PUBLIC RECORD

Dates: 09/09/2024 - 20/09/2024

Medical Practitioner's name:	Dr Senthil PANNEERSELVAM
GMC reference number:	7766297
Primary medical qualification:	MBBS 2009 Annamalai University - Rajah Muthiah Medical College

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

Summary of outcome

Erasure

Immediate order imposed

Tribunal:

Legally Qualified Chair	Miss Rachel Birks
Lay Tribunal Member:	Mr Keith Moore
Medical Tribunal Member:	Dr Shehzad Khan

Tribunal Clerk:	Mr Michael Murphy

Attendance and Representation:

Medical Practitioner:	Not present, not represented
GMC Representative:	Mr Thomas Moran, 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 - 17/09/2024

Background

1. Dr Panneerselvam qualified in India in 2009. Prior to the events which are the subject of the hearing he undertook a Clinical Fellow role in Cardiology at Harefield Hospital. At the time of the events in the Allegation Dr Panneerselvam was practising as a Specialist Registrar in Cardiothoracic Surgery at Harefield Hospital.

2. The allegation that has led to this hearing can be summarised as being concerns relating to Dr Panneerselvam's treatment of Ms A where it is alleged that he conducted an inappropriate examination of her that was sexually motivated. The GMC alleged that, during the examination, Dr Panneerselvam asked Ms A to lie down on the floor of the filing store cupboard XXX, open the buttons on her blouse and to lift up her bra. It was alleged that Dr Panneerselvam lifted Ms A's bra fully exposing her breasts, placed both hands on her breasts and, when asked by her why he was examining her breasts, removed his hands. He then asked if he could undo her bra whilst she was in a standing position and put his hands on her breasts again.

3. The GMC also alleged that after concluding the examination Dr Panneerselvam showed Ms A pictures on his phone of women's breasts with hands on them appearing to be from an examination and said *'please don't tell anyone I examined you without an assistant as I could lose my career'* or words to that effect. It was further alleged that Dr Panneerselvam's examination of Ms A was inappropriate clinically as he failed to take an adequate history, failed to document the clinical history that he did take in Ms A's medical records, performed the examination in a non-clinical setting and examined Ms A's breasts when it was not clinically indicated.

4. The initial concerns were raised with the GMC on 16 August 2021, in an email sent by Ms A. In this, she alleged that she had been sexually assaulted by Dr Panneerselvam on 2

July 2021 XXX at Harefield Hospital. She detailed how she suffered from XXX, that Dr Panneerselvam was aware of this and that he had offered to examine her.

5. The referral to the GMC was further to Ms A disclosing the alleged incident to nursing staff, Ms B and Ms C, during an appointment on 2 July 2021 at Bishops Wood Hospital, very shortly after the alleged incident had occurred. Ms B and Ms C relayed this information to their manager, Mr D, who himself spoke with Ms A before contacting Harefield Hospital's senior management team. He proceeded to log this, on 2 July 2021, as an event with moderate harm. The log detailed that a patient was informally assessed, in a store cupboard with no chaperone, by a consultant for an underlying lung issue. It also detailed that the patient reported that the consultant had exposed and touched her breasts and, when asked to stop, continued but merely in a different position. Both Ms B and Ms C made contemporaneous formal records of what Ms A had reported had occurred.

6. On 2 July 2021, Ms A attended Hayes Police Station and reported the incident that had occurred with Dr Panneerselvam, providing a detailed account for which there is a police summary. On 13 July 2021 she attended again to provide a video statement. There is also a police summary of that evidence. On 21 July 2021, Dr Panneerselvam was interviewed by the police. During this he answered all questions and stated that he did not record any of his clinical findings, in relation to Ms A, as it was an unofficial examination he was performing for a member of staff and he thought he was being helpful. He denied touching Ms A's breasts. There is a police summary of his evidence.

The Outcome of Applications Made during the Facts Stage

7. The Tribunal granted the GMC's application, made pursuant to Rule 31 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to proceed in Dr Panneerselvam's absence. The Tribunal's full decision on the application is included at Annex A.

The Allegation and the Doctor's Response

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

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

1. On 02 July 2021 you attended at a colleague [XXX] at her place of work, where you proceeded to conduct an inappropriate physical examination of Ms A in which you:

    a. asked Ms A to lie down on the floor of the filing store cupboard [XXX]; **To be determined**

    b. when Ms A enquired 'what here?' or words to that effect with reference to your request in paragraph 1a, responded 'just in case, it is more private, I could get in trouble', or words to that effect; **To be determined**

    c. asked Ms A to open the top button of her blouse; **To be determined**

    d. touched Ms A's neck area; **To be determined**

    e. touched Ms A's collarbone area; **To be determined**

    f. asked Ms A to open more of her blouse buttons; **To be determined**

    g. touched Ms A's upper chest area; **To be determined**

    h. touched Ms A's rib cage just below her breasts; **To be determined**

    i. asked Ms A to lift up her bra; **To be determined**

    j. touched Ms A under her breast area; **To be determined**

    k. gestured for Ms A to lift up her bra further; **To be determined**

    l. lifted Ms A's bra, fully exposing her breasts; **To be determined**

    m. placed both of your hands on Ms A's breasts; and:

        i. pressed on Ms A's breasts; **To be determined**

        ii. moved Ms A's breasts around; **To be determined**

    n. moved Ms A's head to one side whilst:

        i. pressing and moving on the pulse in Ms A's neck with one hand; and **To be determined**

ii. placing your other hand on Ms A's heart area on top of her breast; **To be determined**

o. resumed touching both of Ms A's breasts; **To be determined**

p. asked Ms A if she had undergone breast surgery, or words to that effect; **To be determined**

q. placed Ms A's head to one side again whilst you:

i. placed your finger or fingers over the pulse point in Ms A's neck; **To be determined**

ii. touched both of Ms A's breasts; **To be determined**

r. when asked by Ms A why you were examining her breasts:

i. removed your hands from her breasts; **To be determined**

ii. pulled Ms A's bra back down over her breasts; **To be determined**

iii. resumed touching Ms A's rib cage area; **To be determined**

iv. said that you were feeling Ms A's bones and ribs, or words to that effect; **To be determined**

s. pressed down on Ms A's abdomen area, causing her to cry out in pain; **To be determined**

t. held your hand out to Ms A and assisting her up from the floor to a standing position; **To be determined**

u. asked to check Ms A's back; **To be determined**

v. pressed upon and tapped Ms A's upper and middle back area; **To be determined**

w. asked Ms A if you could unfasten her bra strap; **To be determined**

x. whilst stood behind Ms A:

i. placed your hands on both of Ms A's breasts; **To be determined**

ii. cupped both of Ms A's breasts loosely; **To be determined**

iii. moved both of your hands up and down over Ms A's breasts and nipples; **To be determined**

y. whilst acting in the manner described at paragraph 1x moved closer behind Ms A; **To be determined**

z. said 'sorry' or words to that effect to Ms A when she told you 'I feel really uncomfortable now' or words to that effect; **To be determined**

aa. failed to offer Ms A a chaperone. **To be determined**

2. After concluding the examination described at Paragraph 1 you:

a. showed Ms A pictures on your mobile telephone of women's breasts with hands on them appearing to be from an examination; **To be determined**

b. said to Ms A 'please don't tell anyone I examined you without an assistant as I could lose my career' or words to that effect; **To be determined**

3. Your examination of Ms A was inappropriate in that you:

a. failed to:

i. take an adequate clinical history from Ms A; **To be determined**

ii. document the clinical history that you did take in Ms A's medical records; **To be determined**

iii. perform a complete clinical examination of the abdomen; **To be determined**

b. attempted to assess Ms A for the presence of an incisional hernia without the necessary clinical expertise to do so; **To be determined**

c. performed a clinical examination of Ms A's chest when you were unable to auscultate the chest; **To be determined**

d. performed your examination of Ms A in a non-clinical setting as described at allegation 1a above; **To be determined**

e. performed an examination of Ms A's jugular venous pressure whilst she was fully supine; **To be determined**

f. examined Ms A's ribs when this was not clinically indicated; **To be determined**

g. examined Ms A's breasts when this was not clinically indicated. **To be determined**

4. Your conduct described at Paragraph 1 was sexually motivated. **To be determined**

Witness Evidence

9. The Tribunal received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not called to give oral evidence, albeit Ms A was on standby in the event that the Tribunal had any questions for her:

- Ms A, subject of the Allegation and employee at Harefield Hospital;
- Mr D, who worked for BMI Health Care as a Clinical Service Manager for the outpatient, pre-assessment and physiotherapy department;
- Ms B, Staff Nurse in pre-assessment at Bishops Wood Hospital;
- Ms C, senior nurse in pre-operative assessment at Bishops Wood Hospital.

10. Dr Panneerselvam did not provide a witness statement prepared for the purposes of this hearing. The Tribunal did, however, have the following documents available to it from Dr Panneerselvam:

    a. Dr Panneerselvam's written statement (unsigned and without a statement of truth) dated 8 September 2021
    b. Dr Panneerselvam's Rule 7 response, undated
    c. Dr Panneerselvam's written comments, sent by email, dated 19 January 2023 on Mr E's report of 14 October 2022

Expert Witness Evidence

11. The Tribunal also received written evidence from an expert witnesses called by the GMC. Mr E, a Consultant Surgeon, provided an expert report, dated 14 October 2022, along with a supplementary report, dated 24 April 2023. The reports were provided in order to

assist the Tribunal in understanding the professional standards expected of Dr Panneerselvam during his treatment of Ms A. In his expert report, Mr E concluded that:

> *'Although Person A was agreeable to the clinical examination, he failed to take an adequate clinical history, he performed an incomplete clinical examination, he failed to document his clinical findings in the medical records and he performed a clinical examination in a non-clinical environment with no chaperone when there was no clinical indication to perform the examination at that time. Whether any aspect of his clinical examination was sexually inappropriate is a factual matter to be determined by the medical practitioners tribunal on the basis of the available evidence.'*

Documentary Evidence

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

- Event log from Bishops Wood Hospital, dated 2 July 2021;
- Extracts from the Police file, dated 21 July 2021;
- Dr Panneerselvam's written statement, dated 8 September 2021;
- Dr Panneerselvam's undated Rule 7 response;
- Dr Panneerselvam's comments on Mr E's report of 14 October 2022, dated 19 January 2023.
- A summary of Ms A's report to Hayes Police, dated 2 July 2021;
- A summary of Ms A's video recorded interview with Hayes Police on 13 July 2021;
- Ms A's email to the GMC, providing a statement of events, dated 16 August 2021;
- Mr D's contemporaneous statement providing information provided to him by Ms A, prepared on or around 2 or 3 July 2021;
- Ms B's contemporaneous statement detailing information Ms A had provided, prepared on 2 July 2021;
- Ms C's contemporaneous statement detailing information Ms A provided, prepared in July 2021.

The Tribunal's Approach

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

14. In relation to sexual motivation, the Tribunal reminded itself of the following case law:

    a. *R v H [2005] EWCA Crim 732* where it was held that for the Professional Conduct Committee to find that the conduct alleged was sexually motivated it must be satisfied that a reasonable person:

        i. would consider that the touching could be sexual, and

        ii. in all the circumstances of the case the purpose of the touching had in fact been sexual.

    b. *Basson v GMC [2018] EWHC 505 (Admin)* in which Mostyn J described the test for sexual motivation as:

        "that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship".

    c. *Haris v GMC [2021] EWCA Civ 763* where the Court of Appeal upheld the decision of the High Court and the approach set out by Foster J where she stated:

        "..it is in my judgement clear beyond argument that the intimate touching of Patients A and B was sexual and that answering a question as to the motivation of the toucher, the only available answer, is yes, the motivation must have been sexual. This is another way of saying the only reasonable inference from the facts is that the behaviour was sexual. This derives from;

        a. The fact that the touching was of the sexual organs
        b. The absence of a clinical justification
        c. The absence of any other plausible reason for the touching
        The absence of any suggestion of accident and the absence of any consent gives further colour to the acts."

