC reminded the Tribunal that, as Dr Ghatge has chosen to give evidence, it must judge his evidence by precisely the same fair standards as it would apply to any other evidence in the case. The fact that Dr Ghatge has denied the allegation cannot be a factor to be held against him when assessing his evidence. The Tribunal's role is to determine if the denial is supported or undermined by the evidence – *Okpara v GMC* [2019] EWHC 2624 (Admin).

36. The Tribunal was referred to the case of *Byrne v General Medical Council* [2021] EWHC 2237 (Admin), where the court conducted a review of the authorities and stated that:

1. The credibility of witnesses must take account of the unreliability of memory and should be considered and tested by reference to objective facts, and in particular as shown in contemporaneous documents. Where possible, factual findings should be based on objective facts as shown by contemporaneous documents.
2. Corroborating documentary evidence is not always required or indeed available. There may not be much or any such documentary evidence. In a case where the evidence consists of conflicting oral accounts, the court may properly place substantial reliance upon the oral evidence of the complainant (in preference to that of the defendant).

3. In a case where the complainant provides an oral account, and there is a flat denial from the other person concerned, and little or no independent evidence, it is commonplace for there to be inconsistency and confusion in some of the detail. Nevertheless, the task of the court is to consider whether the core allegations are true.

37. The Tribunal was advised that it is open to it not to rule out the whole of a witness's evidence based on credibility; credibility can be divisible- *Khan v The General Medical Council [2021] EWHC 374 (Admin) [106]*.

38. The Tribunal may draw reasonable inferences from the facts, using common sense and from experience. However, it would be wrong for the Tribunal to enter into speculation about matters or for example to consider what evidence might or might not have been available in the case. The Tribunal must decide the case purely on the evidence that has been put before it.

39. Again, as to individual pieces of evidence, the Tribunal is entitled to draw proper inferences, that is to come to common sense conclusions based upon the evidence which it accepts as reliable; but it must not speculate about what other evidence there might have been.

40. The Tribunal should only draw an inference if it can safely exclude other possibilities. – *Sony v GMC (2015) EWAC 0364 Admin*.

41. Tribunals should not assess a witness's credibility exclusively on their demeanor when giving evidence, but their veracity should be tested by reference to objective facts proved independently in their evidence, in particular by reference to the documents in the case.

42. A matter that the Tribunal should bear in mind when considering the evidence of the witnesses and including the evidence of the doctor, is the extent to which the passage of time may have affected a witness's memory. Memories can fade with the passage of time, and that recollections may change, or may become confused, as to what did or did not happen at a particular time. Further, inconsistencies in accounts can happen whether a person is telling the truth or not. This is because if someone has a traumatic experience their

memory may be affected in different ways. It may affect that person's ability to take in and later recall the experience. Also, some people may go over an event afterwards in their minds many times and their memory may become clearer or can develop over time. But other people may try to avoid thinking about an event at all, and they may then have difficulty in recalling the event accurately.

43. The Tribunal was advised that, so far as the making of complaints in sexual assault cases is concerned, in *D [2008] EWCA Crim 2557*, the Court of Appeal accepted that a judge may give appropriate directions to counter the risk of stereotypes and assumptions about sexual behaviour and reactions to non-consensual sexual conduct. In short, these were that:

(i) experience shows that people react differently to the trauma of a sexual assault, that there is no one classic response;

(ii) some may complain immediately whilst others feel shame and shock and not complain for some time; and

(iii) a late complaint does not necessarily mean it is a false complaint.

44. Further, the Tribunal was advised that it should bear in mind that there may be good reasons why a victim of sexual assault generally may not complain or may delay in complaining. The fact that a complaint is not made at the time does not necessarily mean that it must be untrue any more than the fact that a complaint is made immediately means that it must be true.

45. In summary, stereotypes of a 'complainant', an 'assailant' or views as to what is an appropriate or inappropriate reaction should be avoided. The Tribunal should approach their decision making without any pre-formed assumptions. It should exercise caution against stereotypical images of how a complainant or an alleged perpetrator of a sexual offence ought to have behaved at the time or ought to appear when giving evidence and should judge the evidence on its intrinsic merits. Some people might show emotion or distress and might cry. But other people will seem very calm or unemotional.

46. The Tribunal was advised that just because a person makes a consistent account about an event does not necessarily mean that account must be true, anymore than an inconsistent account must be untrue.

47. The Tribunal should assess and on decide each head of the allegations and each sub-head separately. It is, of course, open to the Tribunal to find some parts, but not other, proved.

