

PUBLIC RECORD

Dr Higgins appealed decisions of this Tribunal. On 25/07/24, the High Court dismissed Dr Higgins' appeal. Dr Higgins' name has therefore been erased from the Medical Register.

The judgment can be found [here](#).

Dates: 31/07/2023 - 25/08/2023
29/01/2024 – 31/01/2024

Medical Practitioner's name: Dr Stephen HIGGINS
GMC reference number: 4613019
Primary medical qualification: MB BS 1999 University of London

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	Mrs Tehniat Watson
Lay Tribunal Member:	Ms Liz Daughters
Medical Tribunal Member:	Dr Ann Wolton
Tribunal Clerk:	Mr John Poole

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Oliver Williamson, Counsel, instructed by the MDU
GMC Representative:	Mr Robin Kitching, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 22/08/2023

The determination was handed down in private session. A redacted version will be published following the conclusion of this hearing.

Background

1. Dr Higgins qualified as a doctor in 1999 from St. George's Medical School, London, and went on to train in general practice. In 2004 he began his first substantive post at a GP surgery XXX, 'the Practice', where he became a partner in 2008. It was whilst working at the Practice from XXX 2020 to XXX 2021, that the matters that give rise to this hearing are alleged to have occurred.

2. In summary, the Allegation that has led to Dr Higgins' hearing relates to his conduct towards four female members of staff at the Practice (Ms A, Ms B, Ms C and Ms D). It is alleged that Dr Higgins' conduct towards them was sexually motivated; further that his conduct also constituted harassment within the definition at Section 26(2) of the Equality Act 2010.

3. The initial concerns were raised with the GMC on XXX 2021 by Dr X, Senior Partner at the Practice who relayed that the concerns were being raised following two young female members of staff leaving the Practice because of Dr Higgins alleged behaviour, subsequently Dr Higgins left the Practice at the end of XXX 2021. However, his last working day at the Practice was XXX 2021. Dr Higgins has been working as a salaried GP since March 2022 in XXX.

The Outcome of Applications Made during the Facts Stage

4. The Tribunal granted an application made by Mr Kitching, Counsel, on behalf of the GMC, for Ms A, Ms B and Ms D to give evidence with the use of screens in accordance with

Rule 36 of the General Medical Council (Fitness to Practise Rules). This was not opposed by Mr Williamson, Counsel, on behalf of Dr Higgins. Whilst Ms F was not considered a vulnerable witness, it was agreed that screens were appropriate if it allowed her to give her best evidence.

5. The Tribunal granted an application made by Mr Kitching to amend paragraph 9 of the Allegation to reflect the evidence better, namely that the allegation encompasses more than one electronic message. This was not opposed by Mr Williamson. The Tribunal determined that allowing the amendments did not cause injustice to Dr Higgins.

6. The Tribunal refused an application made by Mr Williamson, following the close of the GMC's case, to admit further evidence in accordance with Rule 34 (1) of the Rules; the Tribunal's reasoning is at Annex A.

7. The Tribunal did however, during the course of Dr Higgins' evidence, allow the admission of some further evidence in the form of various photographs and messages, which Dr Higgins intimated he had, during the course of his evidence. He was released from his affirmation and provided time to gather this material before being reaffirmed to finish his evidence. Mr Kitching did not oppose the admission of the further evidence and the Tribunal admitted it.

The Allegation and the Doctor's Response

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

1. At the time of your actions as set out in paragraphs 2-13:
 - a. you were working as a General Practitioner at a GP Practice ('the Practice');
Admitted and found proved
 - b. (and at the times the relevant individuals are referred to in paragraphs 2-13) Ms A, Ms B, Ms C and Ms D were junior members of staff at the Practice.
Admitted and found proved

Ms A

2. On or around XXX 2020, you approached Ms A XXX and:
 - a. asked Ms A:
 - i. if you could have an affair; **To be determined**
 - ii. how many people she had slept with; **To be determined**
 - iii. when she had lost her virginity;
or words to that effect; **To be determined**
 - b. said to Ms A:

- i. 'oh you wouldn't be interested in me because I'm bald but it would make my day'; **To be determined**
 - ii. that when you were Ms A's age you would sleep around a lot and experiment with people; **To be determined**
 - iii. that you thought Ms A should do the same (referring to your comment to Ms A as described in paragraph 2bii);
or words to that effect. **To be determined**
3. On one or more occasion between XXX 2020 and XXX 2020 you sent a Snapchat message to Ms A in which you:
 - a. called Ms A beautiful, or words to that effect; **Admitted and found proved**
 - b. asked for a:
 - i. naked picture of Ms A; **To be determined**
 - ii. picture of Ms A's breasts; **To be determined**
 - iii. picture of Ms A kissing Miss E; **To be determined**
or words to that effect.
4. On or around XXX 2020, you sent to Ms A an EMIS message in which you stated:
 - a. Ms A was 'beautiful'; **To be determined**
 - b. 'I only keep coming XXX to see you because you're beautiful',
or words to that effect. **To be determined**
5. Between XXX 2020 and XXX 2020:
 - a. on one or more occasion:
 - i. when Ms A entered your room at the Practice you:
 1. said to Ms A 'come and give me a cuddle' or words to that effect; **To be determined**
 2. grabbed Ms A and hugged her without receiving her permission to do so; **To be determined**
 - ii. you sent an EMIS message to Ms A in which you:
 1. stated that XXX if Ms A needed a cuddle she could go to your room XXX, or words to that effect; **To be determined**
 2. invited Ms A and Ms E to your room to:

- a. kiss; **To be determined**
 - b. have a threesome,
or words to that effect; **To be determined**
- iii. you said to Ms A that if she didn't tell anyone what you were like, you could get her:
1. a XXX job; **To be determined**
 2. booked onto a XXX training course;
or words to that effect; **To be determined**
- b. on one occasion you sent an EMIS message to Ms A in which you stated:
- i. that you could imagine what you would do to Ms A on the examination table; **To be determined**
 - ii. 'I can't stop thinking about what I want to do to you on this couch',
or words to that effect. **To be determined**
6. On or around XXX 2020:
- a. Ms A entered your room at the Practice and you:
 - i. closed the door behind Ms A; **To be determined**
 - ii. grabbed Ms A around her shoulders; **To be determined**
 - iii. grabbed Ms A's face under her chin; **To be determined**
 - iv. removed Ms A's mask; **To be determined**
 - v. tried to kiss Ms A; **To be determined**
 - vi. refused to let go of Ms A; **To be determined**
 - vii. said to Ms A:
 1. 'do you feel bad?'; **To be determined**
 2. 'cheating on your boyfriend', when Ms A asked you what she should feel bad about; **To be determined**
 3. 'it's more interesting if someone could walk in – that's what makes it fun'; **To be determined**
 4. 'don't worry I won't try to grab your boobs unless you want me to'; **To be determined**
 5. 'I know you're scared, tell me to fuck off',
or words to that effect; **To be determined**
 - b. when XXX with Ms A after the events described in paragraph 6a, you said 'I'm not leaving without you' or words to that effect; **To be determined**

- c. after the events described in paragraphs 6a-6b, you sent to Ms A a snapchat message stating 'that was fun', or words to that effect. **To be determined**

Ms B

7. On one occasion on a date between approximately XXX 2021 and XXX 2021, you approached Ms B in the Practice's kitchen area and said 'you've got a bad side' or words to that effect. **To be determined**
8. On one occasion on a date between approximately XXX 2021 and XXX 2021 you:
 - a. were sat at your desk at the Practice near to Ms B and you moved unnecessarily close to her on one or more occasion; **To be determined**
 - b. approached Ms B in the Practice's staff room and said to her 'I've never seen you with your mask off, you're so pretty' or words to that effect. **To be determined**
9. On or around XXX 2021 you sent ~~an~~ electronic messages to Ms B stating words to the effect of:
Amended in accordance with Rule 17(6)
 - a. 'we should talk more because you cheer me up'; **To be determined**
 - b. 'add me to Snapchat'; **To be determined**
 - c. 'you are brave for adding me'; **To be determined**
 - d. 'I get bored at work'; **To be determined**
 - e. 'I like to be bad at work'; **To be determined**
 - f. 'don't tell your mum about this because I will get into lots of trouble';
 - g. 'I want to give you a hug'; **To be determined**
 - h. 'why don't you make an excuse to come and see me in my room or somewhere upstairs'; **To be determined**
 - i. 'why don't you XXX get an excuse to come to my room for a hug'. **To be determined**

Ms C

10. On or around XXX 2021 you sent to Ms C a WhatsApp message in which you wrote words to the effect of:
 - a. I really like you; **To be determined**
 - b. I know you have a boyfriend; **To be determined**
 - c. I want to get to know you better. **To be determined**
11. On or around XXX 2021 you sent to Ms C an EMIS message stating 'I'm here until 7pm if you want to come in for a cuddle' or words to that effect. **To be determined**

Ms D

12. On one occasion between approximately XXX 2021 and XXX 2021, during a telephone call with Ms D, you asked her to make her voice sound more sexy, deeper or huskier or words to that effect. **Admitted and found proved**
13. On or around 19 November 2021:
 - a. during a telephone call with Ms D, you asked her if she was going to deepen her voice, or words to that effect; **Admitted and found proved**
 - b. you sent to Ms D an EMIS message stating that you and Ms D needed to find a way to make calls ‘more fun’ or words to that effect. **Admitted and found proved**
14. Your conduct as set out at paragraphs 2-13 was sexually motivated. **To be determined**
15. Your conduct as set out at paragraphs 2-13 was unlawful harassment by virtue of Section 26(2) of the Equality Act 2010 in that you engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of, or creating an intimidating, hostile, degrading, humiliating or offensive environment for:
 - a. Ms A; **To be determined**
 - b. Ms B; **To be determined**
 - c. Ms C; **To be determined**
 - d. Ms D. **To be determined**

The Admitted Facts

9. At the outset of these proceedings, through his counsel, Mr Williamson, Dr Higgins made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended (‘the Rules’). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

10. In light of Dr Higgins’ response to the Allegation made against him the Tribunal is required to determine the remainder of the Allegation.

Witness Evidence

11. The Tribunal received evidence on behalf of the GMC from the following witnesses:
 - Ms B, in person

- Ms D, in person
- Ms G, by video link
- Ms C, by video link
- Ms F, in person
- Dr X, via video link
- Ms A, in person

12. Dr Higgins provided his own witness statement dated 30 June 2023, and a supplemental statement dated 5 August 2023 (adduced during the course of the GMC's evidence) on 7 August 2023. He also gave oral evidence at the hearing.

Documentary Evidence

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

- Referral from Dr X to the GMC, dated 26 November 2021
- Email from Ms A to the Practice dated 19 November 2021
- Transcript of Ms A's video interview with the Practice, 4 December 2021, which the Tribunal viewed during the hearing.
- Written statements made for the Practice investigation in November and December 2021 by Ms B, Ms C, Ms D, Ms F and Ms G.
- Dr Higgins' supplemental bundle of documents adduced on 7 August 2023

The Tribunal's Approach

14. A summary of the LQC's advice to the Tribunal, which was accepted is as below.

15. In reaching its decision on facts, the Tribunal should bear in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Higgins did 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.

16. The Tribunal was advised that it must consider all the evidence before it, before making findings as to the credibility of any witness. When assessing a witness's credibility, it should not rely exclusively on a witness's demeanour when giving evidence as per the principles from the cases of *Dutta v GMC* (2020) EWHC 1974 (Admin) and *Khan v GMC* [2021] EWHC 374 (Admin).

17. The Tribunal was advised that in a case such as this, where the allegations relate to sexual misconduct, it should be cautious not to apply stereotype images of how an alleged victim or alleged perpetrator ought to have behaved at the time, or how they ought to have appeared when giving evidence. Instead, the Tribunal needs to judge the evidence on its intrinsic merits and without prejudice.

18. The Tribunal was advised that Dr Higgins has no adverse regulatory findings. It must therefore consider his good character when assessing his credibility and the likelihood of him having behaved as alleged. His good character is not a defence to the Allegation, it is simply one factor to consider when considering all of the evidence in the round. The weight to assign to Dr Higgins' good character is a matter for the Tribunal to determine.

19. The Tribunal was advised that, when considering whether Dr Higgins' actions were sexually motivated, it should have regard to the case of *Basson v GMC [2018] EWHC 505* which states:

“A sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship...

The state of a person's mind is not something that can be proved by direct observation. It can only be proved by inference or deduction from the surrounding evidence”.

20. The Tribunal was further advised that it must consider whether there was a plausible alternative explanation before determining if the conduct was sexually motivated. It was directed to consider the case of *Haris v General Medical Council [2021] EWCA Civ 763*.

Unlawful harassment

21. In regard to the allegation of unlawful harassment by virtue of Section 26(2) of the Equality Act 2010, as particularised at paragraph 15 of the Allegation, the LQC advised that the law states that:

‘A person (A) harasses another person (B) if—

- (a) A engages in unwanted conduct of a sexual nature, and
- (b) the conduct has the purpose or effect referred to in subsection (1)(b).

(1)(b):

- (i) violating B's dignity, or
- (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

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

- (a) the perception of B;
- (b) the other circumstances of the case;
- (c) whether it is reasonable for the conduct to have that effect

The Tribunal's Analysis of the Evidence and Findings

Ms A

22. The Tribunal considered Ms A's overall account generally. It was her evidence that when she joined the Practice XXX, she had really liked Dr Higgins and had trusted him. She had found him approachable and would always go to him with any issues. XXX. She accepted that he *'played the funny guy'* and that he *'was odd but everyone liked him to my knowledge.'*

23. Ms A stated in her oral evidence that *'probably the main reason'* for her leaving was due to Dr Higgins, but also confirmed that XXX. Ms A said that she *'also wanted to change careers and move job in general.'* In her statement, she said that she wasn't ready to leave when she did but did so because of Dr Higgins.

24. In oral evidence, Ms A accepted that she may have been mistaken about paragraph 2 of the Allegation specifically taking place on XXX 2020, she could not recall specific dates well, but maintained the specifics of the core allegation. Similarly, she clarified that instead of Dr Higgins *'always'* calling her pretty, she meant *'occasionally'*.

25. Overall, Ms A confirmed that she did send messages and photos on Snapchat and EMIS, to Dr Higgins, *'nothing was inappropriate or in a sexual manner'*. Her position on his contact was that the *'majority of it was unwanted. I shouldn't have messaged him back ... I was young and like I say, it shouldn't have gone further but I shouldn't have been put in that position.'* Ms A accepted that she had sent photos of her *'face'* but not of anything inappropriate. She stated that *'there was nothing inappropriate from Dr Higgins for a year after I first started'* she said that they *'got on well before all of this started and I knew that in his position what he was doing was wrong. I didn't take it seriously at the time and I played it as a joke, as my way of coping with it, and I didn't want to offend or upset him XXX.'*

26. After having blocked him in XXX 2020, the Tribunal further noted Ms A's position that from around early 2021, she was once again communicating with Dr Higgins on Snapchat and EMIS. In this respect Ms A stated that *'I didn't want anything completely inappropriate, I just wanted to get on with everyone at normal level as I had done when I first started...just wanted things to be normal again.'* In respect of whether at this time, subsequent to the XXX 2020 allegation, Ms A was comfortable seeing Dr Higgins, speaking to him and being around him, Ms A's clarified her position, *'I used to see him every day and I got over it and didn't think he would do anything more.'*

27. The Tribunal noted that there was correspondence between Dr Higgins and Ms A in respect of a XXX role which Dr Higgins had wanted to secure for Ms A. Ms A's position was that she had become aware that there was no such role. It noted text messages exchanged between Ms A and Dr Higgins purported to be in XXX 2021 where Ms A said *'...I feel like it's got out of hand...I think it's best to just leave it...'* and Dr Higgins agreed to *'draw this to a close'*.

28. The Tribunal noted that by XXX 2021, Ms A had exchanged messages with Dr Higgins about her difficulties with the Practice XXX. Ms A's position was that she sought support from Dr Higgins regarding her difficulties and help to *'fix it'*.

29. Ms A stated in oral evidence that she was still in contact with Ms B, Ms E, Ms F and Ms G but hadn't seen Ms F and Ms B in a long time. Ms A stated that when she sent her email complaint to the Practice XXX, after she had left the Practice, she *'didn't know all of this [referring to the hearing] was a thing, I expected them to look at it and keep an eye on him...'*. She stated that she was concerned about the younger girls XXX, she was 'relieved' when Dr X called her and thought *'maybe he [Dr Higgins] won't do the same to others in the future'*.