15. Dr Panneerselvam does not have any previous convictions or fitness to practise history. Good character is not a defence to the allegations but it is relevant to the Tribunal's consideration of the case in two ways:

a. First, the doctor has provided a written account, albeit he has not attended the hearing and the Tribunal has not been able to ask questions. His good character is a positive feature of the doctor which the Tribunal should take into account when considering whether it accepts what he has set out in writing.

b. Secondly, the fact that the doctor has no fitness to practise history in the past may make it less likely that they acted as is now alleged against them.

16. The fact that that XXX is not something the Tribunal should take into account in deciding whether the facts have been found proved.

17. The Tribunal should not start with an assumption or presumption that a witness is credible or telling the truth. Where Dr Panneerselvam and Ms A provide fundamentally incompatible versions of events, the Tribunal can determine credibility and reliability against:

a. the background of any admissions by the parties as to what took place;
b. the contemporaneous documents and
c. any consistencies and inconsistencies in their evidence
d. the weight to be attached to their evidence, and Dr Panneerselvam's good character.

The Tribunal's Analysis of the Evidence and Findings

18. 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 1 of the Allegation – the stem

19. In its deliberations the Tribunal noted that Dr Panneerselvam and Ms A were in agreement that an examination took place on 2 July 2021. In her witness statement Ms A said:

'On Friday 2 July 2021 following my return to the hospital Dr Panneerselvam entered [XXX]around 9:45am [XXX]…Dr Panneerselvam asked me how I was, and I mentioned I was yet to be assessed due to covid delays. He said if he had his stethoscope he could listen to my chest. We then discussed his new role and my other long term condition

[XXX]. During our conversation Dr Paneerselvam (sic) kept looking out the door, so much so that I questioned him. He said he was just checking no one is outside as we was discussing personal information. Dr Panneerselvam then offered to examine me which I accepted.'

20. In her email to the GMC (her email), dated 16 August 2021, Ms A stated:

'At approx 9.45 on Friday 2nd July 2021 - Dr Senthil Panneerselvam came into [XXX]…He then asked how I was feeling and how my [XXX] was, signalling to his chest as his English is broken, he new (sic) my about my condition as I am a patient at Harefield as well as working there and we had discussed my condition in conversation following my shielding period. I noticed he kept looking out the main office door during our conversation and each time he would say I'm just checking no one is there to listen to our conversation... He asked if I had had any recent check ups, I told him due to covid and a (sic) appointment miscommunication I had not been reviewed for about 2 years he said 'not even any tests' he seemed shocked at this and said 'I haven't got my stethoscope otherwise I could listen to your chest' he enquired & we went on to discuss my other medical conditions then he said 'can I examine you if you are not busy, it was approx 10am now; I said 'what now' and he nodded I said 'oh ok''

21. In her first interview with the police (first police interview) on 2 July 2021, Ms A stated:

'Victim said the suspect came in [XXX] on 02/07/21 at 1000 hrs to confirm officially he will leave the hospital on Sunday. Victim stated the suspect who had been working at Hearefielf (sic) Hospital since 2019 and he knew the victim had a chest disease he asked the victim if she wanted to examine her in [XXX]. Victim said she accepted to be examined and they went into a small room [XXX]'

22. In his email statement, dated 8 September 2021, Dr Panneerselvam stated:

'went to…[XXX]…on July 2nd… I met the complainant. We were having a friendly conversation. During our conversation, the complainant spoke to me about her abdominal pain, with a sensation of swelling, reportedly more while coughing ,during the past few weeks to months… Since she was very concerned about her complaint, I offered an examination to rule out epigastric /sub xiphoid incisional hernia. She agreed for an informal examination.'

23. In his Rule 7 response Dr Panneerselvam stated:

'On 2 July 2021, I went to see her...During the course of what was an amicable conversation, she told me that she was suffering from a swelling sensation when coughing and pain over the upper abdominal area…I offered to examine her informally and she agreed to accept that offer.'

24. In addition, during his police interview, on 21 July 2021, it was stated that:

'he had finished a night shift that had started at 8pm on the 01/07/2021. He entered office…He said they spoke about her medical conditions and he offered to examine her. He stated that [Ms A] locked the [XXX] door and they went into a room [XXX] for privacy'

25. The Tribunal therefore made a finding at the commencement of its deliberations that the detail within the stem of 1 was found proved, with the exception of 'inappropriate' which would depend on the Tribunal's findings in relation to paragraphs 1(a) – 1(aa) of the Allegation.

Paragraph 1(a) of the Allegation

26. The Tribunal considered if Dr Panneerselvam asked Ms A to lie down on the floor of the filing store cupboard XXX. In doing so, it noted that in his email statement, Dr Panneerselvam said *'I chose the adjoining room, since I wanted to offer privacy, to which she agreed… I asked if she was ok to get examined on the floor, to which she agreed'.* In addition, the police noted, that on 21 July 2021 Dr Panneerselvam stated that *'They went into the room and he asked her to lie on the floor'.*

27. Based on the evidence received, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam asked Ms A to lie down on the floor of the filing store cupboard XXX as opposed to her deciding to do this. Dr Panneerselvam has consistently accepted that it was his suggestion which is also consistent with Ms A's account of the events.

28. The Tribunal therefore found paragraph 1(a) of the Allegation proved.

Paragraph 1(b) of the Allegation

29. The Tribunal considered whether Ms A enquired *'what here?'* or words to that effect with reference to Dr Panneerselvam's request in paragraph 1a, he responded *'just in case, it is more private, I could get in trouble'*, or words to that effect. In doing so it had regard to Ms A's witness statement in which she said:

'I closed [XXX] door for some privacy as XXX room was close to [XXX]. Dr Panneerselvam then asked me to lay down and advised I needed to be flat. When I asked him "what here?", he pointed to the filing store cupboard and explained this was "just in case, it is more private, I could get into trouble"'

30. In Ms A's police interview, of 13 July 2021, it was recorded that:

'I closed the door and he asked me to lay down, when I questioned where he pointed to the little like cupboard area and I remember thinking this wasn't ideal but I just went along with it as he has also acted nice and professional and I had no idea that anything bad would occur… I remember feeling shocked at having to lay down [XXX] and remember it was him that said he needed me to lay down and said to go into the filing cupboard as it's more private.

31. In her email to the GMC dated 16 August 2021, Ms A stated:

'He then said 'can you lay down using his hand to gesture a lay down position, he said 'I need you to be flat', I said 'what here on the floor' I was now in the centre area [XXX]. He then said pointing to a small room [XXX] 'it would maybe better if we could go in here, just in case it is more private I could get into trouble.'

32. In Dr Panneerselvam's police interview, on 21 July 2021, it was noted that *'He stated that Ms A locked the [XXX] door and they went into a room [XXX] for privacy as he did not want anyone hearing her medical history.'*

33. In his email statement, Dr Panneerselvam said *'I chose the adjoining room, since I wanted to offer privacy, to which she agreed. She locked [XXX] door at this point. Because there was no bed, I asked if she was ok to get examined on the floor, to which she agreed'.* In his Rule 7 response Dr Panneerselvam said *'I suggested that the examination should take*

place in an inner room inside [XXX], in order to provide her with a degree of privacy. She agreed to this and went to [XXX] door and closed and locked it'.

34. Based on the evidence received the Tribunal was satisfied Dr Panneerselvam and Ms A were in agreement to go into the store cupboard. Dr Panneerselvam accepted that he chose this place to offer privacy. He did not specifically accept that he had said *'I could get into trouble'* but the Tribunal noted that he has also not denied saying this. Dr Panneerselvam's case was that he wanted to go into the store cupboard for Ms A's privacy but her case is that he wanted to do this so that he would not get into trouble.

35. The Tribunal accepted Ms A's account of events as she gave a contemporaneous account, in her email to the GMC, of what had happened which was not challenged. The Tribunal was satisfied that this was a contemporaneous account as in her witness statement Ms A said *'On 16 August 2021 I emailed the GMC with my statement which detailed the incident with Dr Panneerselvam on 2 July 2021. I wrote this statement on the evening of 2 July 2021 following advice from the police to write everything whilst it was fresh in my head'.* The Tribunal noted that Mr D also advised Ms A to make a note of what had happened on 2 July 2021 when she got home. In his contemporaneous record exhibited to his witness statement he states:

    'I advised Ms A to write a record of the events of this morning while it was fresh in her mind.'

36. The Tribunal took the view that Ms A's evidence was consistent and accepted, based on her evidence, that she prepared her account of the events on the evening of 2 July 2021 following advice from both the police and Mr D and included this in her email to the GMC on 16 August 2021.

37. The Tribunal also concluded that the alleged statement *'I could get into trouble'* was a statement that was factually correct in relation to a proposed examination in such circumstances.

38. As such, the Tribunal was satisfied, on the balance of probabilities, that when Ms A enquired *'what here?'* or words to that effect with reference to Dr Panneerselvam's request in paragraph 1a, he responded *'just in case, it is more private, I could get in trouble'*, or words to that effect.

39. The Tribunal therefore found paragraph 1(b) of the Allegation proved.

Paragraphs 1(c) and 1(f) of the Allegation

40. The Tribunal considered whether Dr Panneerselvam asked Ms A to open the top button of her blouse and then asked her to open more of her blouse buttons. In doing so it had regard to Ms A's email to the GMC dated 16 August 2021 in which she stated *'He then said 'can you open your top' gesturing to my blouse'. I said 'what just the top button' he nodded & said 'yes' he started to touch around my neck area and collarbone he then asked me if I would open some more buttons to examine me further.'*

41. It also had regard to Ms A's police interview from 13 July 2021 in which it was recorded *'He asked me to undo my top button which I did and he …then asked me to undo more button (sic) and I did as I thought he needed to check my ribs or something.'*

42. In her witness statement Ms A said '*Dr Panneerselvam asked me to open the top button of my blouse which I did…He then asked me if I would open some more buttons to examine me further.*'

43. In his Rule 7 response, Dr Panneerselvam stated *'At my invitation, she opened her top and I palpated her abdomen'*.

44. The Tribunal noted that Dr Panneerselvam accepted he invited Ms A to open her top but stated that this was in order to conduct an abdominal examination. Ms A was of the view that he asked her to do this in order to conduct a breast and chest examination. It also noted that both accepted that Ms A opened her blouse at his request.

45. The Tribunal preferred Ms A's account of the events. She has consistently, right from the day of the incident, referred to being asked to open first one button to her blouse and then more.

46. As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam asked Ms A to open the top button of her blouse and then asked her to open more of her blouse buttons.

47. The Tribunal therefore found paragraphs 1(c) and 1(f) of the Allegation proved.

Paragraphs 1(d) and 1(e) of the Allegation

48. The Tribunal considered if Dr Panneerselvam touched Ms A's neck area and her collarbone area. In doing so it had regard to Ms A's email to the GMC dated 16 August 2021 in which she stated *'he started to touch around my neck area and collarbone'*. She also said in her witness statement *'Dr Panneerselvam then started to touch around my neck area and collarbone'.* She reported the touching of the collarbone to the police during her police interview on 13 July 2021.

49. In his Rule 7 response, Dr Panneerselvam stated *'I inspected her neck region for grossly elevated JVP and didn't find it to be so'.* In his email statement he said *'Because there was no bed, I asked if she was ok to get examined on the floor, to which she agreed.Initially I checked if there was grossly elevated JVP since she mentioned orthopnoea'.*

50. The Tribunal noted that Dr Panneerselvam and Ms A agreed that he did touch these areas but disagreed as to when. Ms A said it occurred was when she was lying down. However, Dr Panneerselvam said it occurred before she laid down and he only responded to this after reading Mr E's expert report. In this report, Mr E stated that he would not have conducted this examination with the patient lying down. In Dr Panneerselvam's response to the expert report he stated *'I have clearly mentioned that before moving to the supine position for abdomen examination I had conducted the JVP examination'*.

51. As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam touched Ms A's neck area and her collarbone area.

52. The Tribunal therefore found paragraphs 1(d) and 1(e) of the Allegation proved.

Paragraphs 1(g) and 1(h) of the Allegation

53. The Tribunal considered if Dr Panneerselvam touched Ms A's upper chest area and her rib cage just below her breasts. In doing so it first had regard to Ms A's email to the GMC dated 16 August 2021 in which she stated *'He then started to press again over my neck and upper chest feeling and pressing he then moved to my rib cage just under my breasts'.* The Tribunal then had regard to Ms A's witness statement in which she said *'He then asked me if I would open some more buttons to examine me further and started to*

examine my neck and upper chest. Dr Panneerselvam then moved his hands to my rib cage just under my breasts'.