#### Section 26 of the Equality Act 2010

48. Harassment is prohibited conduct under section 26 of the Equality Act 2010, which provides that:

*“A also harasses B if—*

*(a) A engages in unwanted conduct of a sexual nature, and*

*(b) the conduct has the purpose or effect of violating B’s dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*

*(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*

*(a) the perception of B;*

*(b) the other circumstances of the case;*

*(c) whether it is reasonable for the conduct to have that effect.”*

49. There is no need to show a relationship with a protected characteristic in claims relating to harassment consisting of unwanted conduct of a sexual nature.

50. The Tribunal was advised about EHRC guidance for employers which states that:

*“Unwanted conduct of a sexual nature Includes a wide range of behaviour, such as:*

- sexual comments or jokes*
- displaying sexually graphic pictures, posters or photos*
- suggestive looks, staring or leering*
- propositions and sexual advances*
- making promises in return for sexual favours*
- sexual gestures*

- *intrusive questions about a person’s private or sex life, and discussing your own sex life*
- *sexual posts or contact on social media*
- *spreading sexual rumours about a person*
- *sending sexually explicit emails or text messages*
- *unwelcome touching, hugging, massaging or kissing”*

51. The Tribunal was advised that conduct of a sexual nature includes inappropriate physical contact, sexually suggestive remarks and sexually indecent acts in the workplace. The LQC referred the Tribunal to *Raj v (1) Capita Business Services (2) Ward (UKEAT/0074/19/LA* where the unwanted massaging by a female team leader of the claimant’s neck and shoulders (referred to by the employment tribunal as a ‘gender neutral’ part of the body) in an open plan office, accompanied by praise and words of encouragement such as ‘well done’ was held not to constitute conduct of a sexual nature.

#### Reasons

52. The Tribunal must give reasons for its decisions and findings. Reasons do not need to be lengthy or complex, and do not need to summarise all of the evidence and submissions.

53. Reasons should be sufficient to ensure that the Tribunal’s decision is clear, and demonstrates how it has reached the decision in such a way that the parties, and any appellate body scrutinising the reasons, can understand clearly why the parties won or why they lost.

54. The Tribunal does not have to decide every point which has been raised during the hearing; only such matters as will enable it to say whether the matters alleged against the Registrant have been proved: *Tariquez-Zaman v GMC* [2019] EWHC 2927 (Admin).

55. That approach was confirmed in the case of *Sait v GMC* [2019] EWHC 3279 (Admin) in which it was said that “*The task facing a judge is not to pass an examination, or to prepare a detailed legal or factual analysis of all the evidence and submissions he has heard. Essentially, the judicial task is twofold: to enable the parties to understand why they have won or lost; and to provide sufficient detail and analysis to enable an appellate court to decide whether or*

*not the judgment is sustainable. The judge need not slavishly restate either the facts, the arguments or the law”.*

56. The LQC advised the Tribunal that it should assess and decide on each head of the allegations and each sub-head separately. It was open to the Tribunal to find some parts, but not others proved.

### **The Tribunal’s Analysis of the Evidence and Findings**

57. The Tribunal recognised that there was no direct and specific corroborative evidence in respect of the allegations and that the issue of whether the GMC had discharged its burden of proof therefore crucially turned on the question of credibility and reliability of the evidence.

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

#### Paragraph 1(b)

59. The Tribunal began by considering Paragraph 1(b) of the Allegation. The Tribunal considered Paragraph 1(b) of the Allegation first as it was this incident that prompted Ms A to revisit her understanding of what occurred some thirty minutes earlier, in respect of the first alleged incident. It considered the Paragraph in its entirety.

60. The Tribunal first had regard to Ms A’s Statement of Incident. The Tribunal bore in mind that Ms A had written this statement alone without assistance and taken about an hour to do so. The statement was prepared on 21 July 2021, three days after the alleged incidents.

61. The Tribunal then considered the redacted transcript of the recording of the investigation meeting on 12 August 2021 with Ms A.

62. The Tribunal noted that in her Statement of Incident, Ms A stated that Dr Ghatge *“took hold of me around the upper arms gently”* however, in the interview transcript, she stated that *“he just grabbed me”* and *“he held my shoulders”*, indicating that both of his hands were used to hold both of her shoulders.



63. The Tribunal then considered Ms A's witness statement of 23 June 2021 and went on to consider Ms A's oral evidence.

64. Ms A explained that it is very common to people to walk in and out of the anaesthetic room and go up and down the corridors. Ms A added that the anaesthetic room is small but big enough to stop people invading each other's personal space and one can see from the anaesthetic room into the theatre through small porthole windows in the door. There are no windows on the door leading to the corridor so you cannot be warned if anyone is about to come in.