Dr Higgins

30. The Tribunal also considered Dr Higgins' overall account generally. Dr Higgins told the Tribunal that in XXX 2020, the management structure was not the same as it had been pre COVID; XXX.

31. Dr Higgins described his own personal issues at the time. He said that he couldn't speak to the Practice manager, and had fallen out with Dr X, with whom he had previously had a good relationship. He said, *'things were different', 'people didn't get on and there was a lot of disharmony'*.

32. Dr Higgins described his behaviour as having changed in early 2020, referring to himself variously as *'behaving oddly... being out of control... and having left the planet'*.

33. Dr Higgins said that he was shocked and surprised to hear the testimony of most of the complainants and he had not realised that he was being perceived in the way they described. He said that he knew he was *'more talkative and more sociable with staff but did not realise this'*. He accepted that he failed to maintain professional boundaries, *'even though some tested barriers, I should have kept... I let them fade away so feel bad on many levels.'*

34. Dr Higgins explained that he *'almost felt'* that it was his *'duty to keep people happy and morale up'*. He said that's why *'I did inappropriate jokes'* and *'XXX was trying to be helpful and nice and approachable'*.

35. Dr Higgins stated that at the time period to which the Allegation relates, he was lonely, and in a *'bad place'*. He XXX was *'exhausted'* and *'burnt out'*. He had significantly overstepped boundaries. He maintained that there wasn't anything sexual in respect of his behaviour relating to any of the 4 complainants. He said he *'didn't find them sexually attractive, it was just a diversion from things.'* His position was that Ms A had at one time developed a romantic interest in him.

36. In respect of his messages to junior colleagues on Snapchat, he said that *'I honestly didn't find them attractive, seemed like a bit of fun...not fun.. just a diversion'*. He said that when he *'started, he couldn't stop, even if I tried.'*

37. He accepted that he bought alcohol for Ms A, Ms E and Ms G, as *'they were pestering him'* whilst in the pub. He said that he thought his intention was to only *'get a round as they were excellent workers doing a good job'*. He said he *'bought 2 – 3 rounds to make their day but that should have stopped at one or maybe none at all'*. Dr Higgins' accepted that he was worried about the level of their inebriation and accepted that he asked Ms G not to mention that he bought drinks as it would *'look odd'*.

38. Dr Higgins also explained to the Tribunal that whilst his professional boundaries had suffered, they were gradually *'coming back'* 4- 6 weeks after XXX 2020 however there were *'blips'*.

39. Dr Higgins' position was that Ms A had influenced and conspired with Ms B and Ms C in respect of the allegations relating to him having offered/invited hugs and cuddles. In his oral evidence, he said that Ms A had made a concerted effort to cause him harm, he thought, maybe, due to him not being able to advance her career or help her with that.

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

Paragraph 2a and 2b of the Allegation

41. In Ms A's most contemporaneous account, the transcript of her video interview with the Practice, dated XXX 2021, she stated that on XXX 2020 she had been working on a late and on her own XXX. She stated that:

'[Dr Higgins] came in and was talking to me as usual but then he started asking me some personal questions about, erm, like how many people I'd slept with and yeah about erm when I'd lost my virginity and shared details about him when he was younger... He asked me to have an affair with him as it was boring he said that I would make his days fun, he then laughed it off, kind of played it as a joke and said not to tell anyone as he'd get into trouble. Obviously I was a little bit shocked about that, but I brushed it off, I mean, as far as I knew he was joking, it was a bit strange.'

42. Ms A told the Tribunal that XXX. She readily accepted that if XXX was not a XXX, a day on which she worked late, then she was covering the late shift for someone on that date. She however maintained her account on the specifics of the allegation in her written statement and in her oral evidence.

43. In Ms A's witness statement to the GMC, dated XXX 2022, she stated:

'He said something like 'oh you wouldn't be interested in me because I'm bald, but it would make my day'. He asked me about how many people I'd slept with and when I lost my virginity. I didn't know what to do in the situation – I didn't go into any detail with my personal life, but just said enough so he would leave me alone. I just gave a

vague response and said XXX. He told me that when he was my age he would sleep around a lot and experiment with people and that he thought I should do the same...'

44. The Tribunal considered Dr Higgins' account. In his witness statement, dated 30 June 2023, Dr Higgins' denied Ms A's version of events. He stated:

'...I did not engage in a conversation of the nature she has suggested.

Specifically I did not ask Ms A if she would have an affair. I did not ask how many people she had slept with. I did not enquire as to when she had lost her virginity. I did not indicate to Ms A that she would not be interested in me because I was bald, but it would make my day. I did not state that when I was Ms A's age I would sleep around a lot and experiment with people (and this is simply not the case). I did not say that I thought Ms A should engage in such behaviour or words to that effect...'

45. In Dr Higgins' oral evidence to the Tribunal, he stated that some of the conversations he had with Ms A were on the "edge of what they should have been". He had accepted that he had suffered a loss of professional boundaries at this time and that he was behaving in ways which were out of character for him. He said that he did not remember saying the things alleged by Ms A and therefore had to deny them. He said that he 'can't detail every single conversation, not appropriate I know for a middle-aged man to have with a [XXX] year-old.' He further stated that he would not have said those things; for instance, he stated it was not true that he slept around a lot and experimented when he was Ms A's age and so he would not have told Ms A he had. He also stated that a lot of the conversations were consensual. He stated, 'I am aware that these are disgraceful conversations to be having with a [XXX] year old... she would often start these and thought they were funny.'

46. The Tribunal considered Dr Higgins evidence to be unclear and contradictory. He had initially, in his statement, denied making any of the said comments. It further considered Ms A's accounts to be clear and consistent. It considered that her willingness to accept that she had the day of the week wrong added to rather than detracted from her credibility. It viewed Dr Higgins' renewed position that he may have made some inappropriate comments but not the specific ones alleged, as not plausible. The Tribunal preferred Ms A's account and concluded that it is more likely than not that Dr Higgins acted as alleged at paragraph 2 of the Allegation. Accordingly, it found paragraphs 2a and 2b of the Allegation proved.

Paragraph 3 of the Allegation

47. Paragraph 3a of the Allegation was admitted to by Dr Higgins and found proved by the Tribunal; namely that on one or more occasion between XXX 2020 and XXX 2020 he sent a Snapchat message to Ms A in which he called her beautiful or words to that effect.

48. The Tribunal considered paragraph 3b of the Allegation. It was not disputed that Dr Higgins and Ms A had exchanged telephone numbers and had exchanged messages on Snapchat. In her witness statement, Ms A stated that Dr Higgins would share details about

XXX with her, telling her how *'he was not happy'*. She said she *'went along with the conversations XXX.'* In her video interview, Ms A stated that if Dr Higgins:

'ever overheard me or Ms E saying we were going out he would kind of take advantage of that and message us or me when he knew we were drinking a lot of the time. Or he would message me when he'd been drinking as well, asking me to send him pictures, of myself...'

49. Ms A detailed:

'Just naked pictures... Of my boobs a lot of the time...'

He asked me to send him naked pictures because he said it would cheer him up. Erm he used to ask for pictures of me and Ms E kissing if he knew we were together...'

50. In her oral evidence, Ms A detailed that Dr Higgins had asked her for pictures of *'my boobs...2-3 times'*. She had stated in her statement that *'on Snapchat, the messages instantly disappear, and because we were drinking, we knew what he had sent was inappropriate, but we wouldn't quite remember what he'd sent. The next day he would apologise for the things he'd sent. I just didn't want any confrontation. I didn't want anyone to find out because I didn't know what people would think of me...'*

51. In response to Tribunal questions, Ms A stated that although she had been drinking, she was sure that such requests, as described in paragraph 3 b, were made by Dr Higgins as these *'stuck out'*.

52. In Dr Higgins' statement, he stated, *'I never made requests for naked pictures to be sent to me or parts of Ms A's anatomy... I would often be inundated with messages from Ms A...'* In his oral evidence he stated that had he sent such requests, then Ms A would have saved the messages. He further stated that he had received a photo of Ms A and Ms E kissing, which was unsolicited, but he did not have this saved. The Tribunal noted that Dr Higgins had saved other photographs. Dr Higgins explained to the Tribunal how he would save them on his computer's OneDrive and then delete them from his phone. The Tribunal also bore in mind Dr Higgins' oral evidence in which he accepted that there had been *'racy exchanges'* with Ms A.

53. Ms A confirmed in oral evidence that she had sent photos /pictures of *'my face'* to Dr Higgins. She said that *'I did send him messages, but nothing was inappropriate or in a sexual manner like he would send to me, and I didn't remember a lot of them as I used to go out a lot. It was a while ago and Ms E did it too.'*

54. The Tribunal examined Ms A's oral evidence. She stated that at this point in time, she had not started to think about taking screenshots/ collecting evidence. She said that she had thought of doing this towards the end, *'before I left, when he was apologising to me about what he had done, and I knew he was doing the same to the other girls and I did not want it*

to continue, and I would try and get photos from that point'. She explained that she didn't take any photos/screenshots and the two photographs/screenshots from XXX 2020 in which Dr Higgins had stated, 'Beautiful photo, you look soooooo cute. Hope you are home and tucked into bed.' and 'Night beautiful. Have sweet dreams.' were captured only because her partner took them, as 'he was there at the time'. She confirmed that she hadn't taken any photos of Snapchat or EMIS messages herself at that time.

55. The Tribunal further considered if Ms A had any motivation to fabricate allegation/s. It noted the contents of the EMIS messages available to it, from XXX 2021 to nearing the time Ms A had left the employment at the Practice. It considered that these did not show any 'falling out' or 'ill will'. The Tribunal also considered the text message exchange between Ms A and Dr Higgins, purported to be in XXX 2021 also showed an amicable position between them when the issue relating to a XXX role, drew to a close. The Tribunal did not find any evidence of a motive to fabricate allegation/s on Ms A's part.

56. Having considered the entirety of the evidence, the Tribunal found Ms A's account to be credible and convincing and it rejected Dr Higgins' evidence denying this allegation. It determined that it was more likely that not that Dr Higgins' sent a Snapchat message to Ms A, in which he asked her for a naked picture, picture of Ms A's boobs, picture of Ms A and Miss E kissing or words to that effect. It therefore found paragraph 3 b of the Allegation to be proved.

Paragraph 4 of the Allegation

57. The Tribunal had regard to the transcript of Ms A's video interview with the Practice. Ms A stated:

'Then XXX 2020... he seemed he was in quite a bad mood, he must have been duty doctor and I messaged him on EMIS just to see if he was ok XXX like I would do for anyone. He told me that he only kept coming XXX to see me erm because he thought I was beautiful. I ignored the message...'

58. This is consistent with Ms A's witness statement in which she stated:

'XXX 2020

...I noticed Dr Higgins was in an awful mood. I sent Dr Higgins a message on the EMIS system asking if he was ok XXX. He responded and said I was beautiful. When Dr Higgins sent anything inappropriate on EMIS, it was always along with something that was a question about work, so I ignored the inappropriate parts and just answered the questions...'

59. In Dr Higgins' witness statement, he stated:

'I do not believe I made any such comments through EMIS. I do however accept in other circumstances I referred to Ms A as being 'beautiful' and a 'beautiful photo' of Ms A in which she looked cute. However, I did not state I only keep coming XXX to see her because she is beautiful.'

60. The Tribunal noted Dr Higgins' denial in having made this comment on EMIS. It noted Dr Higgins' acceptance that he had called Ms A 'beautiful' on Snapchat. It also considered Ms G's evidence which was accepted by Dr Higgins that he had paid Ms G a compliment too, via Snapchat, which was consistent with Dr Higgins' evidence that this was the time-period that he had lost his sense of professional boundaries.

61. The Tribunal examined Dr Higgins' evidence in relation to his use of EMIS instant messaging system. In his written statement, he said that his use was '*not always professional*'. In his oral evidence he said that he would '*never*' send personal messages on EMIS as '*it was recorded anyway*'. He said that he assumed every key stroke had been saved. Dr Higgins stated that he would not send '*explicit*' or '*sexual*' messages but would send messages '*not to do with work*'. It took the view that Dr Higgins' position changed, and it was not entirely clear or consistent throughout his evidence.

62. It also considered other evidence available to it, within the bundle demonstrating Dr Higgins' use of the EMIS system for personal messages not strictly related to work.

63. Indeed the Tribunal also noted the content of Dr Higgins' Facebook message to Ms A later that day, in which he stated: '*I'm not screen messaging in case anyone is on your computer now.*' It considered that this supported his use of EMIS messages for non-work related messages and supported Ms A's assertion.

64. Dr Higgins intimated in oral evidence that had he messaged Ms A on EMIS as alleged, Ms A would have taken photos of the message. The Tribunal reminded itself of Ms A's evidence as to when she had turned her mind to collect evidence via screenshots/photos of messages.

65. Having considered the evidence, the Tribunal accepted Ms A's account as credible and did not accept Dr Higgins' denial of this allegation to be plausible. It considered that it was more likely than not, that Dr Higgins had sent Ms A an EMIS message as detailed in this allegation.

66. Accordingly, the Tribunal found paragraph 4 of the Allegation proved.

Paragraph 5a of the Allegation

67. The Tribunal had regard to Ms A's evidence. In her video interview with the Practice, she stated that:

'...from XXX to XXX erm, [Dr Higgins] would message me constantly on EMIS most days. XXX. He would constantly ask me for a hug but then even if I said no he would do it anyway, he would just kind of grab me, erm....'

It happened four times over the course of a few months. I was like, there was nothing I could say, I was so shocked, I would just kind of I would just tense up then I would just leave...

On two occasions, at work, he would try and get me and Ms E to go into his room together. Erm, he said for us to either kiss in front of him or for a threesome...'

68. In Ms A's witness statement, she stated:

'Dr Higgins would message me to tell me that he had deliberately not XXX. If XXX, I would try to get the other XXX to ask Dr Higgins XXX. If I had to get Dr Higgins to XXX, I would always tell him that the patient was at the practice XXX, making it clear that I had not gone to his room for anything he had offered me. He would say to me 'come and give me a cuddle'. In that situation, I wouldn't know what to say. I tried to make a joke of it, saying things like 'you can't keep asking for cuddles, it's weird'. He would come over and grab me. I wouldn't fight him off, but I would just stand there until he let me go and then I'd leave - it was really awkward...'

69. Ms A gave her account to the Tribunal and maintained that Dr Higgins had grabbed her and hugged her on 4 occasions. She said *'I was very uncomfortable, I didn't say no. I never implied I wanted it; I don't think I used the word "no" and I never said yes, and I made it relatively obvious that I was uncomfortable, and I didn't want that'*. She said that *'I would say "you can't keep doing this – it's weird"'*. She said that she is *'not confrontational'* and was *'scared of repercussions'* – she found it a *'very uncomfortable situation to be in.'*

70. Ms A accepted that XXX. She stated that Dr Higgins did use the EMIS system for these messages relating to XXX and how these could be used as a ruse for a *'cuddle'* and maintained that she had not been in a mindset at the time to photograph the EMIS instant messages which would disappear when closed.

71. In Dr Higgins' witness statement, he put:

'Ms A would often come into my consulting room XXX. When advising me that she was coming to see me she would add an aside to the effect "shall we have a hug?"'

I can only recall one occasion when we did hug (but I accept there may have been more). We hugged mutually and consensually in my office. Afterwards she said to me that my hug had been 'mechanical'.

Although the hug was mutual I did feel uncomfortable.

Having said that it would be fair to say that we both engineered meetings together to allow us to chat in a silly fashion. I accept that I did this but I believe that she was using XXX as a pretence to come into my room.

I would not have messaged Ms A inviting her to XXX my room as a precursor to a cuddle. I was able to XXX and hence the need did not and would not arise. I did not ever invite Ms A for a cuddle using the EMIS system’.

72. The Tribunal examined Dr Higgins’ oral evidence in respect of Ms A. He stated that she was *‘not a natural kind of person he would be friendly with’* and that *‘she was forward in her messaging’*. He said that she was *‘sort of fun and an excellent XXX and we seemed to get on in a superficial way but always felt a bit manipulated under that.’* Dr Higgins said that Ms A was showing a romantic interest in him, but he wasn’t sure if she was serious or not. He said that the use of XXX was her idea and *‘we would have a chat and talk about people in the practice we weren’t getting on with’*. Dr Higgins stated *‘I would say we will have a chat and she was the one who thought of it in the first place. ...not just that...XXX, I didn’t care what she used.’* In reference to *‘engineering meetings’*, Dr Higgins accepted... *‘this is true...I did say bring something to have a chat but not as a precursor to a cuddle.’*

73. Dr Higgins further stated that Ms A had fabricated her account of there being four hugs. He said that there had been only one exchange of a hug and it was in *‘XXX 2020 or so’*. Dr Higgins provided a sequence in relation to hugs. He said that a mutual hug had taken place in XXX 2020, initiated by Ms A. He said that Ms A had messaged him on a XXX morning and had asked to come in for a hug. He stated that he did not keep that message as at the time he didn’t have concerns about Ms A. He stated that he *‘felt that she wanted to take it further and I remember being busy as there was a lot going on’*. He said that he had a lot to do, and he couldn’t *‘be bothered and she came in XXX and I stood up and we had a hug and it felt odd and she was a certain age and it felt odd and not natural and felt strange.’* He further added that the hug and *‘was more for her – I didn’t find it sexual in anyway’*. He said that it was the first and only physical contact he had with Ms A. He said he thought it was a *‘bit odd and more for her than me’*, and that it was sexual for her. He said it lasted five seconds.