54. In his accounts, Dr Panneerselvam makes no reference to any touching of Ms A's upper chest area or her rib cage just below her breasts. Dr Panneerselvam stated that he was checking for an abdominal issue whilst Ms A believed he was checking for any issues relating to her XXX.

55. The Tribunal had no reason to doubt Ms A's account and could see no motivation for her to lie about Dr Panneerselvam's motivation for the purpose of the examination. Dr Panneerselvam may have given a different account to Ms A in an attempt to cover up his actions in offering to perform the examination. The Tribunal was satisfied that Ms A's account was more likely to have been accurate, in terms of what the purported purpose of the examination was.

56. As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam touched Ms A's upper chest area and her rib cage just below her breast.

57. The Tribunal therefore found paragraphs 1(g) and 1(h) of the Allegation proved.

Paragraph 1(i) of the Allegation

58. The Tribunal considered if Dr Panneerselvam asked Ms A to lift up her bra. In doing so, it had regard to Ms A's email to the GMC in which she stated *'He then started to press again over my neck and upper chest feeling and pressing he then moved to my rib cage just under my breasts he the (sic) asked 'can you lift this gesturing to my bra'.*

59. In Dr Panneerselvam's Rule 7 response he stated *'In order for me properly to carry out this examination, at my request she lifted her bra a little so that I could gain access to her lower sternal area'.*

60. The Tribunal noted that Dr Panneerselvam and Ms A were in agreement that he asked her to lift up her bra. As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam asked Ms A to lift up her bra.

61. The Tribunal therefore found paragraph 1(i) of the Allegation proved.

Paragraph 1(j) of the Allegation

62. The Tribunal considered if Dr Panneerselvam touched Ms A under her breast area. In doing so it had regard to Ms A's email to the GMC in which she stated *'I lifted my bra a little bit. He then put both his hands under my breast area…'*

63. In his Rule 7 response, Dr Panneerselvam stated *'I could not find any cough impulse in the epigastric region. There was mild tenderness at the epigastric region on palpation. In order for me properly to carry out this examination, at my request she lifted her bra a little so that I could gain access to her lower sternal area'.*

64. As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam touched Ms A under her breast area.

65. The Tribunal therefore found paragraph 1(j) of the Allegation proved.

Paragraphs 1(k), 1(l) 1(m)(i) and 1(m)(ii) of the Allegation

66. The Tribunal considered if Dr Panneerselvam gestured for Ms A to lift up her bra further, lifted her bra fully exposing her breasts, and placed both of his hands on her breasts pressed them and moved them around. In doing so it had regard to Ms A's email to the GMC dated 16 August 2021 in which she stated *'he then gestured for me to lift my bra some more I pulled it up a little further initially trying not to fully expose myself! Saying at the same time 'is that ok' he then lifted my bra saying ' I just need check here' fully exposing my breasts he then said again I just need to check using hand gesture he put both hands on my breasts and was pressing and moving them around!'*

67. Ms A gave virtually an identical account in her written witness statement.

68. The Tribunal also noted her report to the police on 2 July 2021 in which she stated that Dr Panneerselvam had lifted her bra and pressed her breasts. In Ms A's police interview from 13 July 2021 it was recorded that she said *'He then felt around my ribcage before he asked me to lift my bra up. I lifted it a little but then he grabbed hold of it and lifted it fully exposing my boobs. He then moved his hand over my chest and breasts.'*

69. Dr Panneerselvam rejected this in his Rule 7 response in which he stated *'At no stage in this examination did I ask her or did she expose either breast except for a small area on the left-hand side at the sub-mammary crease, nor did I touch her breasts'.*

70. In Ms B's statement of what was reported to her within an hour of the alleged incident was *'The doctor allegedly began to touch her breasts and work his way down to her abdomen'.* This showed that Ms A had discussed the incident with other people very shortly after it had taken place. She had then complained to the police and prepared her written account the same day, which formed the basis of her email to the GMC on 16 August 2021. The Tribunal took the view that it would have been implausible for her to have consistently and repeatedly made such a serious allegation so soon after the event, given her past positive experiences with Dr Panneerselvam and lack of any identifiable motivation for lying about what had happened. It noted that Dr Panneerselvam appeared to have shown her kindness in the past and had offered advice regarding shielding and XXX which had demonstrated a relationship of trust between them. The Tribunal had no reason to doubt Ms A's account of events and noted a consistent level of detail in her accounts of the events.

71. The Tribunal accepted Ms A's version of events over that of Dr Panneerselvam as it considered her account more likely to have been accurate. Whilst Dr Panneerselvam is of good character, he has declined to attend this hearing, and this has prevented the Tribunal from being able to ask questions which it considers to be necessary in order to properly consider and scrutinise the case he has sought to put forward in writing. It therefore gave less weight to Dr Panneerselvam's good character than it might otherwise have done. Ms A in contrast made herself available for questioning if required, although ultimately it was not deemed to be necessary due to the full and detailed accounts she had already provided.

72. The Tribunal noted that there was a clear motivation for Dr Panneerselvam to give a false account about what had taken place, given that he had embarked upon an examination of Ms A in such circumstances that were likely to be viewed as inappropriate, and in the absence of a clinical justification for a breast examination.

73. As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam gestured for Ms A to lift up her bra further, lifted her bra fully exposing her breasts, placed both of his hands on her breasts pressed them and moved them around.

74. The Tribunal therefore found paragraphs 1(k), 1(l) 1(m)(i) and 1(m)(ii) of the Allegation proved.

Paragraphs 1(n)(i), 1(n)(ii), 1(o), 1(p), 1(q)(i) and 1(q)(ii) of the Allegation

75. The Tribunal considered if Dr Panneerselvam moved Ms A's head to one side whilst pressing and moving on the pulse in her neck with one hand, placing his other hand on her heart area on top of her breast, resumed touching both of her breasts, asked Ms A if she had undergone breast surgery, or words to that effect, placed Ms A's head to one side again whilst he placed his finger or fingers over the pulse point in her neck and touched both of her breasts.

76. It had regard to Ms A's witness statement in which she said:

> *'Dr Panneerselvam then put my head to one side and was pressing and moving on the pulse in my neck whilst one hand was on my heart area on top of my breast. My head was still to the side next, I remember his hands were back on my breast and I felt I was holding my breath. Dr Panneerselvam asked me how my breathing was, but I felt like I was not breathing properly.*
>
> *I remember my head was still to one side when Dr Panneerselvam resumed examining my breast area and whilst examining both breasts he asked if I had breast surgery. I told him that I had [XXX]. I felt embarrassed answering questions about my breasts*
>
> *Dr Panneerselvam then put my head to one side again but it was with more force than the first time. I think he was checking my pulse again in my neck as he had his fingers over my pulse point, and he was touching my breasts again. I asked him "why are you doing that?" or 'why do you need to do that what are you looking for?" as I was now thinking what the need for him was to examine my breasts.'*

77. The Tribunal noted a virtually identical account by Ms A in her email to the GMC dated 16 August 2021 and in her police interview.

78. The Tribunal further noted that Dr Panneerselvam claimed not to have known that Ms A had previously had XXX surgery until he was informed of this by the police. He gives no account, in any of his evidence, about these allegations made by Ms A.

79. The Tribunal considered Ms A's evidence to have been consistent from the outset, in the face of a complete denial by Dr Panneerselvam. The Tribunal has not been able to ask Dr Panneerselvam any questions about his account of these allegations which it would have wanted to do. Accordingly, the Tribunal accepted Ms A's account of the events.

80. As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam moved Ms A's head to one side whilst pressing and moving on the pulse in her neck with one hand, placing his other hand on her heart area on top of her breast, resumed touching both of her breasts, asked Ms A if she had undergone breast surgery, or words to that effect, placed Ms A's head to one side again whilst he placed his finger or fingers over the pulse point in her neck and touched both of her breasts.

81. The Tribunal therefore found paragraphs 1(n)(i), 1(n)(ii), 1(o), 1(p), 1(q)(i) and 1(q)(ii) of the Allegation proved.

Paragraphs 1(r)(i), 1(r)(ii), 1(r)(iii) and 1(r)(iv) of the Allegation

82. The Tribunal considered if Dr Panneerselvam, when asked by Ms A why he was examining her breasts, removed his hands from her breasts, pulled her bra back down over her breasts, resumed touching her rib cage area and said that he was feeling Ms A's bones and ribs, or words to that effect.

83. It had regard to Ms A's witness statement in which she said *'When I questioned Dr Panneerselvam, he very quickly removed his hands, and he quite quickly and firmly pulled my bra back down over my breasts and started to feel around my rib cage again. He said he was feeling my bones and ribs and I said 'oh ok' but I was feeling more and more uncomfortable'.*

84. In her email to the GMC, Ms A stated:

> *'He again put my head to one side at this point but it was with more force than the 1st time, I think he was checking my pulse again in my neck as he had his fingers over my pulse point I said when he was touching my breasts 'why are you doing that' or 'why do you need to do that what are you looking for' as I was now thinking why is he needing to examine my breasts'*

85. In addition, it was recorded in Ms A's police interview that she said *'He seemed to spend most of the time touching my breasts and I said to him why does he need to do that and he replied he was checking my ribs and bones. After this he quickly pulled my bra back down covering my breasts again.'*

86. The Tribunal accepted Ms A's version of events as it deemed these to have been consistent, in the face of a lack of response from Dr Panneerselvam who has not referred to this part of the Allegation in any of his accounts.

87. As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam, when asked by Ms A why he was examining her breasts, removed his hands from her breasts, pulled her bra back down over her breasts, resumed touching her rib cage area and said that he was feeling Ms A's bones and ribs, or words to that effect.

88. The Tribunal therefore found paragraphs 1(r)(i), 1(r)(ii), 1(r)(iii) and 1(r)(iv) of the Allegation proved.

<u>Paragraph 1(s) of the Allegation</u>

89. The Tribunal considered if Dr Panneerselvam pressed down on Ms A's abdomen area, causing her to cry out in pain. In doing so it had regard to Ms A's witness statement in which she said: *'After pulling my bra back down he then promptly moved towards my abdomen pressing down as if he was examining me. When he pressed on an area that was painful this made me yelp out in pain and he apologised and backed off as I started to bring myself from laying to sitting position'.* In her email to the GMC Ms A stated *'He then promptllpy (sic) moved towards my abdomen pressing as if examining me he pressed on an area that was painful which made me Yelp out in pain'.*

90. In her police interview it was recorded that Ms A had said *'He then moved his hand down to my tummy area and was pressing down. He pressed down on one point and it really hurt and I yelped…He was pressing on my stomach like a doctor would in an exam but then he pressed on one spot and it hurt. I yelped quite loud…'.*

91. In his email statement, Dr Panneerselvam acknowledged that pain was present with Ms A, by stating *'I examined her abdomen by palpation. Relevant finding - there was no cough impulse, but pain was present at the epigastric region'.* In his Rule 7 statement, Dr

Panneerselvam said *'At my invitation, she opened her top and I palpated her abdomen. I could not find any cough impulse in the epigastric region. There was mild tenderness at the epigastric region on palpation'*. In his comments on the expert report he stated *'Initial examination in a supine position followed by examination in a standing position. (refer rule 7 letter and statement) I have clearly mentioned that I have done 'palpation' of the abdomen and stated 'relevant' finding as tenderness'.*

92. The Tribunal accepted Ms A's account of the events as she indicated in every account that he had caused her discomfort which caused her to *'yelp'*. It noted that her account is not inconsistent with Dr Panneerselvam's account although he does not specifically address whether he caused her to *'yelp'*. The Tribunal noted that he did not say that this did not occur.

93. As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam pressed down on Ms A's abdomen area, causing her to cry out in pain.