65. Ms A stated in her oral evidence that Dr Ghatge kept talking about her eye; there had been no sexually explicit comments, he had a calm and caring voice while talking about the eye, and he did not have an erection. Ms A accepted that there was a difference between "groin" as stated in her statement and "genitals" as written in the Allegation, and she explained that she found it difficult to write down the word 'genitals' as, even though she worked in the medical field, it was embarrassing. The person interviewing her had said the word 'genitals' and she had adopted it.

66. Ms A stated in her oral evidence that she had felt Dr Ghatge's genitals pressing against her thigh. Ms A said that this had made her feel sickened and humiliated. She explained that at no point did Dr Ghatge's chest area come into contact with her and his upper torso was arched as he was looking into her eye. This exaggerated posture was not mentioned in her statement, but the Tribunal considered that this may have been as it was not at the forefront of her mind when describing the events.

67. Ms A said in her oral evidence that Dr Ghatge had taken hold of both her arms clumsily, constantly talking, making reckless movements. She added that he displayed forceful movement. Contrastingly, she said in her cross-examination, that he held her gently at first, did not ask for permission, and was very subtle. The Tribunal noted that this was an inconsistency.

68. Whist Ms A gave evidence, she demonstrated with her hands as to how Dr Ghatge had interacted with her. She demonstrated one hand on her left shoulder and circular

gesturing with the other hand around her face. The Tribunal considered that this was inconsistent with the evidence in her statement that Dr Ghatge had held her shoulders.

69. There was a clear important factual issue as to whether Ms A had shown a photograph of her eye on the day that injury had occurred to Dr Ghatge prior to the second occasion. Ms A stated that she did not recall showing Dr Ghatge the photograph, and she would not have done so. She stated that she was more likely to have shown it to an anaesthetist with whom she was more familiar. Dr Ghatge has been consistent throughout that Ms A did show him the photograph of her eye. He explained it was this that prompted him to examine her eye for a second time and that he considered that her showing him the photograph meant that she consented for him to examine her eye again.

70. Having considered this matter with great care, the Tribunal concluded that it was more likely than not that Ms A had shown Dr Ghatge the photo of her eye on her phone which had been taken on the day it was injured. Its reasons are as follows:

- Dr Ghatge brought up the existence of the photo at a very early stage at the investigation meeting on 26 August 2021;
- Dr Ghatge had been consistent throughout that Ms A had shown him a photograph of her eye on 18 July 2021;
- Ms A accepted that she has a photo of her injured eye on her phone, and that the photo was taken on the day of the injury;
- Ms A accepted that she had her phone with her on 18 July 2021;
- When asked directly by the GMC for the purposes of her statement dated 23 June 2022 whether she had shown Dr Ghatge the photo, she replied that she did not recall. This answer in the Tribunal's judgment was neutral, in that Ms A accepted the possibility of having shown Dr Ghatge the photo. In any event, she did not in her statement expressly deny showing Dr Ghatge the photo;
- Although in evidence Ms A denied having shown Dr Ghatge the photo of her eye, she went on to say that she might hypothetically have shown it to another anaesthetist with whom she was on familiar terms;
- Ms A accepted in evidence that she and Dr Ghatge had engaged in general chit chat and had had a light-hearted conversation in the morning of 18 July 2021;
- There is no evidence that Dr Ghatge found out about the existence of the photo via any other channel.

71. In light of its finding that it was more likely than not that Ms A had shown Dr Ghatge the photo taken of her eye on her phone on the day that it was injured, the Tribunal went on to find that it was more likely than not that being shown the photo prompted Dr Ghatge to carry out the second examination and that in light of the fact that it was not in issue that Ms A had expressly consented to the first examination, he would have assumed that consent was not being withdrawn.

72. Having made these findings, and noting the inconsistencies in Ms A's evidence about what happened on the second occasion, the stark differences in the evidence of Ms A and Dr Ghatge and the absence of any corroborative evidence, the Tribunal found that the GMC has not discharged its burden of proof on the second allegation. Having said that the Tribunal did not accept Dr Ghatge's criticism of Ms A having initially referred to "groin" and then "genitals" (and indeed in evidence stating that by genitals she meant penis).

73. Accordingly, the Tribunal found Paragraph 1(b) of the Allegation not proved.

#### Paragraph 1(a)

74. The Tribunal then went on to considering Paragraph 1(a) of the Allegation. It considered the Paragraph in its entirety.