74. Thereafter he stated that on one occasion around XXX or XXX 2020, Ms A had asked for a hug, and he had declined which surprised Ms A.

75. Dr Higgins stated that the next occasion was when he offered Ms A a hug in XXX 2020 which is the subject of allegation 6.

76. In his written evidence, Dr Higgins accepted that there may have been more than one hug, however his oral account was inconsistent with this which referred to the one time that a hug had taken place. Dr Higgins stated that he didn’t keep the message from Ms A, in which she was seeking a hug as he had no concerns about her at the time. In oral evidence however, when giving his account as to earlier events and why he had saved a particular photograph of Ms A, from XXX 2020, he stated that he *‘was worried about her motivation from early on.’*

77. Dr Higgins evidence seemed to shift, and the Tribunal considered it to be unreliable. In contrast, Ms A gave an articulate and clear account and remained consistent in all her accounts. She had vehemently denied ever asking Dr Higgins for a hug, or ever having commented that a hug was *'mechanical'*.

78. It further considered the allegation that he invited Ms A and Ms E in his room to kiss and have a threesome.

79. Ms A said the following in her written statement:

'Dr Higgins messaged both Ms E and I at the same time on EMIS at work saying he wanted us to go into his room for a threesome...'

80. In her oral evidence, Ms A told the Tribunal that by XXX 2020, she had become good friends with Ms E. She said that Dr Higgins had *'come up with a plan'* in respect of the excuse that both Ms A and Ms E could use to go to his room for a threesome. She said that he had sent both her and Ms E the exact same message that XXX and that Ms A would try to XXX and then he would call in Ms E for assistance.

81. In his written statement, Dr Higgins further put:

'Likewise I never used the EMIS system to invite Ms A and Ms E into my room together for the purposes of a kiss or a threesome.'

82. In relation to the allegation that Dr Higgins invited Ms A for a threesome, he stated *'I don't remember saying that or writing it, I don't think it would be possible in a doctor's surgery or consulting room'*.

83. Dr Higgins had shifted his evidence from *'never'* to that he *'didn't remember'*. He stated that he would never write something personal or unprofessional on EMIS; however, the Tribunal did not accept this as it had seen evidence of Dr Higgins sending messages of a personal nature on EMIS. It had also heard from multiple witnesses that EMIS instant messages would disappear once opened. Dr Higgins had told the Tribunal that there had been *'racy'* messages. It noted his acceptance that he had engineered meetings in his room, although he stated that they were for chats. It was mindful of Dr Higgins' evidence that there had been a significant loss in his professional boundaries at this time. It also bore in mind the wider context in which he had called Ms A beautiful and asked her personal and intimate questions (paragraph 2 of the Allegation).

84. Ms A's evidence in respect of Dr Higgins' plan did not feature in the video interview or her witness statement. Considering all of her evidence, the Tribunal did not consider this to be an embellishment nor something that detracted from her credibility; rather the Tribunal considered it an example of Ms A trying her best to assist the Tribunal.

85. Having considered all the evidence, the Tribunal accepted Ms A's evidence and rejected Dr Higgins' evidence in respect of paragraph 5 of the Allegation. Applying the balance of probabilities, the Tribunal found paragraph 5.a(i), 5.a (ii) of the Allegation proved.

86. The Tribunal next considered paragraph 5.a (iii).

87. Ms A stated in her video interview:

'...he'd always tell me he was going to try and get me a XXX job XXX and if I kept him happy and didn't tell anyone then he'd be able to do it. Erm, because obviously he knew that that's what I wanted to do.....'.

In Ms A's statement, she stated:

'Dr Higgins told me that he was going to try and get me a XXX job.... Dr Higgins would say to me that he'd speak to [Dr F] and he'd get me on a XXX training course if I didn't tell anyone what he was like. By this I think he was referring to the Snapchat and EMIS messages...

88. Dr Higgins' position in his statement was:

'It is suggested that I used the prospect of a role XXX or enrolment on a XXX training course to encourage Ms A not to 'tell anyone what I was like'. There is absolutely no truth in this.

Whilst I knew Ms A was keen to train XXX I did not believe that she would be suitable XXX. In any event it was not within my gift to make such an Appointment/commitment. My partner, Dr G, was responsible for the development of XXX staff.'

89. The Tribunal considered Dr Higgins' admission in having called Ms A beautiful on Snapchat, which it had seen. It noted Dr Higgins' explanation that he had lost his professional boundaries. He was 'lonely' and in a 'bad place' and he had accepted that he had used Snapchat to converse with junior colleagues out of work hours and on unrelated issues to work. He accepted that in relation to Ms A, the conversations were inappropriate for a middle-aged man to have with a XXX-year-old. The Tribunal had found proved that Dr Higgins had sent EMIS and Snapchat messages as described in paragraph 2, 3 and 4. It also noted Dr Higgins' acceptance of similar behaviour, in asking Ms G not to mention that he had paid for alcoholic drinks for her to anyone.

90. In response to Tribunal questions as to what would be within his gift, bearing in mind Dr Higgins' documented efforts to 'promote her candidacy' for a XXX role, he accepted that he could have mentioned it or put her forward for the XXX course in a partners' meeting. He also acknowledged that he could have chipped in at a meeting and made a recommendation which could have added a 'quarter to the decision'.

91. Having considered the weight of evidence, the Tribunal accepted Ms A's evidence in relation to this paragraph and rejected Dr Higgins' denial. It was more likely than not that Dr Higgins did say to Ms A, that if she didn't tell anyone what he was like, he could get her a XXX job, booked onto a XXX training course or words to that effect. It therefore found paragraph 5 a (iii) of the Allegation proved.

Paragraph 5.b. of the Allegation

92. In her video interview, Ms A stated:

'I once messaged him on EMIS as he was [XXX], and I asked him if was coming back... and he said, 'why? Do you want to meet me here?' He said he could imagine what he would do to me on the examination table. At the time, I found it funny. I thought he was all talk. I laughed it off as I thought he was just a creepy old man...'

'...the main thing I remember he said was 'I just can't stop thinking about what I'd want to do to you on this couch.'

93. Dr Higgins account in his written statement was:

'I at no time suggested to Ms A via the EMIS system what I imagined I could do to her on an examination table or that I could not stop thinking about what I wanted to do to her on an examination couch. I accept that some of the messages on EMIS were not always professional in nature and at times were instead humorous. I accept it was my responsibility to maintain professionalism...'

94. In response to Tribunal questions, Dr Higgins accepted that he would attend XXX surgery every XXX. He stated *'I do not remember writing that but if I did it would not be on EMIS. There was some racy stuff exchanged.'* He stated that the conversation could have been on Snapchat, and that it was inappropriate. He stated, *'it would not be that graphic and certainly not on EMIS.'*

95. The Tribunal took the view that Dr Higgins was denying having sent the message on EMIS as opposed to having sent the message at all. It found his account to be confused and unreliable. It had already established that Dr Higgins had used EMIS for non-work-related messages and Dr Higgins had conceded that he would use EMIS for unprofessional messages but not explicit messages.

96. It considered Ms A's account to have been consistent in her written and oral evidence. In reporting this, within her video interview she stated, *'the main thing I remember.....and that was all really, he wouldn't go into any detail'*. It also considered Ms A's account to be accurate and that there had been no attempt to embellish it at any point with any added details.

97. Having considered all the evidence, and applying the balance of probabilities, the Tribunal found paragraphs 5b of the Allegation proved.

Paragraph 6 of the Allegation

Paragraph 6 a.

98. The Tribunal had regard to Ms A's evidence. In her video interview she stated that on XXX 2020 she had been working the late shift and:

'as I was walking around collecting stuff I kept noticing, I didn't know if I was overthinking it or not, but I felt like [Dr Higgins] was following me, so, if I went upstairs and suddenly he was upstairs or if I went to the toilet and when I came out, and he was like tying his shoelaces in the corridor. If I was doing something I could see him everywhere...

And... XXX it was late. He was the only doctor there, XXX and went in there and he immediately shut the door behind me... and then he grabbed me. I tried to kind of push him off me. He told me don't worry I won't try to grab your boobs, unless you want me to. Because I tried to push him off my arms are like this and I had my head down, but he had his arms around me so I couldn't get away...

But he then.. he kind of grabbed me and he then.. I was shaking and he said I know you're scared of me. He kept telling me if you don't like it then tell me to fuck off. I just couldn't say anything. Because I was so scared...

...he took my mask off my face and grabbed my face and tried to kiss me. Obviously I kept my head down so he couldn't. Erm he eventually let me go and I kind of I left, I left his room. And erm he came back out XXX and I just said to him if you are finished with your work you can go home I'll lock up, you go. He was going, no I'm not going to leave you, you might say something. And he kept telling me, well you're so beautiful, you're so beautiful. I told him to leave me alone, I was like please just go, leave me alone. Erm when I got home I got a message off him that night saying, erm, oh well that was really fun, so I blocked him. Erm, that was the final straw...'

99. Ms A's account in her witness statement was similar however included further detail:

'When I came back to his room XXX, I went into his room, and he shut his door behind me and grabbed me around my shoulders. We were standing in front of his door. I asked him 'what are you doing?' Dr Higgins said, 'do you feel bad?' and I said, 'feel bad about what?' and he replied, 'cheating on your boyfriend'. I was so panicked, and I was shaking. I said, 'but your door's open' hoping that he would stop, but he said something like, 'it's more interesting if someone could walk in - that's what makes it fun.' I tried to push him away, but he wouldn't let me go. He said, 'don't worry I won't try to grab your boobs unless you want me to.' Then he said, 'I know you're scared, tell

me to fuck off'. I couldn't say anything. He grabbed my face under my chin and took my mask off and tried to kiss me. I was looking down, trying not to look up at him. I put my head down and my hands were down in front of me as I had tried to push him off me. I kept my head down and I said I needed to go. It felt like it lasted forever, but he didn't manage to kiss me and eventually let me go. I left his room and went into the corridor...

Dr Higgins followed me XXX, and I said to him, 'if you're finished you can go' and he said, 'I'm not leaving without you'. I told him to leave me alone. He sent me a Snapchat message when I got home which said something along the lines of 'that was fun'. He played it off as a joke and thought it was funny. I instantly blocked him on Snapchat...'

100. In oral evidence when asked whether Ms A was clear Dr Higgins closed the door or if it closed by itself, she stated that she clearly remembered Dr Higgins closing the door behind her. She also clarified, when asked, that she meant the door was unlocked rather than open. She readily conceded that she may have not been clear on the date/day and accepted that XXX 2020 may not have been a XXX. Ms A had otherwise maintained the accuracy of her account of the core allegation.

101. The Tribunal further examined Ms A's account. She had stated that she knocked on the door but could not remember whether it was open or closed. Nevertheless, the Tribunal considered that Ms A would have gone to Dr Higgins' room twice as by both Dr Higgins and Ms A's account she initially went to Dr Higgins room to ask about XXX, and then again with XXX. She conceded that she could not recall XXX, whether she had XXX or not and that she *'was not focused on that.'* All of Ms A's accounts were consistent, and she maintained details such as she clearly recalled Dr Higgins pushing the door shut, when challenged. She also maintained that she was not kissed by Dr Higgins, that he had tried to kiss her but didn't as she had kept her head down. She maintained this account when informed that Ms B's recollection from information that Ms A herself would have given to Ms B included reference to a kiss. She refuted that a kiss had taken place and remained steadfast and clear in her evidence.

102. In Dr Higgins' witness statement, he denied the entirety of the allegation:

'To be clear regarding the alleged events of XXX 2020, I would not have closed the door of my consulting room behind Ms A. The door closed automatically and to seek to force it shut would only hinder it closing.

*I did not grab Ms A around the shoulders or grab her face under her chin, remove her mask or try to kiss Ms A. I did not refuse to let go of Ms A.
I did not say "do you feel bad," in the context of her cheating on her boyfriend.*

I did not say "it was more interesting if someone could walk in – that's what makes it fun."

I did not say “not to worry as I would not try to grab her boobs unless she wanted me to”.

I did not say “I know you’re scared, tell me to fuck off”. As set out above I may have used the term “fuck off” but in a wholly different context. Following the incident described above I may well have contacted Ms A enquiring what I had done to upset her.

The events as set out by Ms A simply did not happen.

I did not when in the practice XXX state to Ms A “I’m not leaving without you”. I may have on occasion stated that I would not leave her alone in the practice when it was closed or at least be available by telephone in my car. I did not indicate in a Snapchat message that any such incident “was fun”.

103. Dr Higgins had also provided the following account in his written statement, when describing an occasion when he had asked Ms A for a hug, which he stated was XXX 2020:

‘When I asked her for a hug, she seemed confused. I said words to the effect “sorry [Ms A]”. She looked anxious. I said words to the effect “that I was sorry, I was happy for all this to stop just tell me to get lost/fuck off” (I may have used the latter terminology)’.

104. In Dr Higgins’ oral account he stated that he had XXX in his room and was waiting for Ms A to come past; that he kept door open and asked her in so that he could show her how to XXX. He characterised this as a training opportunity, as he knew she was interested in XXX. He however, denied that he engineered this as an opportunity to see Ms A, however, he then stated that he did not really want to show her XXX as ‘it was slowing my evening down.’

105. Dr Higgins further stated that as XXX takes some time, ‘I said to her, do you want a hug and it took her by surprise.’ He further stated, ‘She didn’t look threatened but said that “I don’t want to do that” ... and I said, I don’t care, tell me to fuck off’. Dr Higgins continued to tell the Tribunal, ‘I thought I was on safe ground as she had asked for one before and it was something to do ...on the spur of the moment...seemed like a bit of fun.’ Dr Higgins continued to add that at that time, ‘I was trying to put professional boundaries back.....I have no romantic or sexual feelings for Ms A and I didn’t find her attractive.’ Dr Higgins continued to deny the specifics of the allegation or any physical contact. He did however state that Ms A ‘seemed keen to get away’ and further that he had ‘messed up’ and Ms A ‘was a bit upset with me... she had been talking a lot about professional boundaries... after the first hug they had discussed it and said nothing like that would happen again and she got angry that I was letting myself down again...’ In particular the Tribunal noted Dr Higgins’ oral evidence in which he twice referred to ‘doing something no one knows’ and doing something ‘a little bit daring’ when describing his interaction with Ms A. The Tribunal contrasted this with his denial in his written statement, about having said ‘it was more interesting if someone could walk in – that what makes it fun.’

106. The Tribunal considered Dr Higgins' account to be slightly confused in respect of whether or not he had offered or wanted to show Ms A how to XXX. It considered his earlier evidence that at the time when he had declined an offer of a hug from Ms A, he should have told one of the partners but he *'had hoped that it would all die down and go away,'* alongside his evidence that after the first hug it was agreed nothing like that would happen again. Against that backdrop, and with him thinking that Ms A had a romantic interest in him, and that *he* did not find Ms A attractive, nor did he have any sexual interest in her, the Tribunal could not understand why Dr Higgins would have offered a hug to Ms A *'as something to do'*. The Tribunal noted that Dr Higgins was unable to explain why he did not include this version of events in his written statement. The Tribunal rejected these accounts by Dr Higgins as implausible.

107. The Tribunal further considered an EMIS message from Dr Higgins to Ms A on XXX 2021 in which he stated:

*'I'm always here to talk/message or Snap if you need someone to talk to.
I Think a lot of you (especially how you handled my bad behaviour)
I won't ever try it on with you again, but I am always here if you need me.'*

108. It also had regard to another EMIS message dated XXX 2021 which stated:

*'Things will be fine. Time sorts everything out, I feel much better now.
It is strange. I have gone through odd patches in my life and only realised how odd I
was when I look back. At the time I was out of control...'*

109. It further considered Dr Higgins' oral evidence in which he stated that he thought his 'loss of professional boundary was serious', and he looked *'back in disgust'*...he referred to it as a *'shameful period of time'*.