94. The Tribunal therefore found paragraph 1(s) of the Allegation proved.

Paragraph 1(t) of the Allegation

95. The Tribunal considered if Dr Panneerselvam held his hand out to Ms A assisting her up from the floor to a standing position. In doing so, it had regard to Ms A's email to the GMC in which she stated *'he offered his hand to help me to my feet I was struggling to get up I reluctantly took his hand trying to act like normal'.*

96. In his Rule 7 response Dr Panneerselvam stated *'I asked her to get up. I don't remember if I helped her to get up'*. The Tribunal had no reason to doubt Ms A's account of the events and accepted her account, noting that it is not inconsistent with Dr Panneerselvam's account.

97. As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam held his hand out to Ms A assisting her up from the floor to a standing position.

98. The Tribunal therefore found paragraph 1(t) of the Allegation proved.

Paragraphs 1(u) and 1(v) of the Allegation

99. The Tribunal considered if Dr Panneerselvam asked to check Ms A's back and pressed upon and tapped her upper and middle back area. In doing so it had regard to Ms A's witness statement in which she said *'Dr Panneerselvam asked me if he could just check my back. Dr Panneerselvam then pressed and tapped in a few places on my upper and middle back like a normal examination'.* It also had regard to Ms A's email to the GMC dated 16 August 2021 in which she stated *'he asked if he could just check my back I said ok I just wanted it to be over now thinking in my head was that right what he just did!! he pressed & tapped in a few places on my upper and middle back like a normal examination'.* In addition, in her account to the police on 2 July 2021 it was recorded that Ms A said *'suspect stood then behind her, examined her back'.* In her police interview from 13 July 2021 it was recorded that Ms A had said *'He then asked me to stand up so he could check my back and he started tapping on my back and listening'.* The Tribunal noted the consistency between Ms A's recollection of the events, and that this was her account from the day of the alleged events.

100. In his Rule 7 response, Dr Panneerselvam stated *'After she had got to her feet, I concluded the examination by repeating the palpation of the epigastric region whilst she was standing up and I asked her again to cough but found no cough impulse'.* The Tribunal noted that the epigastric region is in the abdomen and is not in the back. In his email statement, Dr Panneerselvam said *'I told her I would conclude the examination by repeating palpation of the epigastric region in a standing position'.* Dr Panneerselvam denied checking Ms A's back and maintained this assertion throughout his statement. In his Rule 7 response and his response to the expert report he consistently asserted it was Ms A's abdomen that he checked and denied checking her back. In his police interview it was recorded *'He states his right hand was on her sternal region and his left hand was on her back'.*

101. The Tribunal noted the consistency in Ms A's evidence and preferred her account of the events. It has not been able to ask questions of Dr Panneerselvam as it would have wanted to. It could not identify any motivation for Ms A to make up this part of the allegation. The Tribunal noted that there was a clear motivation for Dr Panneerselvam to give a false account about what had taken place in relation to the examination, given that he had embarked upon an examination of Ms A in such circumstances that were likely to be viewed as inappropriate, and in the absence of a clinical justification for a breast examination.

102.As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam asked to check Ms A's back and pressed upon and tapped her upper and middle back area.

103.The Tribunal therefore found paragraphs 1(u) and 1(v) of the Allegation proved.

Paragraphs 1(w), 1(x), 1(y) and 1(z) of the Allegation

104.The Tribunal considered if Dr Panneerselvam asked Ms A if he could unfasten her bra strap, whilst stood behind her placed his hands on both of her breasts, cupped both of her breasts loosely, moved both of his hands up and down over her breasts and nipples, moved closer behind her and said *'sorry'* or words to that effect when she told him *'I feel really uncomfortable now'* or words to that effect.

105.It had regard to Ms A's witness statement in which she said:

> *'He then questioned if he could undo my bra strap and I felt his arms and hands come round to my breasts. He had one hand on my left breast and one on my right breast at the same he cupped them loosely and moved up and down past my nipples.*
>
> *I could feel Dr Panneerselvam closer behind me and his breathing increasing rapidly, and I really felt uncomfortable with the way he was touching me. I froze for a moment trying to understand what was happening. I got the courage and I said 'I feel really uncomfortable now' whilst moving away from him pulling my blouse back on and starting to button my blouse. Dr Panneerselvam then said sorry as I was trying to hurriedly button my blouse.'*

106. The Tribunal noted that in her report to the police on the day of the alleged events, it was recorded:

> *'Victim stated the suspect stood then behind her , examined her back and came with both his two hands aside and in front of her breasts and touched again her breasts inappropriately. Victim said she knew how it was to be touched by a breast surgeon when necessarily, but it wasn't the case that time for the suspect to touch her breasts. Victim said she told the suspect when he touched her breasts she felt uncomfortable and she said the suspect answered:' sorry' and he removed his hands.'*

107. In Ms A's police interview on 13 July 2021 it was recorded that:

> *'he moved his hands back to my breasts and was kind of stroking them and breathing heavy. It was at this point I felt really uncomfortable and told him so, he stopped and said sorry…He started by tapping on my back and listening, he started near the top and down feeling around my bra strap area, he then asked if my bra could be undone. I am not sure if he did this or if I did. I was worried he was going to touch my breasts again though which is what he did. He cupped them with both hands I remember I just sort of stared at his hands on my breasts…I was feeling them move on my sides and I was holding my breath as I just got the feeling he was going to move them onto my breasts again. I'm not sure exactly how he moved them there but I remember just looking down and his hands are on my breasts moving up and down. I said I was feeling uncomfortable then and I moved away from him. I remember my bra was still on but it was undone and hanging from my shoulders…He put his hands up and down probably 2 or 3 times before I pulled away. He was cupping my boobs and almost lightly squeezing them with his fingers around my boobs. It was gentle like he was trying to get my nipples to hard, he was touching both nipples at the same time. He was right behind me almost like I could feel his breath in my hair, this is when I noticed his breathing was getting heavier. When he was touching me on the floor I could justify it in my brain as to why he was doing what he was but at this point I couldn't.'*

108. The Tribunal also had regard to Ms A's email to the GMC in which she stated:

> *'he then asked if he could or if I could undo my bra strap assuming he just needed to examine my back area & thought ok just let him check my back so I can get out of here but then I felt his arms and hands come Round to my breasts he had one hand on my left breast and one on my right breast at the same he cupped them loosely and moved up and down as if brushing up and down past my nipples I could feel him closer behind me and his breathing increasing rapidly and I really felt uncomfortable with the way he was touching me I froze for a moment trying to understand what was happening, I got the courage and I said 'I feel really uncomfortable now''.*

109. The Tribunal further noted Mr D's statement, which reported what Ms A had told him the same morning as the alleged events had occurred, in which he said:

'She want on to explain specifics of the assessment which resulted in her top being unbuttoned and her breasts groped on two occasions. She said that …he then went behind her and she could feel his breath on her back.'

110.The Tribunal noted Ms B’s statement, again in relation to what Ms A told her within an hour of the alleged events, in which she recorded:

‘The doctor stopped and when Ms A was standing upright, he asked her to undo her bra with him standing behind her as her bra restricted access to her sternum, Ms A informed myself and [Ms C] that she had previously had a [XXX] that the doctor alluded to) at this point he allegedly started to feel her breasts from behind, Ms A told him to stop she was not comfortable and was visibly upset, the doctor was said to have apologised’.

111.The Tribunal then had regard to Ms C’s statement, again in relation to what Ms A told her within an hour of the alleged events, in which Ms C said:

‘Patient said she was a shaky and not comfortable as doctor examined her breast and Doctor went behind her back breathing heavily and hands going down to left side of abdomen’.

112.The Tribunal moved on to consider the evidence presented by Dr Panneerselvam. In his police interview it was recorded that *‘He denies any form of breast examination’.* In his email statement, Dr Panneerselvam said *‘I palpated the lower sternal area and asked her again to cough, there was no swelling or cough impulse.* In his Rule 7 response Dr Panneerselvam stated *‘After she had got to her feet, I concluded the examination by repeating the palpation of the epigastric region whilst she was standing up and I asked her again to cough but found no cough impulse’.*

113.The Tribunal preferred Ms A’s account of the events which was consistent in detail across her accounts and in the accounts of the hospital staff she told very soon after the events in the Allegation. There was no plausible explanation for Ms A to lie about such events and as Dr Panneerselvam has not attended the hearing and given evidence, the Tribunal has not been able to ask questions about his account as it would have wanted to do.

114. As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam asked Ms A if he could unfasten her bra strap, whilst stood behind her placed his hands on both of her breasts, cupped both of her breasts loosely, moved both of his hands up and down over her breasts and nipples, moved closer behind her and said *'sorry'* or words to that effect when she told him *'I feel really uncomfortable now'* or words to that effect.

115. The Tribunal therefore found paragraphs 1(w), 1(x), 1(y) and 1(z) of the Allegation proved.

Paragraph 1(aa) of the Allegation

116. The Tribunal considered if Dr Panneerselvam failed to offer Ms A a chaperone. It reminded itself that in order to find a failure it would need to identify that there was a duty or obligation to offer a chaperone as well as that Dr Panneerselvam did not offer one.

117. In considering whether Dr Panneerselvam ought to have offered a chaperone, the Tribunal had regard to the 'Intimate examinations and chaperones' guidance (the Guidance) (2013). It had particular regard to the following paragraphs of the Guidance:

> *'3. Intimate examinations can be embarrassing or distressing for patients and whenever you examine a patient you should be sensitive to what they may think of as intimate. This is likely to include examinations of breasts, genitalia and rectum, but could also include any examination where it is necessary to touch or even be close to the patient*
>
> *5. Before conducting an intimate examination, you should:*
>
> *…*
>
> > *d. offer the patient a chaperone…*
>
> *9. A chaperone should usually be a health professional and you must be satisfied that the chaperone will:*
>
> > *a. be sensitive and respect the patient's dignity and confidentiality*
> > *b. reassure the patient if they show signs of distress or discomfort*
> > *c. be familiar with the procedures involved in a routine intimate examination*

d. stay for the whole examination and be able to see what the doctor is doing, if practical
e. be prepared to raise concerns if they are concerned about the doctor's behaviour or actions.

10. A relative or friend of the patient is not an impartial observer and so would not usually be a suitable chaperone, but you should comply with a reasonable request to have such a person present as well as a chaperone.

13. You should record any discussion about chaperones and the outcome in the patient's medical record. If a chaperone is present, you should record that fact and make a note of their identity. If the patient does not want a chaperone, you should record that the offer was made and declined.

118. The Tribunal concluded that the Guidance confirmed that a breast examination would be classed as an intimate examination. Dr Panneerselvam claimed to have performed an abdominal examination on Ms A whilst she claimed she was expecting an examination relating to her XXX. Ms A's description of the examination, and the touching of the breasts that has been found proved by the Tribunal, falls into the category of an intimate examination.

119. The evidence is clear that Ms A was not clear about what type of examination was about to be undertaken, or that her breasts would be exposed and touched. Based on the available evidence and the Guidance, the Tribunal was satisfied that Dr Panneerselvam had a duty to offer Ms A a chaperone.

120. The Tribunal had regard to the evidence submitted by Ms A. In her witness statement she said: *'he carried out an unnecessary intimate examination on me without a chaperone and during this examination, sexually assaulted me…Dr Panneerselvam then said, "please don't tell anyone I examined you without an assistant as I could lose my career" before he turned to leave'.* In her report to the police it was recorded *'Victim said the suspect then left but before he left he told her : ' please don't tell anyone I examined you without an assistant''.*

121. In her police interview on 13 July 2021 it was recorded *'I remember him saying to please not tell anyone he had examined me as he should have only done so if he had someone*

else with him. I remember him saying he could lose his career for doing it… I just wanted him to go and I remember as he left he again asked me please not to tell anyone.'

122. In her email to the GMC, Ms A *stated 'he said please don't tell anyone as I could get in trouble because I should have had a chaperone/attendant'*. Mr D's statement is consistent with Ms A's evidence as he reported *'The patient explained this occurred in a store cupboard with no one else present'*.