75. There is no corroborative evidence of what occurred on the first occasion. Having considered this allegation very carefully, the the Tribunal found that the GMC has not discharged its burden of proof on the first allegation and it could not determine, based on the evidence with which it had been presented, that it was more likely than not that Dr Ghatge had pressed his genitals on to Ms A's thigh. Its reasons are as follows:

- In her Statement of Incident, Ms A stated that she had been uncertain that anything untoward had occurred after the first examination but that she had felt uncomfortable and slightly confused. On her case, it was Dr Ghatge's second examination of her eye that caused her to consider the first examination;
- The Tribunal has found that on the balance of probabilities Ms A showed Dr Ghatge a photo of her eye prior to the second examination. From this the

Tribunal inferred that the first occasion had not led Ms A to conclude at the time that Dr Ghatge had behaved inappropriately to her. The Tribunal is fortified in this conclusion by noting that in her interview meeting on 12 August 2021 Ms A stated that Dr Ghatge moved so slowly and gently during the first time that he examined Ms A's eye that at that point "[she] didn't know he was doing it";

- In Ms A's Statement of Incident, she stated that Dr Ghatge held her upper arms with his arms straight, but in her interview meeting on 12 August 2021 she stated that she did not feel restrained. When giving evidence Ms A stated that Dr Ghatge had one hand on her shoulder, and his other hand was pointing and looking around, but did not touch her face. This evidence contradicted her initial statement where she said that Dr Ghatge had held her upper arms with his arms straight. Had Dr Ghatge had been pointing in/at Ms A's eyes, he would not have been able to have both hands holding onto her upper arms. When this contradiction was pointed out, Ms A accepted that there was an inconsistency. She then said that she was more inclined to go by what was written three days as opposed to her evidence in the hearing.

76. Accordingly, the Tribunal found Paragraph 1(a) of the Allegation not proved.

#### Paragraph 1(c)

77. The Tribunal then went on to consider Paragraph 1(c) of the Allegation. It considered the Allegation in its entirety.

78. There is no corroborative evidence of what occurred on this occasion. Having considered this allegation very carefully, the the Tribunal found that the GMC has not discharged its burden of proof on this allegation. Its reasons are as follows.

- This again is one person's word against another's. Dr Ghatge denies that he touched Ms A as alleged;
- In her evidence, Ms A stated that the incident took place in the operating theatre and was a public display with others present and that she wished that someone would notice or comment. It is not her case that anyone made any comment at the time of the alleged incident;

- No evidence has been adduced from any other persons said to have been present that anything untoward took place or that Dr Ghatge touched Ms A or lowered his head to speak to her;
- Dr Ghatge accepts that he asked Ms A "What have we learned today, about your eye, and how you should have got it checked?" He said his reason for saying this was because healthcare professionals tended to underestimate their own health issues. His evidence is that the conversation took place in the anaesthetic room. In one sense this is disadvantageous to Dr Ghatge, because he cannot submit that there were others present, who did not notice anything. The Tribunal accepts the GMC's case that Dr Ghatge's comments to Ms A were patronising.

79. Accordingly, the Tribunal found Paragraph 1(c) of the Allegation not proved.

80. In light of its findings that the GMC has not discharged its burden of proof on allegations 1, 2, and 3, the GMC has not established that Dr Ghatge's conduct amounted to unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her in breach of section 26 (2) of the Equality Act 2010.

### The Tribunal's Overall Determination on the Facts

81. The Tribunal has determined the facts as follows:

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

1. On 18 July 2021 you engaged in unwanted contact with your junior colleague Ms A in that on the:

- a. first occasion you pressed your genitals against her left thigh;

**Determined and found not proved**

- b. second occasion you:

- i. took hold of her around the upper arms; **Determined and found not proved**
    - ii. pressed your genitals against her left thigh; **Determined and found not proved**
  - c. third occasion you:
    - i. slowly slid your arm around her waist; **Determined and found not proved**
    - ii. moved your arm from her waist up to her shoulder; **Determined and found not proved**
    - iii. lowered your head to her face to speak with her. **Determined and found not proved**
2. Your actions described in paragraph 1 were carried out without Ms A's consent; **Determined and found not proved**
3. Your actions as described at paragraphs 1(a), 1(b) and 1(c) amounted to unlawful sexual harassment by virtue of Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. **Determined and found not proved.**

82. As the facts have not been found proved, it therefore follows that Dr Ghatge's fitness to practise is not impaired.

83. That concludes the case subject to any further matters that may be raised.