110. Having considered the entirety of the available evidence, the Tribunal thought that the events of XXX 2020 were as purported to be by Ms A. It rejected Dr Higgins' account that this event merely culminated in an offer of a hug to Ms A. The weight of the evidence supported a serious occurrence which on the balance of probabilities, the Tribunal found Dr Higgins was himself referring to in the above EMIS messages. It considered that Ms A was telling the truth – her evidence was cogent, and her account, clear and credible. Having carefully scrutinised and assessed the cogency of Dr Higgins' accounts, it considered it to be confused, unreliable and not credible. It determined paragraph 6 a to be proved.

111. The Tribunal considered allegation 6 b. It noted Ms A's account that Dr Higgins *'wouldn't leave early that day... he used to leave early all the time'* [emphasis added]. Dr Higgins stated that he was keen to leave and would often leave at 6:30 pm but felt he *'needed to hang around'* and explained that the Practice had controlled drugs and that he would not feel comfortable leaving two young females to lock everything up and walk through the car park. It also considered Dr Higgins' evidence in his statement, that *'I may have on occasion stated that I would not leave her alone in the practice when it was closed or*

at least be available by telephone in my car.' Accordingly, the Tribunal determined that considering its finding at paragraph 6 a above and Dr Higgins' own evidence, and in applying the balance of probabilities, this sub-paragraph 6b was proved.

112. The Tribunal considered allegation 6 c. It considered that Dr Higgins had been in communication with Ms A over Snapchat during this time. In his own account of what took place on XXX 2020, he stated that his offer of a hug to Ms A *'seemed like a bit of fun.'* Ms A had stated in her evidence that Dr Higgins *'played it off as a joke and thought it was funny'*. It was not in dispute that Ms A proceeded to block Dr Higgins. Overall, the Tribunal considered that on balance Dr Higgins did send a message on Snapchat to say *'that was fun'* or words to that effect. It therefore found paragraph 6 c proved.

113. Accordingly, the Tribunal found paragraph 6 of the Allegation proved in its entirety.

Ms B

114. The Tribunal considered paragraphs 7-9 of the Allegation regarding Dr Higgins' behaviour towards Ms B.

Paragraph 7 of the Allegation

115. The Tribunal considered all of Ms B's written and oral accounts and noted that XXX, which are the relevant dates of these events. It noted her written account of XXX 2021 given to the Practice did not contain information on all of the allegations and instead mainly focused on the allegations relating to XXX 2021. Ms B's explanation was that she was asked to write down the account of what had happened on the Friday (XXX 2021) which is what she did. Ms B further accepted at the outset of her evidence, that *'within the first week of me working at the Practice, the girls told me to be wary of Dr Higgins.'* She further explained that she had asked why Ms A and Ms G had not said anything to the Practice and stated that they felt that *'they'd be ignored'*.

116. In relation to this allegation, it was Ms B's account that Dr Higgins' said to her *'you're brave'* and that *'you've got a bad side'* whilst she was in the kitchen at the Practice and had put two spoons of coffee in her cup. She took the view that these comments were relating to her use of 2 spoons of coffee. When challenged on her written account, Ms B readily accepted that at that time, whilst she had been warned to be *'wary'*, she thought that there *'had been nothing to be wary about at that time'*. She further accepted that the use of the words *'wouldn't let me move'*, in respect of Ms B wanting to get past Dr Higgins to get to the milk was not accurate. Ms B stated in her oral account that Dr Higgins was chatting entirely appropriately at this point. Nevertheless, she did maintain that those words were used by Dr Higgins.

117. The Tribunal noted Dr Higgins' statement where he stated that whilst he accepted that he *'would have no doubt made conversation with Ms B'*, he stated, *'I believe I would not have said words to this effect.'* In his oral account however, Dr Higgins stated that he did not

remember using those words, but if he did, he would admit it as its *'not a bad thing.'* Dr Higgins did however say that he did agree that reference to *'bad side'* would have been inappropriate and was an *'odd thing to say'*.

118. The Tribunal noted Dr Higgins' general account that his professional boundaries which had not been in place since XXX 2020, had gradually returned due to his efforts but he was still experiencing *'blips'*. It noted Dr Higgins' general admission that he had crossed the line with his use of inappropriate words and communication. On balance, the Tribunal determined that it was more likely than not that Dr Higgins did engage in conversation with Ms B in the kitchen and made the said comment to her.

119. It found paragraph 7 of the Allegation proved.

Paragraph 8 of the Allegation

8 a

120. In her written statement, Ms B detailed seeking help with XXX which Dr Higgins' volunteered to assist her on. It further noted a wide disparity between Ms B's and Dr Higgins' accounts. Ms B stated that *'he was sat at his desk and kept leaning over me, I was leaning forward to look at what he was showing me, but he would move forwards, so I kept moving away, but he kept doing over and over again'. I said to him "can you please stop?" and he said, "oh sorry". It was obvious I was uncomfortable. It freaked me out because of what the girls had said.'*

121. Ms B was clear in her account that she was seated during this interaction, *'in the chair where a patient would sit'*. She confirmed her written account that they had spoken about matters not related to XXX and in fact Dr Higgins had shown her the *'speaker'* that he would speak into referring to a Dictaphone. When challenged in oral evidence, Ms B maintained that she had sat, had given Dr Higgins a note pad and asked him to write notes and was leaning over to see the notes. In relation to leaning over, she stated, *'so was he'*. She confirmed that she had asked him to stop, and he had apologised. Ms B said that she didn't think that there was anything *'sexual'* within the encounter.

122. Dr Higgins stated that he had a vague recollection of Ms B in his room at the Practice seeking help with XXX. He said that he didn't think that Ms B even sat down in a chair and *'never went three steps away from the door asking me which computer programme we use...'* He said that he didn't remember Ms B *'even sitting down'* and denied being asked to stop leaning / moving close to Ms B during this interaction.

123. The Tribunal considered the entirety of the evidence and noted that Dr Higgins had stated that he had a vague recollection of the incident. In contrast Ms B seemed to be clear and consistent in her written and oral accounts and on balance the Tribunal determined that Ms B's account was more likely than not to be accurate, there was no identified motive to fabricate these events which she herself confirmed were *'not sexual'*.

124. Accordingly, the Tribunal found paragraph 8 a of the Allegation proved.

8 b

125. The Tribunal noted Ms B's evidence. She stated that she had been sitting in the staff room eating lunch *'when Dr Higgins came in and said something along the lines of "I've never seen you without your mask off, you're so pretty".'* Ms B maintained that this occurred despite not clearly remembering when it happened – she recalled the incident as *'very brief'*. Ms B denied any exaggeration. She remembered thinking that the alleged comment was *'odd'* and *'unusual'* and she felt *'confused'* and *'uncomfortable'* by it. Ms B stated, *'I felt very uncomfortable.'*

126. Both, in his written statement and oral evidence, Dr Higgins' completely denied having said *'you're so pretty'* to Ms B, he denied having said that even innocently.

127. The Tribunal took that view that Ms B had been readily accepting of any inaccuracies in the details given in her statement had even readily accepted that there had been nothing inappropriate or sexual in these interactions, it did not think that Ms B would have fabricated this allegation. It noted Dr Higgins' admission in having referred to Ms A as beautiful, and Ms G's evidence about Dr Higgins having complimented her which Dr Higgins had also admitted. It thought that it was more likely than not that Dr Higgins had stated, *'you're so pretty'* or words to that effect, to Ms B.

128. It therefore found paragraph 8 b of the Allegation proved.

Paragraph 9 of the Allegation

129. The Tribunal considered Dr Higgins' contention that Ms A had influenced Ms B's evidence, particularly the aspects not part of Ms B's initial account and the allegation relating to a *'hug'*.

130. The Tribunal noted that Ms A's time working at the Practice, overlapped with Ms B, by approximately XXX. Whilst being told to be *'wary'* of Dr Higgins in XXX 2021 when she had joined, she *'didn't know the details, as a new starter and didn't know ins and outs and didn't want to know and didn't want to be involved.'* Ms B clarified that the extent of the information relating to Ms A and Dr Higgins was *'something along the lines of an instance with Dr Higgins in the room and that there was some physical contact, a kiss but I don't know the ins and outs.'* She said that this was the extent of the information that she had.

131. Before providing her own written account to the Practice, Ms B stated that she had only spoken to XXX, and not even her own parents. She informed the Tribunal that all Ms A and Ms G knew was that Ms B had had a meeting with the Practice manager on XXX 2021, Ms B stated that *'we'* had been told not to discuss anything whilst *'writing everything up'*. She stated that it was at a later date, (after having had her meeting at the Practice) that she found out that Ms A *'had sent something to the Practice'*.

132. Ms B's initial written account to the Practice is undated and she confirmed that she would have prepared that the same day, or if not, within a few weeks and within the month of XXX 2021. Ms B further confirmed that they were all her own words and that whilst Ms G was called in next, after her, to the meeting, she did not discuss the contents of the meeting with Ms G and had just informed her that she *'will be called in next'*.

133. Ms B confirmed that there had been a snapchat group which she was a part of alongside Ms A, Ms E and Ms G. She said pictures and messages were put on the group chat so *'we all had a copy of everything'*. Ms B further confirmed to the Tribunal that the Snapchat group had not been formed to talk about Dr Higgins, on the contrary, she said that it was because they had all been friends and it was used to arrange going out XXX. Ms B clarified that the screenshots, messages were put on the group after her meeting with the Practice *'when all started to come out'*.

134. Ms B vehemently denied being untruthful in her evidence and or conspiring with Ms A in respect of the allegations. It also noted that Ms B had lost contact with most of those on the social media group but had remained in 'brief' contact with Ms A.

135. Ms B did however clarify in her oral evidence that when she had been asked at the meeting in XXX 2021, what she had thought of Dr Higgins, she had stated that *'she was not keen on him and that was because of what had happened on Friday'*, referring to her own alleged interaction with Dr Higgins on XXX 2021.

136. Considering the entirety of the evidence, the Tribunal could not adopt the view, that Ms B's evidence had been influenced by Ms A nor that she had any motive to fabricate or lie in giving evidence to further any 'conspiracy' or *'Ms A's concerted effort to cause him harm'* as put by Dr Higgins.

137. The Tribunal took the view that Ms B's answers were 'matter of fact', she was a credible witness who had tried her best to assist the Tribunal with truthful answers.

138. In respect of the specific sub-allegations of paragraph 9, the Tribunal examined the evidence. Ms B explained that on XXX Dr Higgins had sent screen messages on EMIS telling her about XXX Dr Higgins denied this. Ms B stated that she thought that Dr Higgins was of the view that she was sympathising with him and that *'we were friends and that he could speak to me when he was bored.'* The Tribunal considered the probability of this. It noted that Ms G too had stated in oral evidence that Dr Higgins would tell her personal details of XXX, despite her young age and experience, and Dr Higgins accepted that he did seek advice. It considered that it was equally probable that Dr Higgins had messaged Ms B in this regard as she asserted and considered Ms B's account to be credible.

139. Ms B asserted that Dr Higgins' EMIS messages on XXX included reference to it being *'nice'* that she was working upstairs and that she and Dr Higgins should talk more as she cheered him up. Ms B stated that Dr Higgins then asked Ms B to add him to Snapchat and

sent her his user details in an EMIS email. Ms B took a screenshot of this EMIS email which the Tribunal had seen.

140. The Tribunal considered the sequence within the sub-paragraphs. It had already established that Dr Higgins had used the EMIS messaging for non-work-related issues but noted Dr Higgins' denial, he said *'whilst I may have on a number of occasions messaged Ms B using EMIS, I did not make any of the comments that are suggested'*.

141. The Tribunal thought it was probable, in light of Dr Higgins' general oral evidence of being *'lonely'*, that he had commented on Ms B cheering him up via their exchange in EMIS messages. It noted the Snapchat username details that were given to Ms B and both Ms B and Dr Higgins' confirmation that Ms B did in fact add him to Snapchat straight away. Ms B clarified that her motivation in doing this was to find *'evidence'*. She stated, *'I thought if I could get things from him, people would believe me about what was happening'*.

142. The Tribunal further considered Ms B's statement that as soon as she added Dr Higgins on Snapchat, *'he said something like I was "brave" for adding him'*, referring to a Snapchat message. He said that he gets bored at work and likes to *"feel bad" at work'*.

143. Dr Higgins had denied these allegations in all his accounts – he stated that these had been fabricated by Ms B. He also stated that had those messages been sent, Ms B would have saved them. Ms B's testimony was clear, the reason she had not saved these, or screenshot them was because doing so would alert Dr Higgins which she did not want to do. This technicality with Snapchat was also confirmed by Dr Higgins who further provided that he had used Snapchat as a means of communicating with Ms B as opposed to texts as text notifications come up on the phone screen. He said *'I found a way to hide Snapchat messages.'* He stated that he placed that application *'in a separate area on his phone' as his 'daughter would get into his phone'*. He confirmed he knew that communicating with a XXX-year-old was inappropriate and *'the way I was then and wanted to keep it secret [XXX].'*

144. Whilst Dr Higgins denied reference to *'bored'* at work, the Tribunal noted similarities in other evidence available to it. In a message on EMIS to Ms A dated XXX 2021, which had been seen by the Tribunal, Dr Higgins had said *'been so bored, I have been on the (sic) verge of packing my stuff up these last few weeks. The people here are so boring...'*. A further message in which Dr Higgins stated, *'Anyway I am being dragged to Wetherspoons to have a meal with friends who are very boring....'*.

145. Whilst not direct proof, the Tribunal considered that the wider evidence did support Ms B's account in respect of the words used by Dr Higgins.

146. The Tribunal further considered Ms B's account that Dr Higgins had sent her a Snapchat message to say that he needed to XXX in the XXX in which she was working alone and that he would like to give her a hug whilst he was there. Ms B stated that she had responded to Dr Higgins to say that she was going to meet XXX for lunch, to which he had

responded ‘*don’t tell XXX about this because I will get into lots of trouble*’ or words to that effect.

147. It considered Dr Higgins’ assertion that had this been true, the message would have been saved. The Tribunal was convinced by Ms B’s account that she was not able to save or screenshot any messages without alerting Dr Higgins to it and that whilst a photo could be taken via another phone, she did not have another phone available to her as she had been alone XXX.

148. The Tribunal had seen a message from Dr Higgins to Ms G asking her not to mention that he had bought alcoholic drinks. It had also found proved in relation to Ms A, that under the guise of an offer of a XXX job / XXX course, he had asked her not to tell anyone what he was like. Further, it noted Dr Higgins’ own testimony that he had chosen Snapchat to communicate with Ms B, to keep this hidden from XXX. Whilst not direct evidence, the Tribunal took the view that this did support Ms B’s assertion that Dr Higgins told her not to tell XXX about the messages.

149. The Tribunal further considered Ms B’s account that on her return from lunch, she suspected that Dr Higgins would come to hug her. She stated that she asked Ms G to help her move her things XXX so she could work there and not be alone XXX. In her evidence to the Tribunal, Ms G corroborated this account. She stated that Ms B felt uncomfortable that Dr Higgins was going to come upstairs.

150. Ms B detailed a further message from Dr Higgins in which he asked her to see him in his room or somewhere upstairs. She stated he said, ‘*something along the lines of, “why don’t you XXX get an excuse to come to my room and I’ll give you a hug”.*’

151. The Tribunal did not consider that Ms B’s account was influenced by Ms A. It further took into account Ms G’s evidence that she had seen a couple of EMIS messages from Dr Higgins to Ms B, relating to how he would come up and see her and that the messages would disappear once you respond to them. It examined Ms B’s evidence and noted that in her most contemporaneous account, she had referred to this being a Snapchat message which she also confirmed in her written statement to the GMC. In her oral evidence, Ms B stated that ‘*she couldn’t recall now but thought that the reference to the hug may have been on EMIS.*’ She accepted that had that been the case, she could have taken a photograph of it but had not.

152. The Tribunal noted that some time had elapsed since XXX 2021, and it was understandable that there would be some confusion in the detail, particularly where there were likely to be numerous message exchanges on both platforms, both EMIS and Snapchat. It also took the view that Ms B’s account was otherwise clear and consistent, and it had considered her to be a credible witness. On balance, it considered there had been at least two references to a ‘hug’, one before lunch and another after, the latter in the context of using ‘XXX’ as a ruse. It considered that despite the confusion about which platform each reference to a hug may have been on, the core allegation, being the reference to a hug and

the purported use of a 'XXX' to further that end, was not wavering in any of Ms B's account. It preferred her account and rejected Dr Higgins' evidence.