123. The Tribunal then had regard to the evidence submitted by Dr Panneerselvam. In his police interview he made no mention of a chaperone and in his email statement he said *'I clearly explained to her the constraints of a non-medical setup and the lack of a chaperone. She agreed for an examination without a chaperone in a non-clinical setup'.* In his Rule 7 response Dr Panneerselvam stated *'I offered to examine her informally and she agreed to accept that offer and I explained to her that there would not be a chaperone present for the examination as it was a non-hospital setup. She readily agreed that I should conduct the examination without the presence of a chaperone…Before the examination began, I made sure that she was content to proceed in the absence of a chaperone. Had she asked for one, then I would not have proceeded with the examination at all…I realise and accept that I should not have carried out this examination without a chaperone'.*

124. The Tribunal noted that an explanation of why there could not be a chaperone was not the same as offering one. Dr Panneerselvam's explanations do not constitute offering a chaperone and in any event Ms A asserted that there was no mention of a chaperone. There was no record of the examination having taken place, let alone about any conversation about a chaperone.

125. The Tribunal was content to accept Ms A's version of events that there was no discussion of a chaperone and that there couldn't have been a chaperone in any case as the examination took place in a non-clinical environment in a filing store cupboard. The Tribunal was satisfied that anyone nearby would not have met the requirements to be a chaperone and considered it to have been unlikely a chaperone was offered by Dr Panneerselvam in the knowledge that any healthcare professional would have questioned the location of the examination and why it was taking place.

126. As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam failed to offer Ms A a chaperone.

127.The Tribunal therefore found paragraph 1(aa) of the Allegation proved.

128.Having made findings in relation to all sub paragraphs of 1, the Tribunal considered whether those facts it had found proved were inappropriate as set out in the stem and determined that the physical examination as determined at 1(a) – 1(aa) in its entirety was inappropriate in relation to each and every sub paragraph.

Paragraph 2(a) of the Allegation

129.The Tribunal considered if Dr Panneerselvam, after concluding the examination described at Paragraph 1, showed Ms A pictures on his phone of women's breasts with hands on them appearing to be from an examination. In doing so it had regard to Ms A's email to the GMC in which she stated *'I immediately opened the door back to the open position it was in when he entered and walked to behind [XXX] I felt safe there as I was in full view of [XXX colleagues]…were he prompted to show me his phone of some images of what looked like examination images with hands on the breast area'.* This detail is repeated on her witness statement. In her police interview on 13 July 2021 it was recorded that Ms A said '*He then started to show me stuff on his phone that was explaining what he had just done to me. I now find this strange why he had this info ready on his phone'.*

130.The Tribunal acknowledged that the details were consistent across Ms A's account of the events. It had regard to Dr Panneerselvam's evidence and noted that he said he did not examine Ms A's breasts and as such did not refer to any photographs being shown to her. Dr Panneerselvam made no reference to his phone or to any photographs in the evidence submitted. There was no opportunity to question Dr Panneerselvam about these events as he had absented himself from proceedings. The Tribunal noted no plausible explanation as to why Ms A would make this up. The Tribunal had no reason to doubt Ms A's accounts of the events and was satisfied to accept them.

131.As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam, after concluding the examination described at Paragraph 1, showed Ms A pictures on his phone of women's breasts with hands on them appearing to be from an examination.

132.The Tribunal therefore found paragraph 2(a) of the Allegation proved.

Paragraph 2(b) of the Allegation

133.The Tribunal considered if Dr Panneerselvam said to Ms A *'please don't tell anyone I examined you without an assistant as I could lose my career'* or words to that effect. In doing so it had regard to Ms A's email to the GMC in which she stated '*he said please don't tell anyone as I could get in trouble because I should have had a chaperone/attendant'*. In her witness statement, Ms A said *'Dr Panneerselvam then said, "please don't tell anyone I examined you without an assistant as I could lose my career" before he turned to leave'.*

134.The Tribunal also had regard to the record of Ms A's report to the police in which it was recorded *'before he left he told her : ' please don't tell anyone I examined you without an assistant''*. In Ms A's second police interview it was recorded that Ms A said *'I remember him saying to please not tell anyone he had examined me as he should have only done so if he had someone else with him. I remember him saying he could lose his career for doing it… He seemed anxious at this point and he said please don't say anything as I should have had someone with me I could lose my career, he said this in broken English… as he left he again asked me please not to tell anyone'.*

135.The Tribunal noted that Dr Panneerselvam made no response to the allegation that he said these words in any of the evidence submitted. It noted that he did not deny it. Dr Panneerselvam had the opportunity to comment upon this allegation in his Rule 7 response, as he had seen Ms A's account at this point, but he did not. Due to Dr Panneerselvam absenting himself from these proceedings the Tribunal were unable to question him about the allegation.

136.The Tribunal accepted Ms A's account of events due to the consistent nature of her account in relation to this allegation. It considered it to be unlikely for Ms A to have made this up given the amount of specific detail that she has provided. Factually it was an accurate statement to have made. Dr Panneerselvam would have known that examining Ms A in the manner that he did would have potential ramifications for his career, and that it is plausible that he would have tried to persuade Ms A not to tell anyone. As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam said to Ms A *'please don't tell anyone I examined you without an assistant as I could lose my career'* or words to that effect.

137.The Tribunal therefore found paragraph 2(b) of the Allegation proved.

Paragraph 3(a)(i) of the Allegation

138.The Tribunal considered if Dr Panneerselvam's examination of Ms A was inappropriate in that he failed to take an adequate clinical history. In doing so the Tribunal had regard to the expert report of Mr E which said that Dr Panneerselvam *'stated that he was aware that Person A was suffering from chronic lung disease ([XXX]) but on the basis of the clinical history, he thought she may have had an incisional hernia at the site of her previous [XXX] surgery'.*

139.In his expert report, Mr E outlined what history should have been taken and his opinion on the care provided by Dr Panneerselvam as follows:

'When a patient presents with a history of pain and swelling in the upper abdomen, it is important to take a detailed history of the nature and location of the pain, how often the pain occurs, the duration of the pain, any radiation of the pain and any precipitating or relieving factors. It is also important to ask about associated symptoms including nausea, vomiting, indigestion, bowel symptoms and weight loss. When a patient presents with a history of a swelling it is important to establish the site of the swelling, whether it is always present or comes and goes, how long it has been present and whether it is increasing in size. It is also extremely important to ask in detail about any previous surgical operations, what the exact nature of the operation was and when any operations were performed. It is also important to ask about smoking and alcohol consumption and what medications the patient takes..

…In my opinion, Dr Panneerselvam failed to take a detailed history of Person A's abdominal symptoms as outlined above. In terms of her chronic lung disease, he elicited a history of orthopnoea but on the basis of both witness statements he did not ask Person A whether she had a history of chest pain, a productive cough, shortness of breath on exertion or about her exercise tolerance…

…In my opinion, the standard of history taking was poor and this together with the failure to document the clinical history elicited in her medical records, represents care seriously below the expected standard'

140.Next, the Tribunal had regard to the evidence provided by Ms A. In her witness statement she said:

> *'Dr Panneerselvam was aware that I suffered from a chest disease, namely [XXX] and that I was a patient of the hospital.*
>
> *Sometime in August 2020 whilst working at the hospital Dr Panneerselvam entered [XXX] and questioned why I was at work with my condition and that as I was vulnerable, I should be shielding due to Covid. He seemed very concerned and professional. Following this conversation, I immediately contacted my manager and colleagues very distressed and upset. I requested my employer to XXX.'*

141.The Tribunal considered this to be an indication that Dr Panneerselvam was aware of Ms A's health condition, namely XXX. It noted that Ms A did not describe any abdominal symptoms featuring in her discussion with Dr Panneerselvam before the examination took place, in her witness statement.

142.In his written statement of 8 September 2021, Dr Panneerselvam said *'During our conversation, the complainant spoke to me about her abdominal pain, with a sensation of swelling, reportedly more while coughing ,during the past few weeks to months. Relevant past medical history was previous surgery in the lower chest region and chronic lung disease. As per the patient's version, the surgery was to '[XXX]'. Other concerning medical history was slight orthopnoea. She also said that she had not been able to get a medical appointment for a long time… I offered an examination to rule out epigastric / sub xiphoid incisional hernia'.*

143.In his Rule 7 response, Dr Panneerselvam stated *'During the course of what was an amicable conversation, she told me that she was suffering from a swelling sensation when coughing and pain over the upper abdominal area. She also mentioned a slight difficulty in breathing after retiring to bed, although that was not her main issue. She said that she had had previous surgery in the lower chest region and chronic lung disease…I suspected that she might be suffering from some kind of incisional hernia (?epigastric/sub xiphoid). I offered to examine her informally…'*

144.He reiterated this position when responding to the expert report and went on to explain his account of why he did not previously mention the clinical history. He stated:

‘Because I have not mentioned anything about other factors such as bowel habits, weight loss, it doesn’t mean that I have not asked about the same. No such history as such was told by the patient. It is not uncommon in practice to mention only positive medical history while detailing the patient's complaints. I do accept I may have missed things like smoking history but again what I was intending was a focused abdominal examination. In fact the clinical vignette of past surgical history in lower chest region, pain with swelling on and off (while coughing) in the upper abdomen was the reason for me to arrive at a provisional diagnosis of incisional ventral hernia which again is not uncommon to make of, since every aspect of history taking is a clue to arrive at final diagnosis’.

145. The Tribunal accepted that Ms A did not mention any abdominal pain before the examination and therefore the Tribunal rejected Dr Panneerselvam’s claim that the history he had taken from Ms A led him to proceed with an abdominal examination. If she had consented to an abdominal exam it is very unlikely that she would not have mentioned to him that she was undergoing XXX surgery XXX and having pre-op assessment later that morning. Dr Panneerselvam accepts that he was not aware of this as at 2 July 2021.

146. The Tribunal noted Ms A’s account that Dr Panneerselvam did, however, touch her abdomen and it considered this to be part of the inappropriate touching of her that took place as opposed to a genuine examination. Ms A did not expect an abdominal exam and no evidence has been submitted of any abdominal history being taken. The Tribunal accepted that at some point Dr Panneerselvam did press her abdomen but it did not accept Dr Panneerselvam’s account of the events.

147. In his response to the expert report, Dr Panneerselvam stated that he had neither conducted a chest examination nor examined her for a respiratory condition.

148. Based on the evidence received, the Tribunal was satisfied that Dr Panneerselvam took an inadequate history in relation to both the abdomen and chest.

149. As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam’s examination of Ms A was inappropriate in that he failed to take an adequate clinical history in relation to the condition he indicated to her that he was examining her in connection with, namely XXX.

150.The Tribunal therefore found paragraph 3(a)(i) of the Allegation proved.

Paragraph 3(a)(ii) of the Allegation

151.The Tribunal considered if Dr Panneerselvam's examination of Ms A was inappropriate in that he failed to document the clinical history that he did take in her medical records.

152.The Tribunal had regard to the expert report in which Mr E stated *'In my opinion, the standard of history taking was poor and this together with the failure to document the clinical history elicited in her medical records, represents care seriously below the expected standard'.* It noted that Dr Panneerselvam accepts *'I didn't write it in the model of a standard history sheet or hospital case record*.' Dr Panneerselvam refers to what he has set out in statements, which were prepared after he was aware that Ms A had reported the matter to the police. This was to support his assertion that he took a clinical history of Ms A and cannot be seen as a contemporaneous medical record.

153.As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam's examination of Ms A was inappropriate in that he failed to document the clinical history that he did take in her medical records.

154.The Tribunal therefore found paragraph 3(a)(ii) of the Allegation proved.

Paragraph 3(a)(iii) of the Allegation

155.The Tribunal considered if Dr Panneerselvam's examination of Ms A was inappropriate in that he failed to perform a complete clinical examination of the abdomen.

156.The Tribunal noted Mr E's report in which he stated:

> *'When examining the abdomen, the entire abdomen should be exposed and initially inspected for the presence of scars from previous surgery. The abdomen is then palpated to elicit any areas of tenderness and to check for any abdominal masses. It is also standard practice to palpate the abdomen for the liver, spleen and both kidneys. Hernias orifices in the groin should also be examined. The abdominal wall should also be examined in the standing position to complete the examination for hernias'*

157. Dr Panneerselvam responded to the expert's comments about an incomplete abdominal examination, stating:

> *'This he [Mr E] states in his own words, should be done as palpation of quadrants in supine position after inspection and then move to a standing position. This was what I had done. Initial examination in a supine position followed by examination in a standing position. (refer rule 7 letter…) I have clearly mentioned that I have done 'palpation' of the abdomen and stated 'relevant' finding as tenderness. Palpation examination of abdomen usually involves all quadrants and my mentioning palpation indirectly conveys the same. Because I have not mentioned in detail about each quadrant doesnt mean I didnt examine the same'*

158. The Tribunal referred to its earlier findings in relation to paragraph 3(a)(i) of the Allegation. In particular, the Tribunal's view that the touching of the abdomen was part of the inappropriate touching of Ms A, as opposed to a genuine examination. It noted Ms A's account that Dr Panneerselvam only examined her abdomen as a response to her asking why he was examining her breasts, before he resumed examining her breasts. It bore in mind that Dr Panneerselvam did not have a stethoscope during the examination and as such wouldn't have been able to undertake a proper clinical examination.

159. Based on the evidence received, the Tribunal accepted Ms A's account of the events. As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam's examination of Ms A was inappropriate in that he failed to perform a complete clinical examination of the abdomen.

160. The Tribunal therefore found paragraph 3(a)(iii) of the Allegation proved.

<u>Paragraph 3(b) of the Allegation</u>

161. The Tribunal considered if Dr Panneerselvam attempted to assess Ms A for the presence of an incisional hernia without the necessary clinical expertise to do so.

162. It had regard to Mr E's supplementary expert report in which he stated *'As far as I am aware a CCT is issued at the completion of training in either Cardiothoracic Surgery or General Surgery. It is not possible to be given a CCT as a dual qualification in both General Surgery and Cardiothoracic Surgery in the UK unless you complete separate specialist training at SpR level in both specialties, but this should be clarified by the GMC'.*

163. Given its earlier findings, the Tribunal was not satisfied, on the balance of probabilities, that Dr Panneerselvam attempted to assess Ms A for the presence of an incisional hernia.

164. Furthermore, the Tribunal noted Dr Panneerselvam's purported clinical experience and that Mr E questioned this and wanted clarification from the GMC, which was not presented in evidence at these proceedings. The Tribunal noted that the burden of proving the facts rest with the GMC and based on the evidence received at this hearing, it could not conclude whether Dr Panneerselvam has the necessary clinical expertise to assess for the presence of an incisional hernia or not.

165. The Tribunal therefore found paragraph 3(b) of the Allegation not proved.

Paragraph 3(c) of the Allegation

166. The Tribunal considered if Dr Panneerselvam performed a clinical examination of Ms A's chest when he was unable to auscultate the chest.

167. Based on the evidence received, the Tribunal was satisfied that Ms A thought that the examination was regarding her chest complaint. Dr Panneerselvam claimed not to have examined Ms A's chest. However, the Tribunal had already found that he did touch her chest at paragraph 1(g) of the Allegation. Whilst Ms A understood him to be undertaking a clinical examination of her chest he could not have done so as neither Dr Panneerselvam nor Ms A referred to a stethoscope being used. Indeed Dr Panneerselvam specifically denied having a stethoscope with him. It would therefore have been impossible for him to auscultate (listen to) her chest.

168. As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam performed an inappropriate clinical examination of Ms A's chest when he was unable to auscultate the chest.

169. The Tribunal therefore found paragraph 3(c) of the Allegation proved.

Paragraph 3(d) of the Allegation

170. The Tribunal considered if Dr Panneerselvam performed the examination of Ms A in a non-clinical setting as described at paragraph 1(a) of the Allegation. In doing so it bore in mind that it has already found paragraph 1(a) of the Allegation proved.

171. In his email statement, Dr Panneerselvam stated *'I clearly explained to her the constraints of a non-medical setup and the lack of a chaperone. She agreed for an examination without a chaperone in a non-clinical setup'.* In his Rule 7 response Dr Panneerselvam stated *'Looking back to the incident, I realise and accept that I should not have carried out this examination without a chaperone (though the patient had consented) and in such an informal setting. I very much regret those errors on my part and I wish to assure the GMC that nothing like this will ever happen again'.*

172. The Tribunal noted that both Dr Panneerselvam and Ms A had stated that the examination took place in a non-clinical setting. As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam performed the examination of Ms A in a non-clinical setting as described at paragraph 1(a) of the Allegation.

173. The Tribunal therefore found paragraph 3(d) of the Allegation proved.

Paragraph 3(e) of the Allegation

174. The Tribunal considered if Dr Panneerselvam performed an examination of Ms A's jugular venous pressure whilst she was fully supine. In doing so it had regard to its findings in relation to paragraphs 1(d) and 1(e) of the Allegation in so far as that he examined her neck and collar bone when she was lying down.

175. In her witness statement, Ms A said *'Dr Panneerselvam asked me to open the top button of my blouse which I did. He then kneeled on my right side. Dr Panneerselvam then started to touch around my neck area and collarbone'.* The Tribunal noted that all of Ms A's descriptions are either of her standing up or supine, rather than reclined.

176. In his email statement, Dr Panneerselvam said *'I had not been proper in examining the patient's JVP in supine position. I again would like the GMC and expert to go through my statement where I have clearly mentioned that before moving to the supine position for abdomen examination I had conducted the JVP examination'.*

177. The Tribunal noted that Ms A said nothing happened in the examination before she was supine. It also noted that Dr Panneerselvam had said that he had done the JVP examination whilst she was slightly reclined, but he only commented on this after he had read the expert report. Mr E noted the impracticality of Ms A being slightly reclined during a JVP examination. There is no suggestion that an examination bed, cushions or anything else to support Ms A's back were present. The Tribunal have had no opportunity to question Dr Panneerselvam with regard to how he performed the examination in the way that he suggests without anything for Ms A to lean against.

178. As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam performed an examination of Ms A's jugular venous pressure whilst she was fully supine.

179. The Tribunal therefore found paragraph 3(e) of the Allegation proved.

Paragraph 3(f) of the Allegation

180. The Tribunal considered if Dr Panneerselvam examined Ms A's ribs when this was not clinically indicated. In doing so it had regard to its finding in relation to paragraph 1(h) of the Allegation.

181. It also had regard Mr E's opinion in his expert report that:

> *'There are limited clinical scenarios when it is necessary to directly examine the ribs including when a patient complains of pain or a swelling relating to a rib or ribs or following chest trauma. In this case, Person A had chronic lung disease, she did not complain of any symptoms relating to the ribs. She also had [XXX]. In my opinion, there was no clinical indication to examine the ribs. Any examination of the ribs was completely inappropriate and this represents care seriously below the expected standard.'*

182. The Tribunal accepted Mr E's opinion and noted that Dr Panneerselvam does not address this allegation in any of his evidence. As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam examined Ms A's ribs when this was not clinically indicated.

183.The Tribunal therefore found paragraph 3(f) of the Allegation proved.

Paragraph 3(g) of the Allegation

184.The Tribunal considered if Dr Panneerselvam examined Ms A's breasts when this was not clinically indicated. In doing so it bore in mind that it has already found paragraphs 1(m)(i), 1(m)(ii), 1(n)(ii), 1(o), 1(q)(ii), 1(x)(i), 1(x)(ii) and 1(x)(iii) proved.

185.The Tribunal accepted Mr E's view in his expert report that: *'Patient A had no symptoms relating to the breasts and the examination of the lungs does not require an examination of the breasts. There was therefore, no clinical reason to examine Person A's breasts'.*

186.As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Panneerselvam examined Ms A's breasts when this was not clinically indicated.

187.The Tribunal therefore found paragraph 3(g) of the Allegation proved.

Paragraph 4 of the Allegation

188.The Tribunal considered if Dr Panneerselvam's conduct described at Paragraph 1 was sexually motivated. In doing so it bore in mind that it had already established that there had been touching of Ms A's breasts with no clinical justification for doing so. Ms A maintains that this was unnecessary, was conducted without her consent and was not by accident.

189.The Tribunal had regard to Ms A's police interview which was summarised as follows:

> *'I think he asked if he could undo my bra strap which I allowed and he was then touching around my ribs again before he moved his hands back to my breasts and was kind of stroking them and breathing heavy. It was at this point I felt really uncomfortable and told him so, he stopped and said sorry.*
>
> *…When he was touching my breasts and I was stood up he was doing it really softly and kind of stroking them it was as if he was trying to get my nipples hard or something.*

…He was cupping my boobs and almost lightly squeezing them with his fingers around my boobs. It was gentle like he was trying to get my nipples to hard, he was touching both nipples at the same time. He was right behind me almost like I could feel his breath in my hair, this is when I noticed his breathing was getting heavier. When he was touching me on the floor I could justify it in my brain as to why he was doing what he was but at this point I couldn't.

…He had his hands gently on my breasts moving them slightly up and down brushing my nipples on a scale of 1-10 it was about a 3 in pressure.'

190.In her email to the GMC, Ms A stated *'I could feel him closer behind me and his breathing increasing rapidly'*.

191.In her witness statement Ms A said:

'I could feel Dr Panneerselvam closer behind me and his breathing increasing rapidly, and I really felt uncomfortable with the way he was touching me. I froze for a moment trying to understand what was happening. I got the courage and I said 'I feel really uncomfortable now' whilst moving away from him pulling my blouse back on and starting to button my blouse'

192. The Tribunal noted:

a. The fact that the touching included the sexual organs, namely Ms A's breasts;
b. There was the absence of a clinical justification, in particular for the touching of the breasts;
c. There was an absence of any other plausible reason for the touching;
d. Dr Panneerselvam did not seek to suggest that he had accidentally touched Ms A's breasts;
e. Ms A had not consented to her breasts being touched.

193.In all the circumstances, the Tribunal took the view that Dr Panneerselvam's acts were sexually motivated. A reasonable person would consider that the touching could be sexual, and in all the circumstances of the case the purpose of the touching had in fact been sexual. Dr Panneerselvam's behaviour during the touching led the Tribunal to conclude that it was done for sexual gratification. As such, the Tribunal was satisfied, on

the balance of probabilities, that Dr Panneerselvam's conduct described at Paragraph 1 was sexually motivated.

194. The Tribunal therefore found paragraph 4 of the Allegation proved.

The Tribunal's Overall Determination on the Facts

195. The Tribunal has determined the facts as follows:

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

1. On 02 July 2021 you attended at a colleague [XXX] at her place of work, where you proceeded to conduct an inappropriate physical examination of Ms A in which you:

   a. asked Ms A to lie down on the floor of the filing store cupboard [XXX]; **Determined and found proved**

   b. when Ms A enquired 'what here?' or words to that effect with reference to your request in paragraph 1a, responded 'just in case, it is more private, I could get in trouble', or words to that effect; **Determined and found proved**

   c. asked Ms A to open the top button of her blouse; **Determined and found proved**

   d. touched Ms A's neck area; **Determined and found proved**

   e. touched Ms A's collarbone area; **Determined and found proved**

   f. asked Ms A to open more of her blouse buttons; **Determined and found proved**

   g. touched Ms A's upper chest area; **Determined and found proved**

   h. touched Ms A's rib cage just below her breasts; **Determined and found proved**

   i. asked Ms A to lift up her bra; **Determined and found proved**

   j. touched Ms A under her breast area; **Determined and found proved**

k. gestured for Ms A to lift up her bra further; **Determined and found proved**

l. lifted Ms A's bra, fully exposing her breasts; **Determined and found proved**

m. placed both of your hands on Ms A's breasts; and:

  i. pressed on Ms A's breasts; **Determined and found proved**

  ii. moved Ms A's breasts around; **Determined and found proved**

n. moved Ms A's head to one side whilst:

  i. pressing and moving on the pulse in Ms A's neck with one hand; and **Determined and found proved**

  ii. placing your other hand on Ms A's heart area on top of her breast; **Determined and found proved**

o. resumed touching both of Ms A's breasts; **Determined and found proved**

p. asked Ms A if she had undergone breast surgery, or words to that effect; **Determined and found proved**

q. placed Ms A's head to one side again whilst you:

  i. placed your finger or fingers over the pulse point in Ms A's neck; **Determined and found proved**

  ii. touched both of Ms A's breasts; **Determined and found proved**

r. when asked by Ms A why you were examining her breasts:

  i. removed your hands from her breasts; **Determined and found proved**

  ii. pulled Ms A's bra back down over her breasts; **Determined and found proved**

  iii. resumed touching Ms A's rib cage area; **Determined and found proved**

iv. said that you were feeling Ms A’s bones and ribs, or words to that effect; **Determined and found proved**

s. pressed down on Ms A’s abdomen area, causing her to cry out in pain; **Determined and found proved**

t. held your hand out to Ms A and assisting her up from the floor to a standing position; **Determined and found proved**

u. asked to check Ms A’s back; **Determined and found proved**

v. pressed upon and tapped Ms A’s upper and middle back area; **Determined and found proved**

w. asked Ms A if you could unfasten her bra strap; **Determined and found proved**

x. whilst stood behind Ms A:

i. placed your hands on both of Ms A’s breasts; **Determined and found proved**

ii. cupped both of Ms A’s breasts loosely; **Determined and found proved**

iii. moved both of your hands up and down over Ms A’s breasts and nipples; **Determined and found proved**

y. whilst acting in the manner described at paragraph 1x moved closer behind Ms A; **Determined and found proved**

z. said ‘sorry’ or words to that effect to Ms A when she told you ‘I feel really uncomfortable now’ or words to that effect; **Determined and found proved**

aa. failed to offer Ms A a chaperone. **Determined and found proved**

2. After concluding the examination described at Paragraph 1 you:

a. showed Ms A pictures on your mobile telephone of women’s breasts with hands on them appearing to be from an examination; **Determined and found proved**

b. said to Ms A ‘please don’t tell anyone I examined you without an assistant as I could lose my career’ or words to that effect; **Determined and found proved**