153. In considering the entirety of the evidence, the Tribunal was convinced by Ms B's testimony and found that on a balance of probabilities the sub-paragraphs as set out in paragraph 9 of the Allegation were proved, in that Dr Higgins had sent the said electronic messages to Ms B.

Ms C

154. The Tribunal considered paragraphs 10 – 11 of the Allegation regarding Dr Higgins behaviour towards Ms C.

Paragraph 10 of the Allegation

155. The Tribunal first considered Ms C's most contemporaneous account. Ms C has referred to Dr Higgins having commented on her hair at the end of XXX / beginning of XXX 2021, she said he had called it '*beautiful and gorgeous.*' In oral evidence she confirmed that Dr Higgins had said it 'looked nice' but couldn't remember the exact adjectives at the time she gave evidence.

156. Ms C further accepted that she had had exchanged innocent messages with Dr Higgins about her interest in XXX and on the subject of XXX.

157. Ms C clarified that by the time she gave her written account to the Practice, she did not have, nor was she '*given a clear idea of what the others experienced.*' She stated that '*all she knew was the Ms D had mentioned once that Dr Higgins had said that she had a sexy voice.*' She further said that additionally at the time she was asked to make the statement to the Practice, she only knew that there were other women who had left the Practice.

158. Ms C gave a clear account about the specific date and time of the messages described in paragraph 10. She stated that she had rang her mother XXX for advice on how to respond to the messages she received from Dr Higgins.

159. In assessing Ms C's evidence, it could not find any indication that Ms C had colluded with A or anyone else at the Practice before giving her account, nor could it find any motive on her part to have fabricated or exaggerated her evidence. In fact, the Tribunal took the view that Ms C came across as a credible witness who gave an analytical account and was eager to point out details which she could not remember at the time of her oral evidence.

160. Ms C stated that she had opened the messages from Dr Higgins but had not replied as she wanted to seek advice from her mother. She said she was concerned that if she said anything wrong then she would be in a difficult position with work. Ms C told the Tribunal that she was '*quite clear*' as to her recollection and the messages and she had read them out to her mother. She recounted having received a further message from Dr Higgins telling her

that she could reply as his phone didn't show notifications. Having sought advice, Ms C stated that she responded to say that she wanted the relationship to stay professional. She said Dr Higgins had responded to say that he was embarrassed to send the message and asked her not to tell her boyfriend as he didn't want to be *'beaten up'*.

161. The Tribunal noted Dr Higgins written evidence in which he completely denied paragraph 10 of the Allegation. In his oral evidence he stated Ms C *'didn't usually make an effort with her hair and so it was unusual.'* He explained that in commenting on her hair, he did not mean anything more than that he was trying to be nice.

162. In oral evidence, and in response to the question whether he stated the words *'I really like you'* in a message to Ms C, Dr Higgins stated *'I may have said that I like working with you...you make a good part of the team.'* In respect of whether he said, *'I know you have a boyfriend'*, Dr Higgins stated, *'maybe that I was worried about messaging [Ms C] and said I know you have a boyfriend, and he may get the wrong idea.'* He said that at times he had moments of clarity and thought that it could be taken the wrong way. He said that he didn't remember sending the message, *'I want to get to know you better.'*

163. When asked about whether he had messaged Ms C to apologise and that he was embarrassed, the Tribunal noted that Dr Higgins response *'Yes I was upset... i had strayed into messaging something inappropriate'*. Further that, *'do you know I cannot remember all messages, but I know that the exchange between us was me saying ... stop "messages out of work" and I got the impression she was saying "stay professional"...'*

164. The Tribunal was concerned about the cogency of Dr Higgins' evidence in this respect. From an initial denial, Dr Higgins had changed his testimony to events that may have taken place with a different context and that he could not remember clearly but had a vague recollection. He stated *'I do not remember the exact words...I was worried I was messaging out of hours and I wasn't appropriate and I was worried that her boyfriend would get the wrong idea.....it would cause Ms C difficulty and she would need to explain.'* Having considered Dr Higgins' evidence, the Tribunal thought it probable that Dr Higgins had sent the said WhatsApp messages to Ms C, as per the details within paragraph 10. It further considered it likely that he had asked Ms C not to tell her boyfriend about the messages.

165. The Tribunal viewed Dr Higgins' evidence to be unclear and inconsistent, it did not consider it to be reliable. It preferred Ms C's full, clear and cogent account, which was convincing and applying the standard of proof to all of the evidence it considered, it found the entirety of paragraph 10 of the Allegation to be proved.

Paragraph 11 of the Allegation

166. Ms C stated that following the exchange of WhatsApp messages with Dr Higgins, she *'found herself trying to over-compensate when we were talking to make things seem normal.'* She stated that Dr Higgins sent her an EMIS message around 6 pm saying, *'I'm here until 7 pm if you want to come in for a cuddle'*. She stated that she didn't reply to this message and got

on with what I needed to do XXX. She stated that there was a further EMIS message from Dr Higgins in which he stated that he hoped that the message hadn't gone to Dr X rather than her. Ms C explained that she didn't keep a copy of the messages as EMIS is an instant messaging program, *'so I just read it, exited out of it and lost it.'* Ms C confirmed in her oral evidence, that her recollection was very clear about these messages.

167. In his written statement, Dr Higgins stated that *'I did not send an EMIS message inviting her for a cuddle.'* In his oral evidence, he stated that he would never have written anything like this on EMIS *'as it would have saved and so I wouldn't have.'* He further stated that *'only one person he remembered asking for a hug from is Ms A.'* He stated that this is an allegation from Ms C, planted by Ms A and they were friends and in communication. However, Dr Higgins accepted that he could not think of any other motives for this fabrication.

168. The Tribunal reminded itself that it had already established that Dr Higgins had used the EMIS instant messaging system for personal, non-work-related matters.

169. It noted that there was no evidence before it which suggested that Ms C was friends with Ms A, in fact in response to Tribunal questions, Ms C had confirmed that she had not socialised with Ms A, B or G other than at Christmas parties. It remained of its view that there was no collusion between Ms C and Ms A in respect of the allegation relating to a hug/cuddle. It also considered Ms C's account that she *'didn't want anyone to get in trouble'* and had ignored the messages. The Tribunal accepted that Ms C did not at the time have any intention to report Dr Higgins and hence had not saved or photographed the messages.

170. Having considered the entirety of the evidence, the Tribunal was of the view that applying the balance of probabilities, Dr Higgins did send an EMIS message to Ms C stating *'I'm here until 7 pm if you want to come in for a cuddle'* or words to that effect. It therefore found paragraph 11 of the Allegation proved.

Paragraph 14 of the Allegation

171. Having made findings in relation to paragraphs 2 – 13 of the Allegation, the Tribunal considered whether Dr Higgins conduct as set out at paragraphs 2-13 was sexually motivated. The Tribunal bore in mind Dr Higgins' good character.

Ms A

Paragraphs 2 – 5

172. The Tribunal considered Dr Higgins' account in oral examination that generally there was no sexual aspect to his actions and any comments within paragraphs 2 a and 2 b were *'misplaced jokiness'*. It also considered that there were multiple comments/questions, all with a sexual connotation.

173. The Tribunal considered the wider context and Dr Higgins' evidence on saving messages and photographs. In relation to a particular photograph of Ms A purported to have been received by him in XXX 2020, on which a filter stating 'cute' and 'that 1 am look' had been added, seemingly by Ms A, Dr Higgins explained how he had saved it by using a method that would not alert the sender. He said XXX had shown him how to do this. He maintained that he did not find Ms A attractive at all. The Tribunal noted its earlier finding in relation to Dr Higgins inconsistent account on why he had saved that photo.

174. The Tribunal considered the various comments made by Dr Higgins to Ms A in which he stated she was beautiful (paragraphs 3a and 4a-b of the Allegation which were proved). The Tribunal acknowledged that calling somebody beautiful would not necessarily lead to an inference of a sexual motivation as the overall context of the comment must be taken into consideration. Dr Higgins' explanation was that calling Ms A beautiful, was to encourage her and to make her feel good about herself. He said he would send similar messages to XXX another female family member. The Tribunal did not find this plausible. It considered his comments in the context of its other findings in relation to Ms A, such as that asked her for a naked picture and picture of her breasts (at 3 b) which were overtly sexual.

175. In respect of Dr Higgins messaging Ms A and junior colleagues on issues not-work-related, the Tribunal was conscious that Dr Higgins had stated something had started which he '*couldn't stop*' and that he was '*a bit out of control.*' Dr Higgins stated that he found the exchanges of messages and photographs sent to him '*flattering*'. He said that he would have also been flattered if a group of boys had sent him photos from the pub, demonstrating they wanted him to be part of their group. Having viewed the totality of the evidence, the Tribunal did not accept this.

176. Dr Higgins' stated that it was a diversion that he couldn't stop even if he tried. In relation to Ms A and Ms E, he stated '*some of them did say sexual things and I may have written back in a jokey way ...they would push the boundary a bit, I was under a lot of pressure and would message back in the same way*'. He maintained that he never had any desire to have a relationship and in response to whether he found images of young women, disinhibited through alcohol, sexually arousing, he said no and that '*he would run a mile from that.*' The Tribunal had seen a message from Dr Higgins commenting on how he wanted to be at the pub with his younger colleagues and that it was like 'torture' not being there. He told the Tribunal that he was '*pretending like I wanted to be there, not actually, if I was 20 years old.*'

177. The Tribunal considered that the conduct proved in paragraphs 5a(i) – (ii) and 5b. It did not view the offer of cuddles, using XXX as an excuse, and inviting Ms A and Ms E to kiss and have a threesome had any innocent explanations. Similarly, his EMIS message to Ms A about him thinking and imagining what he wanted to do to Ms A on the examination table was overtly sexual, and Dr Higgins had referred to messages as being '*racy*'. It considered Dr Higgins' oral evidence that he had considered what would have happened if he ended up having sex with Ms A, that he found her a bit scary and wondered whether he could even '*perform*'.. Taking everything into account, the Tribunal found a strong inference that Dr

Higgins' conduct was in pursuit of a future sexual relationship with Ms A. It did not find any other plausible explanation for his actions. It determined that Dr Higgins' conduct in relation to Ms A as outlined at paragraphs 2 – 5a(i) and 5a(ii) and 5b was sexually motivated.

178. In respect of paragraph 5a(iii), the Tribunal considered that Dr Higgins' conduct in offering a XXX job and booking onto a XXX course was to dissuade Ms A from telling anyone about 'what he was like', i.e his behaviour which the Tribunal found to be sexually motivated. The Tribunal took the view that whilst such conduct demonstrated an attempt not to expose his behaviour, it also saw it as an attempt to further his pursuit of any future sexual relationship with Ms A. As such, it considered his action in 5 a(iii) to be sexually motivated.

179. In summary, the Tribunal therefore determined paragraph 14 in relation to paragraphs 2 – 5 to be proved.

Paragraph 6

180. The Tribunal had found allegation 6 proved in its entirety. It reminded itself that Dr Higgins had denied this charge. His account was that he merely offered Ms A a hug. His account had been rejected by the Tribunal as not plausible. Dr Higgins said it was something 'to do', on the 'spur of the moment' and 'seemed like a bit of fun', whilst XXX. In considering the wider context, it noted that Dr Higgins had however commented on thinking about a sexual encounter with Ms A, in stating that he wouldn't be able to perform. This was in direct contradiction to him saying that he had not thought about Ms A in a sexual way and that nothing in his conduct was sexual. It further considered Dr Higgins' account in respect of some of the previous messages to Ms A being 'racy'.

181. The Tribunal did not consider that this incident on or around XXX 2020 was a 'bit of fun' without any sexual undertones. Dr Higgins had removed Ms A's mask, had tried to kiss her and had held her knowing that she was scared and had made reference to grabbing her 'boobs'. It also considered that there had been an element of risk taking and doing something 'daring'. The Tribunal considered there to be a strong inference that Dr Higgins' intention in carrying out the actions, questions and comments within paragraph 6 a, was for sexual gratification.

182. It further considered Dr Higgins' actions after the events as described in 6 a; in saying that he did not want to leave without Ms A and in sending a Snapchat message, to be a continuation of his earlier, sexually motivated conduct.

183. Hence, paragraph 14 of the Allegation as it relates to paragraph 6 was proved, i.e that Dr Higgins' conduct was sexually motivated.

Ms B

184. The Tribunal considered whether Dr Higgins conduct in relation to Ms B was sexually motivated.

Paragraph 7, 8 a and 8 b of the Allegation.

185. In respect of paragraph 7, the Tribunal noted that this took place in XXX 2021. Dr Higgins himself stated that it was an *'odd thing to say'*, and *'potentially flirtatious'*. It did not think that one comment in XXX 2021 which was found to have taken place demonstrated any sexually motivated conduct on Dr Higgins part. It could not discount other plausible explanations for the comment.

186. In respect of paragraph 8 a relating to XXX 2021, which it had found proved, the Tribunal considered that having moved unnecessarily close was likely to have invaded Ms B's personal space but that it was not sufficient on its own to be demonstrative of sexually motivated conduct. No explanation was proffered as this was denied by Dr Higgins. The Tribunal also considered Ms B's evidence that there wasn't anything sexual and, on balance, did not find Dr Higgins' conduct to be sexually motivated.

187. In respect of 8 b, whilst the Tribunal had found this allegation proved, it noted no explanation was provided by Dr Higgins who had denied this took place. The Tribunal considered the GMC's case that such action on part of Dr Higgins, if proved, would be sexually motivated, however it did not think that there was sufficient information before it to safely infer such an intention on Dr Higgins' part. It considered that such a comment of a personal nature to a XXX junior member of staff, would be ill-judged and inappropriate but it could not make an inference that Dr Higgins intention was sexually motivated.

188. It therefore found paragraph 14 of the Allegation as it relates to paragraphs 7, 8a and 8 b not proved.

Paragraph 9 of the Allegation

189. The Tribunal had found all the sub paragraphs of allegation 9 proved.

190. It considered Dr Higgins' explanations in having messaged Ms B on Snapchat and bore in mind that he had completely denied the allegation relating to the offer of a hug.

191. Dr Higgins stated that Ms B was *'quiet'* and *'withdrawn'* and had been subject to idle gossip at the Practice. It noted that he had stated in his statement that Ms B had added him as a Snapchat friend at his suggestion as a result of a conversation that they had regarding her projects. In his oral evidence, however he stated that he thought that she was ostracised and was keen for her to fit in. He said that he *'thought he would go out on a limb and was trying to be a friend'*. He said that he had found out about XXX two weeks before XXX 2020 and that people were talking about her behind her back. The latter assertions were not in Dr Higgins' written statement.

192. In oral examination Dr Higgins did concede that he knew that it was inappropriate to message someone aged XXX, that he was her employer and he *'should have been doing it'*

through work methods'. He further stated that *'I was a good employer and friendly with people – friendly and always there and that was my motivation'*. He explained that his motivation was just to support Ms B and that he was in no doubt that he should have gone through the correct channels and at that time, that is how he was communicating with people.

193. When challenged in oral examination and it being suggested that it was after reading Ms B's statement that Dr Higgins became aware of XXX, he responded to say, *'I promise you 1000 percent it wasn't that'*. He further detailed in his evidence that it was when he was *'packing his suitcase to go to Dubai, and also having a conversation XXX, that Ms B was messaging him and speaking about XXX'*. He said that the messages were *'getting on his nerves'*. He further stated that Ms B was *'going on and on about her parents...'* and that he *'abandoned the conversation by 8.30.'* The Tribunal considered Dr Higgins' account as to when he found out about XXX to be confusing. Even if it were to accept that he had found this out during the purported Snapchat exchanges, the earliest that he would then have known about it would be after the said messages in paragraph 9a.

194. The Tribunal further considered Dr Higgins' account of why he had used the application Snapchat - for its ability to be *'hidden'*. It rejected Dr Higgins' account that his actions whilst inappropriate, did not have any sexual motivation. Considering all the evidence, it took the view that there was a strong inference that Dr Higgins' intention to communicate with Ms B in this way and to offer and invite hugs and tell her not to tell her mother about the messages, was to create a personal connection with Ms B and to further a future sexual relationship with her. It also took the view that Dr Higgins conduct demonstrated a replication of a similar pattern of behaviour it had found proved in respect of Ms A.