3. Your examination of Ms A was inappropriate in that you:

a. failed to:

i. take an adequate clinical history from Ms A; **Determined and found proved**

ii. document the clinical history that you did take in Ms A’s medical records; **Determined and found proved**

iii. perform a complete clinical examination of the abdomen; **Determined and found proved**

b. attempted to assess Ms A for the presence of an incisional hernia without the necessary clinical expertise to do so; **Not proved**

c. performed a clinical examination of Ms A’s chest when you were unable to auscultate the chest; **Determined and found proved**

d. performed your examination of Ms A in a non-clinical setting as described at allegation 1a above; **Determined and found proved**

e. performed an examination of Ms A’s jugular venous pressure whilst she was fully supine; **Determined and found proved**

f. examined Ms A’s ribs when this was not clinically indicated; **Determined and found proved**

g. examined Ms A’s breasts when this was not clinically indicated. **Determined and found proved**

4. Your conduct described at Paragraph 1 was sexually motivated. **Determined and found proved**

Determination on Impairment - 18/09/2024

196.The Tribunal must now 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 Panneerselvam's fitness to practise is impaired by reason of misconduct.

The Evidence

197.The Tribunal has considered all the evidence received during the facts stage of the hearing.

Submissions

198.On behalf of the GMC, Mr Moran submitted that findings of the kind made by the Tribunal necessitate a finding of misconduct. He stated that Dr Panneerselvam's conduct had involved sexualised touching of an intimate area. He further stated that Dr Panneerselvam's conduct was prolonged and persistent and reminded the Tribunal of the evidence that it had taken place over a period of around 30 minutes. Mr Moran submitted that Ms A was vulnerable in that she was anxious and at a low ebb. She was worried about her physical health and Dr Panneerselvam knew that. He submitted that this was not an act of spontaneous madness on the part of Dr Panneerselvam and that it was premeditated to some extent. He reminded the Tribunal that Dr Panneerselvam was looking out to make sure that he was not being observed when he offered to examine Ms A and that he had chosen the filing room as an area in which he believed they would not be disturbed. He stated that Dr Panneerselvam's inappropriate examination of Ms A only ended as her actions brought it to an end. Mr Moran said that after the examination Dr Panneerselvam attempted to stop Ms A from reporting it to anyone.

199.Mr Moran invited the Tribunal to have regard to Good Medical Practice (2013) (GMP) in determining the appropriate standards.

200.Mr Moran went on to submit that there has been no evidence of insight or remediation in this case and so the Tribunal may feel there is an ongoing risk of repetition. He asserted that public confidence in the medical profession would still demand a finding of impairment in this case even if Dr Panneerselvam had fully remediated and had full insight.

201. Mr Moran submitted that the facts found proved amount to misconduct and that Dr Panneerselvam's fitness to practise is impaired.

The Relevant Legal Principles

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

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

204. The Tribunal had regard to the relevant case law which assists in relation to the meaning of misconduct including:

a. *Doughty v GDC [1988] AC 164* where misconduct was stated to be conduct that has: *"fallen short, by omission or commission, of the standards of conduct expected…, and that such falling short as is established should be serious."*

b. *Roylance v GMC [2000]1 AC 311* where misconduct was described as: *"a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances."*

c. *Nandi v GMC [2004] EWHC 2317* in which Mr Justice Collins observed that in other contexts it has been referred to as: "*conduct which would be regarded as deplorable by fellow practitioners.*"

205. The Tribunal had also had regard to the case of *Cohen v GMC [2008] EWHC 581 (Admin)* in which Mr Justice Silber states:

> *'It must be highly relevant in determining if a doctor's fitness to practise is impaired that; first his or her conduct which led to the charge is easily remedied, second that it has been remedied and third that it is highly unlikely to be repeated.'*

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

207.The Tribunal also had regard to the questions posed by Dame Janet Smith in the Fifth Shipman Report, as referred to in the case of *CHRE v NMC and Grant [2011] EWHC 927 (Admin)*, as follows:

'Do our findings of fact in respect of the doctor's misconduct… show that his/her fitness to practise is impaired in the sense that s/he:

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

The Tribunal's Determination on Impairment

Misconduct

208.The Tribunal noted that it has made findings in relation to clinical matters which it considered to have engaged paragraph 15 of GMP as follows:

'You must provide a good standard of practice and care. If you assess, diagnose or treat patients, you must:

***a** adequately assess the patient's conditions, taking account of their history (including the symptoms and psychological, spiritual, social and cultural factors), their views and values; where necessary, examine the patient*

***b** promptly provide or arrange suitable advice, investigations or treatment where necessary*

> **c** *refer a patient to another practitioner when this serves the patient's needs'*

209. The Tribunal concluded, however, that the gravamen of this case relates to Dr Panneerselvam using a purported clinical examination of Ms A as a facade to inappropriately examine her intimately for his own sexual gratification. In its deliberations, the Tribunal had regard to the principles set out in the version of GMP, which was in effect at the time of the events in the Allegation. This states in opening: *'Never abuse your patients' trust in you or the public's trust in the profession.'* The Tribunal concluded that there had been a breach of this fundamental tenet.

210. The Tribunal also considered that Dr Panneerselvam's conduct engages paragraph 65 of GMP as follows:

> *'You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.'*

211. Doctors hold a trusted position in society by virtue of their professional status. Ms A trusted Dr Panneerselvam because he was a doctor. She only entered the filing store room with him, undid some of her clothing and allowed him to conduct a purported examination on her because she trusted him as a doctor. The Tribunal noted that his actions towards her up to the point where she agreed to an examination had engendered heightened trust beyond the usual trust a patient would have in a doctor. It is relevant that he had:

    a. Previously expressed concern that she should be shielding during the Covid pandemic, which had XXX;
    b. Remembered what her health concerns were and had asked about how she was;
    c. Expressed concern about the length of time that she had been waiting for a hospital appointment;
    d. Offered to examine her to alleviate any concern.

212. The Tribunal took the view that Ms A's relationship with Dr Panneerselvam was based on trust which he had exploited to blatantly pursue his own sexual gratification under the guise of a clinical examination. His conduct fell seriously below the standard expected of a doctor. It seriously impacted Ms A, and public confidence in the medical profession would inevitably be adversely affected by his actions.

213.The Tribunal has concluded that Dr Panneerselvam's conduct fell so far short of the standards of conduct to be expected of a doctor so as to amount to misconduct.

Impairment

214.The Tribunal having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr Panneerselvam's fitness to practise is currently impaired.

215.In its deliberations the Tribunal had regard to the three principles as set out in the case of *Cohen*. It did not consider that Dr Panneerselvam's misconduct could easily be remedied due to the serious attitudinal nature of the misconduct that had been found.

216.In considering if Dr Panneerselvam's misconduct has been remedied, the Tribunal noted that he had demonstrated only limited acceptance of the facts which led to the finding of misconduct in this case, as in his Rule 7 response he stated *'Looking back to the incident, I realise and accept that I should not have carried out this examination without a chaperone (though the patient had consented) and in such an informal setting'.* In Dr Panneerselvam's written statement, dated 8 September 2021, he said:

> *'Later I decided, given the circumstance of restricted practise and my own situation of being in a new job at a new place without any family support, to end my work contract. I took due permission from my employers and did the same. I thereafter relinquished my license to practise.'*

217.The Tribunal noted an absence of any evidence as to what, if anything, Dr Panneerselvam has undertaken with regards to remediation and insight. The Tribunal has no evidence before it of Dr Panneerselvam's current understanding and attitude in relation to his conduct. He did not make any admissions to the Allegation, relinquished his licence to practise medicine and left his employment shortly after he was made aware of the allegations made against him. He has not engaged with this hearing. The Tribunal reminded itself of the judgement in *GMC v Ketyar [2018] EWHC 813:*

> *'...insight requires that motivations and triggers be identified and understood, and if that is possible at all without there first being an acceptance that what happened did happen it will be very rare, and any assessment of ongoing risk must pay close*

attention to the doctor's current understanding of and attitude towards what he has done'.

218.The Tribunal concluded that Dr Panneerselvam has not remediated his conduct.

219.The Tribunal then considered if Dr Panneerselvam's misconduct is likely to be repeated. In the absence of any evidence of remediation, the Tribunal took the view that there was a high risk of repetition, if Dr Panneerselvam had the opportunity again.

220.The Tribunal next considered its findings in line with the principles set out in the case of *Grant*. It was satisfied that Dr Panneerselvam's actions put Ms A at an unwarranted risk of emotional harm and considered that he is liable to repeat this in the future. The Tribunal was also satisfied that Dr Panneerselvam's actions brought the medical profession into disrepute in that a fully informed member of the public would be shocked to learn that a doctor had treated a patient in the way that Dr Panneerselvam treated Ms A. Members of the profession would also be appalled by his actions. It considered that Dr Panneerselvam was liable, in the future, to bring the medical profession into disrepute. In addition, the Tribunal was satisfied that Dr Panneerselvam's misconduct breached a fundamental tenet of the profession in that he had seriously breached his position of trust as a doctor, and that he was liable to repeat this in the future.

221. The Tribunal concluded that a finding of impairment is necessary in order to uphold the overarching objective of protection of the public and the three strands of that objective, namely 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.

222.The Tribunal has therefore determined that Dr Panneerselvam's fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 20/09/2024

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

The Evidence

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

Submissions

3. On behalf of the GMC, Mr Moran submitted that there are no mitigating factors in this case and no evidence of remorse or remediation from Dr Panneerselvam. He submitted that an aggravating factor in this case is Dr Panneerselvam's lack of insight, and the fact that the sexual misconduct was premeditated, prolonged and persistent.

4. Mr Moran submitted that taking no action would not be applicable in this case and that it would not be appropriate to impose conditions as no workable conditions could be formulated to address the sexual misconduct. With regard to suspension, Mr Moran submitted that the gravity of Dr Panneerselvam's misconduct was such that it was fundamentally incompatible with continued registration. He highlighted that there has been no acknowledgement of fault from Dr Panneerselvam and that the Tribunal has found there is a high risk of repetition. Mr Moran submitted that whilst there is no evidence of repetition, Dr Panneerselvam has had limited opportunity to repeat the misconduct.

5. Mr Moran went on to submit that the appropriate sanction in this case is one of erasure. He reminded the Tribunal of its finding that there was a heightened degree of trust between Ms A and Dr Panneerselvam due to the history between them and submitted that Dr Panneerselvam exploited this trust in a blatant way for his sexual gratification. As such, Mr Moran submitted that the only appropriate sanction in this case is one of erasure.

The Tribunal's Determination on Sanction

6. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgment. In reaching its decision, the Tribunal has taken account of the Sanctions Guidance (2024) (SG) and GMP. It has borne in mind that the purpose of a sanction is not to be punitive, but to protect patients and the wider public interest, although it may have a punitive effect.

7. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Panneerselvam's interests with the public interest and it bore in mind the overarching objective.

Aggravating and Mitigating factors

8. The Tribunal then noted the aggravating factors of this case. In doing so it had regard to paragraph 55 of the SG which states:

> *'55 Aggravating factors that are likely to lead the tribunal to consider taking more serious action include:*
>
> *…*
>
> *d abuse of professional position…*
>
> *e sexual misconduct…'*

9. The Tribunal noted that Ms A trusted Dr Panneerselvam because he was a doctor and only entered the filing store room with him and allowed him to conduct a purported examination on her because of that trust. It also noted that Dr Panneerselvam's actions towards Ms A had engendered heightened trust beyond the usual trust a patient would have in a doctor as he had previously expressed concern that she should be shielding during the Covid pandemic, remembered what her health concerns were and had asked about how she was, expressed concern about the length of time that she had been waiting for a hospital appointment and offered to examine her to alleviate any concern.

10. The Tribunal also noted that Dr Panneerselvam's sexual misconduct persisted after Ms A had expressed concern about his actions, and it was prolonged. The sexual misconduct did not take place opportunistically as part of a legitimate examination for which she was booked in, but rather as part of a purported examination suggested by Dr Panneerselvam, who was not Ms A's doctor, which gave him the opportunity for his sexual misconduct.

11. The Tribunal bore in mind that Dr Panneerselvam's misconduct was sexually motivated and that he has demonstrated no remorse and limited contrition, and offered no evidence of insight. He did not make any admissions to the Allegation, relinquished his licence to practise medicine and left his employment shortly after he was made aware of

the allegations made against him. Dr Panneerselvam also tried to persuade Ms A against reporting his actions.

12. In considering all of the evidence presented in this case, the Tribunal could not identify any mitigating factors.

No action

13. In reaching its decision as to the appropriate sanction, if any, to impose in this case, the Tribunal first considered whether to conclude by taking no action.

14. The Tribunal determined that due to the serious nature of Dr Panneerselvam's misconduct that there were no exceptional circumstances to warrant taking no action in this case.

Conditions

15. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Panneerselvam's registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable. In doing so, it had regard to the following paragraphs of the SG:

'81 Conditions might be most appropriate in cases:

a involving the doctor's health

b involving issues around the doctor's performance

c where there is evidence of shortcomings in a specific area or areas of the doctor's practice

d where a doctor lacks the necessary knowledge of English to practise medicine without direct supervision.

82 Conditions are likely to be workable where:

a the doctor has insight

b a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings

c the tribunal is satisfied the doctor will comply with them

d the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised.'

16. The Tribunal did not consider these paragraphs of the SG to be relevant in this case and took the view that no workable conditions could be formulated to address serious sexual misconduct.

17. The Tribunal therefore concluded that conditions are insufficient and unworkable to ensure protection of patients, to meet the public interest or to maintain proper professional standards of conduct for the members of the profession.

Suspension

18. The Tribunal then went on to consider whether imposing a period of suspension on Dr Panneerselvam's registration would be appropriate and proportionate. In doing so it had regard to the following paragraphs of the SG:

'92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration.

93 Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions

…97 Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.

a A serious departure from Good medical practice, but where the misconduct is not so difficult to remediate that complete removal from the register is in the public interest. However, the departure is serious enough that a sanction lower than a suspension would not be sufficient to protect the public.

b In cases involving deficient performance where there is a risk to patient safety if the doctor's registration is not suspended and where the doctor demonstrates potential for remediation or retraining.

c In cases that relate to the doctor's health, where the doctor's judgement may be impaired and where there is a risk to patient safety if the doctor were allowed to continue to practise even under conditions, or the doctor has failed to comply with restrictions or requirements.

d In cases that relate to knowledge of English, where the doctor's language skills affect their ability to practise and there is a risk to patient safety if the doctor were allowed to continue to practise even under conditions.

e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.

f No evidence of repetition of similar behaviour since incident.

g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.'

19. The Tribunal bore in mind its previous finding that there was a high risk of repetition. It also bore in mind that there has been no acknowledgment of fault from Dr Panneerselvam and no evidence of remediation. The Tribunal had careful regard to the factors set out in paragraph 97 of the SG. It noted that Dr Panneerselvam's misconduct amounted to a serious departure from GMP (SG, para 97(a)). Furthermore, the Tribunal considered Dr Panneerselvam's misconduct to be fundamentally incompatible with continued registration, due to factors including:

a. The fact that Dr Panneerselvam has breached a fundamental tenet of the medical profession, by breaching the special position of trust that a doctor occupies;
b. The finding of sexual motivation;
c. The serious aggravating factors;
d. The high risk of repetition; and
e. The obvious impact of his actions on confidence in the profession. Paragraph 17 of the SG states '...*the reputation of the profession as a whole is more important than the interests of any individual doctor*'.

20. For these reasons, the Tribunal determined that suspension would not be an appropriate sanction.

Erasure

21. In considering erasure, the Tribunal had regard to the following paragraphs of the SG:

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

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

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

c Doing serious harm to others (patients or otherwise), either deliberately or through incompetence and particularly where there is a continuing risk to patients

150 Sexual misconduct seriously undermines public trust in the profession. The misconduct is particularly serious where there is an abuse of the special position of trust a doctor occupies, or where a doctor has been required to register as a sex offender. More serious action, such as erasure, is likely to be appropriate in such cases.'

22. There has been a departure from, and deliberate disregard for, the principles set out in GMP and Dr Panneerselvam's behaviour is difficult to remediate. The Tribunal took into account the serious harm caused, namely the immediate upset and distress caused to Ms A by Dr Panneerselvam's actions, and longer term impact. The Tribunal noted that the nurses, Ms B and Ms C, who saw Ms A after her encounter with Dr Panneerselvam, described her as being tearful and distressed. In her written complaint to the GMC, Ms A stated that six weeks after the events detailed in the Allegation she was unable to return to work as she was suffering with PTSD. There is a continuing risk to others due to the high risk of repetition.

23. The Tribunal was satisfied that Dr Panneerselvam's actions undermined the public's trust in the medical profession due to the abuse of the special position of trust that a doctor occupies. This led the Tribunal to take the view that erasure is the only appropriate and proportionate sanction that can be applied in this case, being the only means of protecting patients, maintaining public confidence in the profession and declaring and upholding proper standards of conduct.

24. The Tribunal therefore determined to erase Dr Panneerselvam's name from the Medical Register.

Determination on Immediate Order - 20/09/2024

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

Submissions

2. On behalf of the GMC, Mr Moran submitted that an immediate order should be made in this case and that it would be in the public interest to do so.

The Tribunal's Determination

3. In its deliberations the Tribunal had regard to the following paragraphs of the SG:

'172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.

177 … Where the tribunal has directed suspension or erasure as the substantive outcome of the case, it may impose an immediate order to suspend registration.'

4. In its deliberations, the Tribunal bore in mind its previous findings that Dr Panneerselvam's misconduct amounted to a serious breach of GMP, that there was a high risk of repetition and an ongoing risk to patient safety and public confidence in the medical profession.

5. The Tribunal took the view that an immediate order was necessary in this case in order to protect the public and to maintain public confidence in the medical profession.

6. Accordingly, the Tribunal determined to impose an immediate order of suspension.

7. This means that Dr Panneerselvam's registration will be suspended from the date on which notification of this decision is deemed to have been served upon him. The substantive direction, as already announced, will take effect 28 days from that date, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

8. The interim order will be revoked when the immediate order takes effect.

9. That concludes the case.

ANNEX A – 09/09/2024

Application on service and proceeding in the absence of the doctor

1. Dr Panneerselvam is neither present nor represented at these proceedings. The Tribunal bore in mind Rule 31 of the GMC (Fitness to Practise Rules) 2004 ('the Rules') which provides:

   'Where the practitioner is neither present nor represented at a hearing, the Committee or Tribunal may nevertheless proceed to consider and determine the allegation if they are satisfied that all reasonable efforts have been made to serve the practitioner with notice of the hearing in accordance with these Rules.'

2. It is therefore a two-stage test to be considered by the Tribunal. The Tribunal first considered whether notice of this hearing has been properly served upon Dr Panneerselvam in accordance with Rules 15 and 40 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended)(the Rules) and Schedule 4, Paragraph 8 of the Medical Act 1983 (as amended). In so doing, the Tribunal has taken into account all the information placed before it, together with submissions on behalf of the GMC.

3. The Tribunal has been provided with a service bundle, containing a copy of the Notice of Hearing, dated 15 July 2024, which was emailed to Dr Panneerselvam by the MPTS. Dr Panneerselvam acknowledged receipt of this on 15 July 2024. The Notice of Allegation was emailed to Dr Panneerselvam, on 15 July 2024 by the GMC. Dr Panneerselvam again acknowledged receipt of this on 15 July 2024. Having considered all the information, the Tribunal was satisfied that notice of this hearing had been properly served upon Dr Panneerselvam.

4. The Tribunal next went on to consider whether to proceed with the case in Dr Panneerselvam's absence in accordance with Rule 31 of the Rules. In doing so, it bore in mind the advice of the Legally Qualified Chair who referred to:

   i. The case of *Tait v The Royal College of Veterinary Surgeons [2003] UKPC 34)*, which confirms that the decision to proceed with a hearing in the absence of a practitioner is a discretion which a panel should exercise with the utmost care and caution. The factors which a panel must bear in mind when deciding whether to exercise their discretion to proceed are those as set out in the case of *R v Jones (Anthony) [2003] AC 1, HL*. These include:

i. The nature and circumstances of the Registrant's behaviour in absenting themselves from the hearing;
ii. Whether the Registrant has voluntarily absented themself from the proceedings;
iii. Whether an adjournment would resolve the Registrant's absence;
iv. If so, the likely length of any such adjournment;
v. The disadvantage to the Registrant in not being able to present their case.

5. The case of *Adeogba v GMC [2016] EWCA Civ* which draws a distinction between criminal and disciplinary proceedings in terms of the procedure to be followed when deciding on whether to proceed in the absence of the registrant. Key features of that judgment are:

   i. that fairness involves fairness both to the registrant, which is the prime consideration, but also fairness to the regulator and to the public.
   ii. The decision to proceed should be guided by the context of the main statutory objective of the GMC, namely the protection, promotion and maintenance of the health and safety of the public. In that regard the fair, economical and efficient disposal of allegations is of very real importance.

6. The Tribunal bore in mind that its discretion to proceed in the practitioner's absence must be exercised with caution and with regard to the overall fairness of the proceedings. It balanced the interests of Dr Panneerselvam, including fairness to him, against the public interest, including the need to protect patients. The Tribunal had regard to all the circumstances.

7. The Tribunal noted that in his email to the MPTS, on 15 July 2024, in reply to the Notice of Hearing, Dr Panneerselvam stated *'due to the new change in legal situation that took place with respect to the case in September 2023, I am currently not in a situation to take part in the hearing'*. Mr Moran clarified that the change in legal situation is a reference to XXX. Dr Panneerselvam XXX he is now living abroad.

8. On the basis of the information provided the Tribunal was satisfied that Dr Panneerselvam has voluntarily waived his right to be present and represented at this hearing and that he is aware that the hearing could proceed in his absence. He has not requested an adjournment. The Tribunal considered that if it were to adjourn today, it was very unlikely that Dr Panneerselvam would attend a future hearing due to the current position in relation to XXX, and that position is unlikely to change. No information has been received to suggest that Dr Panneerselvam will return to the UK XXX.

9. Whilst there will be a disadvantage to Dr Panneerselvam in not being able to present his case, the Tribunal does have before it his written response to the allegations sent to the GMC, his Rule 7 response and his comments on the expert report produced by the GMC. This documentation will be considered during the course of the hearing.

10. The Tribunal has therefore determined that it is in the public interest to exercise its discretion and to proceed with the case in Dr Panneerselvam's absence, in order to ensure a prompt resolution of serious allegations, and in order to fulfil the requirement to protect the public.