195. It therefore found paragraph 14 of the Allegation as it relates to paragraph 9 proved.

Ms C

196. The Tribunal considered whether Dr Higgins conduct in relation to Ms C was sexually motivated.

Paragraphs 10 and 11 of the Allegation

197. The Tribunal reminded itself of Dr Higgins' evidence and explanations which it had not considered plausible and had rejected. Dr Higgins had been messaging Ms C out of work hours, had previously commented on her hair and noticed that she *'didn't usually make an effort with it'*. He had stated to Ms C, that he really liked her, he knew that she had a boyfriend and that he wanted to get to know her better. Dr Higgins had told Ms C that she could reply as his phone did not show notifications. When told that Ms C had wanted to keep the relationship professional, Dr Higgins had asked her not to tell her boyfriend about his messages. It considered such *'secretiveness'* on Dr Higgins' part to be demonstrative of a

lack of innocent intention on his part. The Tribunal considered that there was a strong inference that Dr Higgins' intention was sexually motivated.

198. The Tribunal took the view that a pattern had emerged in respect of Dr Higgins offering to hug/cuddle junior colleagues and asking junior colleagues to not 'tell' others about various aspects of his conduct. It could find no plausible alternative explanation other than a sexual motivation. It considered that in sending this message to Ms C, Dr Higgins' motivation was to pursue a future sexual relationship with her.

199. It therefore found paragraph 14 of the Allegation as it related to paragraphs 10 and 11 proved.

Ms D

200. The Tribunal considered whether Dr Higgins conduct in relation to Ms D was sexually motivated.

Paragraphs 12 and 13 of the Allegation

201. Dr Higgins had admitted his conduct within these paragraphs. Dr Higgins' position was that Ms D had a habit of breathing into the telephone, he said *'she had a way of speaking, she would breathe into the phone, and it sounded like it shouldn't'*. Ms D had confirmed in oral evidence that she did not carry out any *'heavy breathing'* to provoke such comments nor did she remember being breathless as part of her work.

202. Dr Higgins stated that his comments were intended to be humorous and that he thought that at the time Ms D had found them funny also. He accepted that *'on occasion I suggested that she make her voice sound more husky, sexy, deeper or words to that effect.'* In oral examination Dr Higgins denied that these suggestions were sexual in nature. He said that had Ms D been a man, he would have made a similar joke. He stated that Ms D had *'laughed her head off'* and *'that he was just trying to find ways to be funny'*. In response to whether there was an audible laugh, Ms D had confirmed in her oral evidence that she had chuckled and referred to it as a *'shocked laugh'* and assumed it was a joke. Ms D further stated that she told her colleagues that she's *'found it uncomfortable'* was *'surprised'* by it but that she *'hoped that he [Dr Higgins] was having a joke'*.

203. The Tribunal further noted Dr Higgins' general evidence that he felt it was his duty to *'keep people happy and morale up'*, however it could not equate how making such specific suggestions to Ms D during the course of her workday would be a 'joke' or indeed be to raise morale. It did not consider this explanation to be plausible. It considered Dr Higgins' evidence that he would have said this to a man. The Tribunal thought this was irrelevant. It rejected the premise that such a request to a man could not be sexually motivated.

204. It considered that in asking Ms D to do this, i.e. make her voice sound more sexy, deeper or huskier, Dr Higgins' intention, on a balance of probabilities, was more likely than

not, the pursuit of sexual gratification. It therefore considered allegation 14 proved in relation to paragraphs 12 and 13.

Paragraph 15 of the Allegation

205. The Tribunal considered whether Dr Higgins' conduct as set out at paragraphs 2-13 of the Allegation was unlawful harassment in that he engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms A, Ms B, Ms C and Ms D. It continued to bear in mind Dr Higgins' good character.

Ms A, paragraphs 2 – 6 of the Allegation

206. In respect of the allegations the Tribunal found proved at paragraph 2 a and 2 b, it considered the questions and comments to be a sexual nature. It was put to Ms A that these allegations were made up or were entirely consensual – Ms A vehemently denied this and maintained that they were *'all unwanted'*.

207. When challenged further, Ms A stated that *'I would respond to him, that didn't mean I wasn't uncomfortable'*. In her statement Ms A provides, *'I didn't go into any detail with my personal life, but just said enough so he would leave me alone'*.

208. In her statement, Ms A referred to there being *'other little things. For example, he would always call me pretty, but I didn't pay attention to that'*. The incident of the XXX 2020 was the first incident where he crossed the line, and I was a bit shocked.

209. In response to the comment about the affair, Ms A stated *'I laughed it off, but I was a bit shocked, and he could tell I was shocked for he laughed his way out of it'*. The Tribunal considered Ms A's comment that *'after that I was uncomfortable if Dr Higgins was the duty doctor on XXX. When he was, it would scare me because he would always come to talk to me. He wasn't always inappropriate, but you couldn't predict how he was going to be.'*

210. The Tribunal took the view that the questions in paragraph 2 a and b were unwanted by Ms A and they were conduct of a sexual nature by virtue of their content. It noted a power imbalance in the dynamic between Ms A and Dr Higgins, she was a young and junior member of staff XXX. It considered the impact on Ms A as described by her and that it would be reasonable that these questions and their personal nature did violate A's dignity and create an intimidating work environment for her.

Ms A, Paragraphs 3 -5 of the Allegation

211. Dr Higgins' conduct as outlined at paragraphs 3 – 5 spanned from XXX – XXX 2020. Dr Higgins calling Ms A beautiful, sending her an EMIS message stating that he only kept coming to see Ms A because she was beautiful had sexual undertones. Suggesting the use of XXX as a ruse for a *'cuddle'* and *'grabbing'*, *'hugging'* Ms A without her permission, inviting her for a

threesome or sending an EMIS message to Ms A in respect of what Dr Higgins was imagining he would do to her on the examination table was conduct of a sexual nature.

212. The Tribunal had regard to various extracts from Ms A's evidence: In her video interview, she stated:

'He told me that he only kept coming XXX to see me erm because he thought I was beautiful. I ignored the message. I mean quite often, if he ever sent me anything that was inappropriate it would be amongst others so I would kind of ignore that part and respond to the others or sometimes, just ignore it completely...'

213. In oral evidence Ms A stated that she was a 'bit' offended and that it made her feel uncomfortable.

214. In respect of having received the invitation for a threesome, Ms A stated, 'when we received that message, we both left work early'.

215. In reference to being 'grabbed' and 'hugged' she stated that Dr Higgins 'would apologise afterwards and say, 'Oh sorry'. I mean I'm not a confrontational person so I would just go okay. Yes, so that happened four times over them months and I mean I'd do my best to get one of the other XXX to go into his room if need be...'

216. In her witness statement she stated:

'Ms E and I would XXX which was our way of coping with what was going on...He would ask for pictures of us kissing each other.... The next day he would apologise for the things he'd sent. I just didn't want any confrontation. I didn't want anyone to find out because I didn't know what people would think of me.'

217. In relation to the sick notes, Ms A stated:

'Dr Higgins would message me to say that XXX. If XXX, I would try and get the other XXX to ask Dr Higgins XXX. If I had to get Dr Higgins to XXX, I would always tell him that the patient was at the practice XXX, making it clear that I had not gone to his room for anything he had offered me. He would say to me "come and give me a cuddle". In that situation, I wouldn't know what to say. I tried to make a joke of it, saying things like "you can't keep asking for cuddles, it's weird". He would come over and grab me. I wouldn't fight him off, but I would just stand there until he let me go and then I'd leave - it was really awkward.'

218. In relation to the EMIS message, Ms A stated:

'At the time, I found it funny. I thought he was all talk. I laughed it off as I thought he was just a creepy old man...'

219. In her oral evidence, and in respect of events from XXX 2020 – XXX 2020, Ms A said *'he did things I didn't agree to and I was uncomfortable with. I didn't know what to say, I was scared of repercussions, it was very difficult situation to be in'*. Ms A further added, *'I feel like in this period, we didn't take it as seriously as we should have, we were young and naive and that he [Dr Higgins] took advantage of that.'*

220. The Tribunal took the view that there was considerable evidence that Dr Higgins' conduct of sexual nature towards Ms A was unwanted. It may not have been Dr Higgins' purpose, but the evidence also demonstrated that the effect of the unwanted conduct did violate Ms A's dignity and created an intimidating and offensive environment for her. It further considered that given the circumstances of the case proved, Ms A's evidence of the effect on her of Dr Higgins' conduct was entirely reasonable.

221. Accordingly, the Tribunal found paragraph 15 of the Allegation proved in relation to paragraphs 2-5 a (i) – (ii) and 5 b.

222. In respect to para 5a(iii), the Tribunal noted that Dr Higgins' said conduct was in effect asking Ms A to 'cover up' his behaviour at that time, which it considered to be of a sexual nature. It considered Ms A's evidence. She said in her video interview, *'...I'd do my best to get one of the other XXX to go into his room if need be.....I just didn't want to make a scene but he'd always tell me he was going to try and get me a XXX job...if I kept him happy and didn't tell anyone then he'd be able to do it.'* She said that Dr Higgins would make her *'feel bad for him all the time...and how he was so unhappy.'* She further said that *'so once he'd kind of push it and then I'd be a bit freaked out and then after a few weeks I kind of get over it'*. The evidence pointed to Dr Higgins' conduct being unwanted by Ms A. It considered her overall account of being *'freaked out'* not knowing *'what to say'*, being young and naïve and that she should not have been put in that position, as being demonstrative of Dr Higgins' said conduct creating an intimidating environment for her. The Tribunal therefore found paragraph 15 in respect of paragraph 5.a(iii) of the Allegation proved.

Ms A, Paragraph 6 of the Allegation

223. Ms A's evidence in respect of the impact of this incident on her was unaltered. She detailed that *'she was shaking, and he said, I know you are scared of me. He kept telling me if you don't like it then tell me to fuck off. I just couldn't say anything because I was so scared'*. She further stated that *'he eventually let me go'* and after the incident, *'I told him to leave me alone, I was like please just go, leave me alone.'*

224. The Tribunal was satisfied that Dr Higgins' conduct was unwanted and it was of a sexual nature. It accepted Ms A's evidence that she had called Ms E in tears as soon as she had left work and she was quite shocked. Ms A's evidence was that *'she didn't want to see Dr Higgins'* so she applied to XXX.

225. It considered Ms A's action in blocking Dr Higgins on Snapchat that day after having received a message from Dr Higgins. It noted the evidence that it wasn't until 2021, when Ms A unblocked him.

226. The Tribunal considered Ms A's account to be clear and convincing and further considered that the impact on her that she described to be reasonable, given the proven conduct. It determined that the incident not only violated Ms A's dignity, it also created an intimidating environment for a period of time thereafter.

227. It therefore determined paragraph 15 proved in respect of paragraph 6 of the Allegation in its entirety.

Ms B, Paragraphs 7, 8 a and 8 b of the Allegation

228. In respect of paragraph 7, The Tribunal did not view the comment '*you've got a bad side*' to be sexual conduct and it therefore did not engage s26(2) of the Equalities Act 2010.

229. Similarly, in respect of paragraph 8a, The Tribunal took the view that Dr Higgins conduct in moving unnecessarily close to Ms B could not on its own be classed a conduct of a sexual nature. It noted that whilst it was unwanted, and inappropriate, Ms B stated that she was '*freaked out*' because of what XXX had told her, she didn't think that there was anything '*sexual*'.

230. The Tribunal therefore determined that paragraph 8 a did not amount to unlawful harassment as per s26(2) of the Equalities Act 2010.

231. In relation to paragraph 8 b, the Tribunal considered that Dr Higgins' comment to Ms B, '*you're so pretty*' would have been unwanted. She had considered it to be '*odd*' and '*unusual*' and she had been confused and was uncomfortable by it. Whilst it considered the comment to be inappropriate, it did not consider it to be conduct of a sexual nature on its own.

232. The Tribunal therefore determined that paragraph 8 b did not amount to unlawful harassment as per s26(2) of the Equalities Act 2010.

233. Overall, Paragraph 15 of the allegation as it relates to paragraph 7, 8 a and 8 b was not proved.

Ms B, Paragraph 9 of the Allegation

234. The Tribunal reminded itself of its findings. It considered that whilst Ms B had been willing to add Dr Higgins as a friend on Snapchat, it was only for the purpose of collating evidence.

235. It further considered that Dr Higgins' conduct in seeking to establish a personal connection via messages out of hours and out of the workplace and via an application on which messages could disappear and be hidden, did have a sexual context. Dr Higgins' comment in wanting to give Ms B a hug, being '*bad*' at work and suggesting the ruse of XXX as a way of Ms B coming into his room for a hug and telling Ms B to keep the messages from her mother, also had a sexual context.

236. Ms B's oral testimony was that she was '*scared*' and she chose to leave the office early XXX. When challenged in cross examination, she conceded that her fear could have been partly due to what Ms A had shared with her previously, but she maintained that the '*the idea of the hug and being alone upstairs was still scary.*' It noted the significant disparity in the balance of power between Ms B and Dr Higgins, by virtue of her being a young, new and junior member of staff XXX.

237. The Tribunal considered that Ms B had moved from her allocated workspace where she was sat alone before lunch, to sit with Ms G, to no longer be alone. This was solely so that she would avoid Dr Higgins coming to XXX give her a hug.

238. Ms B stated that she '*didn't want to be alone upstairs*' and that she had found the situation to be '*quite intimidating*'. She told the Tribunal that at that weekend, she '*didn't want to go back to work.*'

239. The Tribunal noted that whilst the effect on Ms B was potentially limited in time, as XXX 2021 was Dr Higgins' last working day, Ms B would not have known that at least until the week after. It was of the view that that the series of events from lunch time on XXX 2021 to at least the week after, would have created an intimidating environment for her. It considered it reasonable for Dr Higgins' conduct to have effected Ms B as she described.

240. The Tribunal therefore determined that Dr Higgins' conduct within paragraph 9 was unlawful harassment. It therefore found paragraph 15 in relation to paragraph 9 of the Allegation proved.

Ms C, Paragraph 10 and 11 of the Allegation

241. The Tribunal considered if Dr Higgins' conduct within paragraph 10 and 11 was unlawful harassment. Ms C had stated that these messages were '*slightly different*' from the rest. '*When I received the message, it was uncomfortable for me. She said, 'on Friday, it felt really awkward'... 'it felt more personal, it wasn't as light hearted or professional or friendly as the conversation had been – it seemed more personal.'* She stated that sexual was not the right word, '*I guess wanting more than our professional relationship*'. Ms C considered Dr Higgins' conduct as she had detailed in her statement, to be '*inappropriate*'.

242. From the evidence, the Tribunal was satisfied that the said WhatsApp messages and the EMIS message relating to a cuddle were unwanted and uninvited by Ms C. The messages

together with connotations for them to be hidden (from Ms C's boyfriend) and the offer of a cuddle was conduct of a sexual nature.

243. It considered Ms C's evidence that she was concerned not to say the wrong thing in response to the messages as she could be in a *'difficult position'* with work. She referred to having *'coped'* with her situation. The Tribunal noted that on XXX 2021, when Dr Higgins had come to XXX, Ms C had found herself *'trying to over-compensate when we were talking, to make things seem normal'*. She said that she was *'trying to hold a conversation like we normally would, but it felt awkward.'* *My colleague... was there and I was hoping she wouldn't leave as I didn't want to be alone with [Dr Higgins]'*.

244. Ms C further explained that after she had received and ignored the message in relation to the cuddle, she *'felt a bit awkward going into Dr Higgins' room on her own.* She stated that *'from then on, if I needed to speak to Dr Higgins, I sent him a message asking if he could come to XXX, or I'd ask one of my colleagues if they would mind popping down to his room and asking him a question for me'*. Ms C explained feeling *'really awkward'* and *'didn't know what to do'* and *'just really uncomfortable'*.

245. The Tribunal considered that there was a power imbalance between Dr Higgins who was a GP Partner and Ms C XXX. It considered it reasonable that Dr Higgins' conduct would have this effect on her. Dr Higgins' conduct was uninvited and his repeated behaviour had caused her to feel embarrassed and intimidated in the workplace to the extent that Ms C had changed her working practices from then on (around XXX 2021).

246. It therefore found paragraph 15 of the Allegation as it related to paragraphs 10 and 11 proved.

Ms D, Paragraphs 12 and 13 of the Allegation

247. The Tribunal considered that the conduct proved within paragraphs 12 and 13 was of a sexual nature – Dr Higgins had overtly and on more than one occasion asked Ms D to make her voice more sexy, deeper and huskier and in an EMIS message, had suggested that they needed to make their calls *'more fun'*.

248. Ms D had *'hoped'* it was a joke and when Dr Higgins asked this the first time, her response was to say *'No'*. She said that she thought that *'maybe there should have been a second thought'*. In her most contemporaneous account, Ms D stated that Dr Higgins *'then asked if I was in XXX, and I said yes, and he said I probably couldn't do what he had asked as I was in XXX with other staff around.'* It noted Ms D's account that she had *'found it uncomfortable'* and was *'surprised by it'*. She said *'I found it uncomfortable, but I thought I'd just let it go because I thought it was a joke'*.

249. Ms D stated that Dr Higgins had asked her to do this again on XXX 2021. She explained to the tribunal *'I didn't want this to be said to me again, it made me feel uncomfortable. If I had sent an instant message that would have prevented that being said to*

me'. She further stated that 'I didn't feel it was fair to be said to me, I was just trying to do my job, if it was a joke, I didn't find it funny. I didn't want it to be said to me, I was just doing my job.'

250. Ms D further explained to the Tribunal, after the second call, she felt *'more angry that it was being said again and I remember that I was just too busy, so busy at work and I thought I can't deal with this right now. I felt annoyed and angry.'* She said it was definitely on her mind when she had left work and continued to feel angry and uncomfortable. When asked why she hadn't reported it, she said she didn't know but she wished she had. The Tribunal considered it reasonable that Dr Higgins' conduct would have this effect on her.

251. The Tribunal accepted that such repeated conduct on Dr Higgins' part was uninvited and unwanted. She had changed her work practice and for any follow up, had decided to send a screen message instead of calling.

252. It considered that Ms D was again, a young and a junior member of staff, and the imbalance of power was significant as Dr Higgins was a GP Partner whose comments had crossed professional boundaries and had placed Ms D in a difficult and uncomfortable position and had caused her embarrassment. The Tribunal considered the totality of the evidence and determined that Dr Higgins' conduct had created an intimidating and offensive environment for Ms D.

253. It therefore found Allegation 15 in relation to paragraph 12 and 13 proved.

The Tribunal's Overall Determination on the Facts

The Tribunal has determined the facts as follows:

1. At the time of your actions as set out in paragraphs 2-13:
 - a. you were working as a General Practitioner at a GP Practice ('the Practice');
Admitted and found proved
 - b. (and at the times the relevant individuals are referred to in paragraphs 2-13)
Ms A, Ms B, Ms C and Ms D were junior members of staff at the Practice.
Admitted and found proved

Ms A

2. On or around XXX 2020, you approached Ms A XXX and:
 - a. asked Ms A:
 - i. if you could have an affair; **Determined and found proved**
 - ii. how many people she had slept with; **Determined and found proved**
 - iii. when she had lost her virginity;
or words to that effect; **Determined and found proved**

- b. said to Ms A:
 - i. ‘oh you wouldn’t be interested in me because I’m bald but it would make my day’; **Determined and found proved**
 - ii. that when you were Ms A’s age you would sleep around a lot and experiment with people; **Determined and found proved**
 - iii. that you thought Ms A should do the same (referring to your comment to Ms A as described in paragraph 2bii);
or words to that effect. **Determined and found proved**
- 3. On one or more occasion between XXX 2020 and XXX 2020 you sent a Snapchat message to Ms A in which you:
 - a. called Ms A beautiful, or words to that effect; **Admitted and found proved**
 - b. asked for a:
 - i. naked picture of Ms A; **Determined and found proved**
 - ii. picture of Ms A’s breasts; **Determined and found proved**
 - iii. picture of Ms A kissing Miss E;
or words to that effect. **Determined and found proved**
- 4. On or around XXX 2020, you sent to Ms A an EMIS message in which you stated:
 - a. Ms A was ‘beautiful’; **Determined and found proved**
 - b. ‘I only keep coming XXX to see you because you’re beautiful’,
or words to that effect. **Determined and found proved**
- 5. Between XXX 2020 and XXX 2020:
 - a. on one or more occasion:
 - i. when Ms A entered your room at the Practice you:
 - 1. said to Ms A ‘come and give me a cuddle’ or words to that effect; **Determined and found proved**
 - 2. grabbed Ms A and hugged her without receiving her permission to do so; **Determined and found proved**
 - ii. you sent an EMIS message to Ms A in which you:

1. stated that XXX if Ms A needed a cuddle she could go to your room XXX, or words to that effect; **Determined and found proved**
 2. invited Ms A and Ms E to your room to:
 - a. kiss; **Determined and found proved**
 - b. have a threesome,
or words to that effect; **Determined and found proved**
 - iii. you said to Ms A that if she didn't tell anyone what you were like, you could get her:
 1. a XXX job; **Determined and found proved**
 2. booked onto a XXX training course;
or words to that effect; **Determined and found proved**
 - b. on one occasion you sent an EMIS message to Ms A in which you stated:
 - i. that you could imagine what you would do to Ms A on the examination table; **Determined and found proved**
 - ii. 'I can't stop thinking about what I want to do to you on this couch',
or words to that effect. **Determined and found proved**
6. On or around XXX 2020:
- a. Ms A entered your room at the Practice and you:
 - i. closed the door behind Ms A; **Determined and found proved**
 - ii. grabbed Ms A around her shoulders; **Determined and found proved**
 - iii. grabbed Ms A's face under her chin; **Determined and found proved**
 - iv. removed Ms A's mask; **Determined and found proved**
 - v. tried to kiss Ms A; **Determined and found proved**
 - vi. refused to let go of Ms A; **Determined and found proved**
 - vii. said to Ms A:
 1. 'do you feel bad?'; **Determined and found proved**
 2. 'cheating on your boyfriend', when Ms A asked you what she should feel bad about; **Determined and found proved**
 3. 'it's more interesting if someone could walk in – that's what makes it fun'; **Determined and found proved**
 4. 'don't worry I won't try to grab your boobs unless you want me to'; **Determined and found proved**
 5. 'I know you're scared, tell me to fuck off',

or words to that effect; **Determined and found proved**

- b. when XXX with Ms A after the events described in paragraph 6a, you said ‘I’m not leaving without you’ or words to that effect; **Determined and found proved**
- c. after the events described in paragraphs 6a-6b, you sent to Ms A a snapchat message stating ‘that was fun’, or words to that effect. **Determined and found proved**

Ms B

- 7. On one occasion on a date between approximately XXX 2021 and XXX 2021, you approached Ms B in the Practice’s kitchen area and said ‘you’ve got a bad side’ or words to that effect. **Determined and found proved**
- 8. On one occasion on a date between approximately XXX 2021 and XXX 2021 you:
 - a. were sat at your desk at the Practice near to Ms B and you moved unnecessarily close to her on one or more occasion; **Determined and found proved**
 - b. approached Ms B in the Practice’s staff room and said to her ‘I’ve never seen you with your mask off, you’re so pretty’ or words to that effect. **Determined and found proved**
- 9. On or around XXX 2021 you sent ~~an~~ electronic messages to Ms B stating words to the effect of:
Amended in accordance with Rule 17(6)
 - a. ‘we should talk more because you cheer me up’; **Determined and found proved**
 - b. ‘add me to Snapchat’;
 - c. ‘you are brave for adding me’; **Determined and found proved**
 - d. ‘I get bored at work’; **Determined and found proved**
 - e. ‘I like to be bad at work’; **Determined and found proved**
 - f. ‘don’t tell your mum about this because I will get into lots of trouble’;
 - g. ‘I want to give you a hug’; **Determined and found proved**
 - h. ‘why don’t you make an excuse to come and see me in my room or somewhere upstairs’; **Determined and found proved**
 - i. ‘why don’t you XXX get an excuse to come to my room for a hug’. **Determined and found proved**

Ms C

10. On or around XXX 2021 you sent to Ms C a WhatsApp message in which you wrote words to the effect of:

- a. I really like you; **Determined and found proved**
- b. I know you have a boyfriend; **Determined and found proved**
- c. I want to get to know you better. **Determined and found proved**

11. On or around XXX 2021 you sent to Ms C an EMIS message stating ‘I’m here until 7pm if you want to come in for a cuddle’ or words to that effect. **Determined and found proved**

Ms D

12. On one occasion between approximately XXX 2021 and XXX 2021, during a telephone call with Ms D, you asked her to make her voice sound more sexy, deeper or huskier or words to that effect. **Admitted and found proved**

13. On or around XXX 2021:

- a. during a telephone call with Ms D, you asked her if she was going to deepen her voice, or words to that effect; **Admitted and found proved**
- b. you sent to Ms D an EMIS message stating that you and Ms D needed to find a way to make calls ‘more fun’ or words to that effect. **Admitted and found proved**

14. Your conduct as set out at paragraphs 2-13 was sexually motivated. **Determined and found proved in relation to all the paragraphs 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13 and not proved in relation to paragraph 7 and 8**

15. Your conduct as set out at paragraphs 2-13 was unlawful harassment by virtue of Section 26(2) of the Equality Act 2010 in that you engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of, or creating an intimidating, hostile, degrading, humiliating or offensive environment for:

- a. Ms A; **Determined and found proved in relation to paragraph 2, 3, 4, 5 and 6.**
- b. Ms B; **Determined and found proved in relation to paragraph 9. Not found proved in relation to paragraph 7 and 8.**
- c. Ms C; **Determined and found proved**
- d. Ms D. **Determined and found proved**

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

Determination on Impairment - 24/08/2023

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

The Evidence

255. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. It received no further evidence at this stage.

Submissions

GMC Submissions

256. On behalf of the GMC, Mr Kitching submitted that Dr Higgins' fitness to practise is currently impaired by reason of misconduct.

257. Mr Kitching reminded the Tribunal that it must first consider whether the facts found proved amount to misconduct which was serious, before considering whether Dr Higgins' fitness to practise is impaired.

258. Mr Kitching reminded the Tribunal of the statutory overarching objective and submitted that all three limbs were engaged by the facts of this case.

259. Mr Kitching invited the Tribunal's attention to Good Medical Practice (2013 edition) (GMP). He referred to paragraph 1 of GMP, and then, within 'Domain 3: Communication, partnership and teamwork', paragraphs 35, 36 and 37; and in 'Domain 4: Maintaining trust', paragraph 65. He also submitted that paragraph 72 was to some extent relevant which deals with being open and honest in giving evidence.

260. Mr Kitching further submitted that paragraphs 2d, 2e, 6 and 7 of the guidance 'Leadership and management for all doctors (2012)' were relevant in this case, as below:

Duties of a doctor in the workplace

2. *The primary duty of all doctors is for the care and safety of patients. Whatever their role, doctors must do the following.*

d Demonstrate effective team working and leadership.

e Promote a working environment free from unfair discrimination, bullying and harassment, bearing in mind that colleagues and patients come from diverse backgrounds.

Respect for colleagues

All doctors

6. *It is essential for good and safe patient care that doctors work effectively with colleagues from other health and social care disciplines, both within and between teams and organisations. Whatever the composition of the teams you work in, you must respect and value each person's skills and contribution.*
7. *You must tackle discrimination where it arises and encourage your colleagues to do the same. You must treat your colleagues fairly and with respect. You must not bully or harass them or unfairly discriminate against them. You should challenge the behaviour of colleagues who do not meet this standard.*

261. Mr Kitching also invited the Tribunal to consider the Sanctions Guidance (November 2020 edition) (SG). Whilst he acknowledged that the Tribunal was not considering sanctions at this stage, he submitted that there was relevant guidance pertaining to insight and remediation as well as in relation to sexual misconduct.

262. Mr Kitching summarised that there were four complainants in this case and that the conduct, which whilst taking different forms, was repeated over a period of 18 months. He stressed that the complainants were all young; and this, combined with their position at the Practice, gave rise to a significant power imbalance. He submitted that Dr Higgins' actions included, to some extent, a breach of trust connected with that power imbalance.

263. Mr Kitching submitted that sexual misconduct is inherently serious. He submitted that there is a sliding scale of seriousness. He submitted that paragraph 6 of the Allegation, involving Ms A in Dr Higgins' room, was the most serious because it involved a physical assault. He submitted that whilst it was not at the top end of the scale of sexual misconduct, it was not at the bottom end of the scale. He submitted that the context and the nature of the relationship between Dr Higgins and Ms A at that point does not mitigate what took place. He emphasised that whilst this was the most serious allegation of the case, it did not stand alone, and he submitted that the Tribunal must consider Dr Higgins' conduct as a whole. In summary, he submitted that there can be no doubt that what has been found proved constitutes misconduct.

264. In regard to impairment, Mr Kitching reminded the Tribunal that it must consider current impairment. He acknowledged Dr Higgins' previous good record but submitted that this was tempered by the fact that this case did not involve a single isolated incident. He also acknowledged the lapse of time since the misconduct and that there had been no repetition since.

265. Mr Kitching invited the Tribunal to consider Dr Higgins' level of insight and any efforts he may have made to remedy the deficiencies. He submitted that this was an unusual case in that Dr Higgins has displayed some insight despite having denied virtually all of the Allegation.

266. Mr Kitching submitted that one type of insight was understanding the seriousness of the conduct alleged, and another is where a doctor understands why they behaved like they did despite knowing that what they were doing was wrong. He submitted that Dr Higgins did display some insight into his own actions; for example, there were contemporaneous messages of apology. However, he submitted that those glimpses hardly constitute sound and sufficient evidence of good insight. Overall, Mr Kitching submitted that Dr Higgins has shown very limited insight and because of his denials; there is no evidence of any meaningful remediation.

267. Mr Kitching reminded the Tribunal of the principles in the case of *Yeong v GMC [2009] EWHC 1923* ('*Yeong*') and submitted that some types of misconduct are inherently more difficult to remediate than others. He submitted that whilst insight and remediation are important factors to consider at stage two, at the heart of the considerations of misconduct and impairment lies an assessment of the seriousness of the conduct found proved at stage one.

Submissions on behalf of Dr Higgins

268. On behalf of Dr Higgins, Mr Williamson submitted that there was more than a glimpse of insight demonstrated by Dr Higgins in his evidence to the Tribunal. Mr Williamson submitted that Dr Higgins was in many respects his own harshest critic, stating himself that he had been '*disgraceful*'. Mr Williamson submitted that Dr Higgins did not move from that position in relation to any of the complainants and recognised in relation to all of them that he had crossed boundaries.

269. Mr Williamson submitted that Dr Higgins recognises and accepts that a finding of misconduct is open to the Tribunal based on the findings made. He submitted that the Tribunal would take into account the nature of the relationship between Dr Higgins and Ms A; stating that Dr Higgins was mindful there are issues that were raised which are not considered in the Tribunal's determination regarding Ms A and her significant and unexplained actions including messages she sent to him.

270. Mr Williamson submitted that Dr Higgins recognises the seriousness of the Tribunal's findings and that there is a risk that public confidence could be adversely affected if the Tribunal were not to make a finding of impairment.

271. Mr Williamson reiterated that the decision of impairment is a matter of judgement for the Tribunal and that there is no burden or standard of proof.

The Relevant Legal Principles

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

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

274. The Tribunal must determine whether Dr Higgins' fitness to practise is impaired today, taking into account Dr Higgins' 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.

275. Whilst there is no statutory definition of impairment, the Tribunal followed the test of impairment set out by Dame Janet Smith in the Fifth Shipman Report, and approved by the High Court in *CHRE v NMC and Paula Grant [2011] EWHC 297 Admin*. The Tribunal asked whether Dr Higgins:

- 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 or is liable in the future to bring the medical profession into disrepute; and/or
- c. Has in the past breached or is liable to breach in the future one of the fundamental tenets of the medical profession; and/or

...'

The Tribunal's Determination on Impairment

Misconduct

Ms A

276. The Tribunal had considered the nature of the relationship between Ms A and Dr Higgins' and Ms A's evidence that whilst she had sent him messages and photographs, there was nothing of an inappropriate or sexual content sent. Ms A was young, aged XXX in XXX 2020, and a junior member of staff, whereas Dr Higgins was a 45-year-old man, a GP Partner, in a senior position of authority XXX. There was a clear imbalance of power in the dynamic of the relationship. Dr Higgins' conduct towards Ms A, included asking Ms A for a naked picture, and a picture of Ms A's breasts, grabbing, hugging Ms A without receiving her permission and having invited Ms A to his room to have a threesome, to be sexually motivated and constituting unlawful harassment. The conduct over a few months, was on a sliding scale, and at its most serious, had culminated in non-consensual physical contact with Ms A which included Dr Higgins' attempting to kiss her.

Ms B

277. Whilst having found proved that Dr Higgins' had said "you've got a bad side" or words to that effect to Ms B, and had moved unnecessarily close to her on one occasion and on

another had said *'I've never seen you with your mask off, you're so pretty'* or words to that effect. It had not determined these to be sexually motivated or constituting unlawful harassment (paragraphs 7 and 8 of the Allegation). It had however found Dr Higgins' other conduct which included sending Ms B electronic messages which included words to the effect of, *'don't tell your mum about this or I'll get into lots of trouble, 'I want to give you a hug'* and *'why don't you XXX get an get an excuse to come to my room for a hug'* to be sexually motivated and constituting unlawful harassment. Ms B had been at the Practice for XXX. She was a junior member of staff.

Ms C

278. In regard to Ms C, the Tribunal again noted the imbalance of power, Ms C was a young member of staff XXX. Dr Higgins' sexually motivated conduct, also constituting unlawful harassment culminated in Ms C altering her working practice in that rather than go into Dr Higgins' room, she would ask one of her colleagues to go on her behalf, or she would ask Dr Higgins to come to XXX.

Ms D

279. In regard to Ms D, Dr Higgins' conduct was sexually motivated and constituted unlawful harassment. She was also a young member of staff at the Practice. Dr Higgins' conduct had put her in a difficult position, had caused her embarrassment and had created an intimidating environment for her.

280. The Tribunal had regard to the following paragraphs of GMP:

1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.

35 You must work collaboratively with colleagues, respecting their skills and contributions.

36 You must treat colleagues fairly and with respect.

37 You must be aware of how your behaviour may influence others within and outside the team.

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

281. The Tribunal individually considered all the paragraphs of the Allegation that were found proved.

282. It considered paragraphs 7 and 8 of the Allegation which were proved. The Tribunal found that Dr Higgins' behaviour within these paragraphs was not sexually motivated nor did

it constitute unlawful harassment on its own. It considered that the conduct was not sufficiently serious in the exercise of professional practice that it could properly be described as misconduct going to fitness to practise. It therefore did not consider paragraphs 7 and 8 of the Allegation to amount to misconduct.

283. In relation to the other paragraphs of the Allegation relating to Ms A, Ms B, Ms C and Ms D, the Tribunal took the view that Dr Higgins' conduct was on a sliding scale of seriousness which whilst not on the lowest end, was not at the highest end of the scale either. It considered that his conduct did however constitute significant departures from the above paragraphs of GMP. The Tribunal considered that Dr Higgins' said conduct towards Ms A, Ms B, Ms C and Ms D would be considered by fellow practitioners as deplorable.

284. The Tribunal also considered the guidance, Leadership and Management for all doctors, referred to by Mr Kitching. It considered that Dr Higgins' behaviour had fallen short in respect to demonstrating effective team working and leadership and also promoting a working environment free from harassment, in respect of the four complainants.

285. Overall, it was satisfied that Dr Higgins' conduct fell so far short of the standards of conduct expected of a doctor, so as to amount to misconduct.

Impairment

286. The Tribunal considered whether Dr Higgins' fitness to practise is currently impaired by reason of misconduct.

287. Considering the conduct proved, the Tribunal was satisfied that the following limbs in *Grant* case are engaged in this case; Dr Higgins:

- b. Has in the past and/or is liable in the future to bring the medical profession into disrepute; and/or
- c. Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

288. The Tribunal bore in mind that sexually motivated behaviour was difficult but not impossible to remediate. It noted Dr Higgins' evidence that he had suffered a complete loss of professional boundaries, and that at the relevant time, he wasn't able to speak to his practice manager nor Dr X as they had had a falling out. Dr Higgins' evidence was that he was in a 'bad place', he had 'started something' that 'he couldn't stop' and 'he was out of control'. It considered the following passage from Dr Higgins' statement:

'From the outset I wish to apologise for my actions. I readily concede that from approximately 2019, I did not respect boundaries between myself and a number of staff members. I failed to fully appreciate either the importance of maintaining professional boundaries in a professional setting, and my responsibilities in my position as partner on the practice and my relationship with practice employees'.

289. The Tribunal acknowledged that Dr Higgins had referred to his conduct as ‘disgraceful’ and a ‘shameful period of time’. Dr Higgins’ evidence was that 4 – 6 weeks from the start of the loss of his professional boundaries in XXX 2020, he had made efforts to improve but had suffered from what he referred to as ‘blips’. The Tribunal was concerned that the majority of the conduct within the Allegation found proved (paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 & 13) happened after this 4 – 6 week period.

290. The Tribunal noted Dr Higgins’ apology for his actions in his written statement, and his unreserved apology to Ms D, via his counsel Mr Williamson. It also had regard to contemporary EMIS messages to Ms A in which he had indicated remorse for his actions.

291. Dr Higgins’ actions however were not a single nor an isolated incident and had occurred with Ms B, Ms C and Ms D, even after his messages to Ms A in which he had showed remorse. He had looked to cover up his behaviour in asking Ms B not to tell her mother and Ms C not to tell her boyfriend about his messages. The Tribunal did however note that there had been a lapse of time since the events and there had not been any further concerns reported.

292. The Tribunal was mindful that since its earlier findings, there had been little time for further reflection and remediation. However, other than Dr Higgins accepting his loss of professional boundaries and his oral testimony that that was no longer the case and that he had subsequently put boundaries back in place, it had no evidence before it as to remediation, and in particular, in respect of the conduct found proved. It had no evidence as yet about how Dr Higgins would prevent his behaviour recurring.

293. It therefore considered that there is some evidence of developing insight, but it is limited. The Tribunal could not be satisfied that there was no risk of repetition in the future.

294. The Tribunal was mindful of the public interest in this case. Given Dr Higgins’ limited insight and lack of remediation and therefore, a risk of repetition, it considered that all three limbs of the overarching objective were engaged. It considered that to protect, promote and maintain the health, safety and wellbeing of the public, and the need to promote and maintain public confidence in the medical profession and the need to promote and maintain proper professional standards would be undermined if a finding of impairment were not made.

295. Accordingly, the Tribunal has determined that Dr Higgins’ fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 31/01/2024

296. This determination will be handed down in private. However, as this case concerns Dr Higgins’ misconduct a redacted version will be published at the close of the hearing.

297. Having determined that Dr Higgins' 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

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

299. The Tribunal received further evidence on behalf of Dr Higgins at this stage. This included two bundles of documents containing but not limited to:

- A reflective statement from Dr Higgins dated 13 February 2022,
- Thank you notes and messages from patients.
- Development and restoration plan dated February 2022
- Dr Higgins' letter to the Panel dated 29 January 2024
- XXX
- Certificates of completion and reflections on courses on Sexual harassment
- Letter from his current workplace
- Basic life-support skills assessment
- GP update course certificate

Submissions

GMC submissions

300. On behalf of the GMC, Mr Kitching submitted that the only appropriate sanction in Dr Higgins' case is one of erasure.

301. Mr Kitching submitted that all three strands of the overarching objective are engaged in this case.

302. Mr Kitching submitted that the individual facts found proved vary in seriousness. He submitted that it would be wrong in principle to approach the question of sanction by looking at each proven allegation in isolation of others. He submitted that it was necessary for the Tribunal to look at the conduct as a whole, and it must impose the sanction which reflects the seriousness of the overall conduct.

303. Mr Kitching submitted that sexual misconduct is inherently serious and at the upper end of seriousness. He submitted that the facts found proved at paragraph 6 of the Allegation were regarding a sexually motivated assault of a junior employee, who Dr Higgins knew was alone with him towards the end of the day, when there were few others in the building. He submitted that whilst it was not a particularly sustained incident it was not momentary either and may not have been the subject of significant pre planning on the part

of Dr Higgins, nor did it occur on the spur of the moment. He also submitted that the impact it had on Ms A was significant; she was in tears immediately after the incident, and at least partly as a result of this, she decided to XXX to avoid Dr Higgins as much as possible.

304. Mr Kitching stressed that the whole of the conduct found proved involved four female employees, much younger than Dr Higgins, XXX. He submitted that a significant power imbalance existed, and that Dr Higgins breached the trust placed in him. Furthermore, the conduct involved multiple actions and continued over a period of approximately 18 months.

305. Mr Kitching reminded the Tribunal of the various paragraphs of GMP which it had found that Dr Higgins had breached; he also submitted that Dr Higgins' conduct had breached a fundamental tenet of the profession.

306. Mr Kitching referred the Tribunal to various paragraphs of the Sanctions Guidance (November 2020 edition) ('the SG'). He submitted that the Tribunal would have to consider mitigating and aggravating factors. In terms of mitigating factors, he submitted that there is no suggestion that Dr Higgins is not an otherwise competent and good GP, however, he submitted that this is of less significance in a case such as this and must be seen in the context of multiple complainants and that conduct continued over a sustained period of time.

307. Mr Kitching submitted that the Tribunal will have to consider Dr Higgins' insight and whether he has remediated the concerns, though he added that the misconduct in this case is hard to remedy.

308. Mr Kitching submitted that there were two aspects to insight. First, an understanding of why the conduct is unacceptable and the degree to which it falls below expected standards. He submitted that that this aspect of insight does not require any acceptance of the facts on the part of the doctor. Second, a personal understanding of why the doctor acted in the way he did. Mr Kitching submitted that it was impossible to gain this second type of insight unless there is an acceptance of the conduct in question. He submitted that none of the material provided by Dr Higgins explains why he thought that at the time it was acceptable to behave in the way he did.

309. Mr Kitching submitted that a lack of insight can be an aggravating factor. He also highlighted the number of complainants, the power imbalance and the period of time over which the conduct took place.

310. Mr Kitching submitted that the SG advises that suspension may be appropriate when the conduct is serious but falls short of being fundamentally incompatible with continued registration. However, he submitted that the misconduct found proved is not significantly mitigated such that a lesser sanction than erasure would be appropriate.

311. Mr Kitching referred the Tribunal to the following factors outlined in 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 fundamentally incompatible with being a doctor.

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

c Doing serious harm to others (patients or otherwise)...

d Abuse of position/trust

312. Mr Kitching added that it could not be said that serious harm had been done but that there certainly has been some harm done to the complainants in this case. In summary, he submitted that several factors which indicate that erasure is appropriate were present in this case.

313. Mr Kitching also referred the Tribunal to the section of the SG under the heading 'Cases that indicate that more serious action is likely to be required'. He highlighted various paragraphs, including:

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

b sexual harassment

314. Mr Kitching also highlight paragraphs 149 – 150 of the SG:

Sexual misconduct

149 This encompasses a wide range of conduct from criminal convictions for sexual assault and sexual abuse of children (including child sex abuse materials) to sexual misconduct with patients, colleagues, patients' relatives or others...

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.

Submissions on behalf of Dr Higgins

315. On behalf of Dr Higgins, Mr Williamson submitted that suspension is the appropriate and proportionate outcome.

316. Mr Williamson submitted that whilst the conduct is plainly serious, in all the circumstances of this case, it falls short of being fundamentally incompatible with continued registration.

317. Mr Williamson reminded the Tribunal that the purpose of any sanction is not to punish Dr Higgins for his past wrongdoing, but to protect patients and the wider public interest, maintain public confidence and uphold the important standards of behaviour.

318. Mr Williamson submitted that erasure is not required in the specific circumstances of this case.

319. Mr Williamson submitted that Dr Higgins is an otherwise excellent doctor with a previously unblemished career. He submitted that patients and the public want, require and deserve good doctors to continue to serve and treat them. He submitted that the unique events concerning his colleagues will not be repeated.

320. Mr Williamson submitted that Dr Higgins accepts the Tribunal's findings in relation to misconduct and accepts he behaved inappropriately and has apologised.

321. Mr Williamson submitted that there were unique precipitating factors at the time, including a breakdown in numerous areas of his life against the background of limited understanding of his responsibilities as a supervisor, as a colleague, as a person, and a limited recognition of a need to take positive and early action to prevent such behaviours. He submitted that Dr Higgins has since then done a great deal to ensure that he would never fall into that situation again.

322. Mr Williamson submitted that the misconduct was out of character and there had been no repetition. As such, he submitted the misconduct can be treated as a temporary aberration and is no way indicative of Dr Higgins' true personal or professional character. He submitted that these out of character events should be contrasted against many years of distinguished dedicated service to the practice, to colleagues and his patients.

323. Mr Williamson submitted that Dr Higgins had been ignorant of his responsibilities and the impact he was having on his colleagues, and also ignorant of the impact various pressures were having upon him XXX.

324. Mr Williamson submitted that Dr Higgins has had five months to reflect on the Tribunal's determination in respect of misconduct and impairment. He submitted that Dr Higgins had taken very positive steps to address the factors which led to the misconduct, including by recognising his own personal issues, XXX and paying for and undergoing considerable learning and development. Mr Williamson submitted that Dr Higgins is now well equipped with the knowledge and understanding to ensure that he will not allow his behaviour or anything like it to be repeated.

325. Mr Williamson submitted that the impact of these proceedings has acted as a salutary lesson for Dr Higgins. He submitted that Dr Higgins has gone to great lengths to understand

why he behaved as he did, and has never shied away from the dismay and regret which has served to motivate him to put things right and move forward positively. He submitted that in the circumstances, the Tribunal can be satisfied that it is right to give him a second chance.

326. Mr Williamson submitted that a period of suspension would mark the Tribunal's disapproval of the behaviour proportionately and appropriately.

327. Mr Williamson submitted that there had been a concatenation of factors leading to the events and reminded the Tribunal of the evidence it heard regarding COVID, XXX and his feelings of isolation. He stressed that prior to 2019 there were no issues of this nature.

328. Mr Williamson submitted that Dr Higgins continues to engage in conversations with people about what he has done and about how his actions have impacted others.

329. Mr Williamson referred the Tribunal to the paragraphs in the SG which advise when suspension might be appropriate. In particular, he highlighted paragraphs 91 and 92:

91 Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.

92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).

330. Mr Williamson submitted that Dr Higgins' conduct is not fundamentally incompatible with continued registration. He submitted that it cannot be the case that any finding of sexual harassment results in erasure. He submitted that Dr Higgins' knowledge and understanding in respect of sexual harassment has improved and developed and has been the focus of his remediation and development of insight.

331. Mr Williamson drew the Tribunal's attention to the positive colleague feedback received regarding Dr Higgins, as well as all the remediation he has undertaken, including a Professional Boundaries course and various therapy sessions since February 2022. He highlighted Dr Higgins' reflections upon a sexual harassment awareness course.

332. Mr Williamson submitted that Dr Higgins understands that suspension is an appropriate response to the misconduct. He submitted that Dr Higgins knows he should have done far better and hopes one day to be someone who would be considered a good example of what it is to be a good medical practitioner in every aspect of his working life. Mr

Williamson submitted that Dr Higgins has previously been a credit to the profession and can be again.

The Relevant Legal Principles

333. The Tribunal had regard to the statutory overarching objective 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. The LQC advised that the Tribunal must consider the overarching objective as a whole and should not give excessive weight to any one limb.

334. The decision as to the appropriate sanction to impose, if any, is a matter for the Tribunal exercising its own judgment.

335. The Tribunal should first consider the objective features of the case and assess the gravity of the doctor's actions, taking into account any aggravating and mitigating features, giving careful consideration to the weight to be attached to each of them before going to consider which sanction, if any, will best meet the overarching objective.

336. The Tribunal must bear in mind that the purpose of imposing a sanction is to protect the public and the wider public interest and its purpose is not to punish, although it may have a punitive effect. The Tribunal should consider proportionality, weighing the public interest against the interests of Dr Higgins but bear in mind that the reputation of the profession as a whole is more important than the fortunes of any individual doctor (*Bolton v Law Society* [1994] 1 WLR 512).

The Tribunal's Determination on Sanction

337. Before considering what action, if any, to take in respect of Dr Higgins' registration, the Tribunal considered the aggravating and mitigating factors in this case.

Aggravating and Mitigating factors

338. The Tribunal reminded itself of all the specific paragraphs of the allegation which it had found proved. Whilst it had considered that the conduct relating to Ms A, Ms B, Ms C, and Ms D was not at the highest end of the scale, it did consider that the misconduct as a whole which included unlawful sexual harassment and sexually motivated behaviour was inherently serious and would be considered to be deplorable by fellow practitioners. It considered Dr Higgins' sexually motivated non-consensual physical contact with Ms A, together with its specific features to be an aggravating feature in this case.

339. The misconduct was towards multiple young women who worked in a junior capacity, XXX. There was an imbalance of power. Dr Higgins' sexually motivated and sexually harassing conduct towards them was not just a breach of his professional position and a breach of trust as their employer, but the conduct was persistent, and took place over a sustained period of

time. The Tribunal reminded itself of the features of the specific paragraphs of the allegation found proved where Dr Higgins had asked Ms C not to tell her boyfriend about the messages, and Ms D not to tell her mother as he would ‘get into lots of trouble’. Dr Higgins had offered Ms A a job as a XXX if she didn’t tell anyone what he was like. The Tribunal considered these aspects and the pattern of behaviour to be an aggravating feature in this case. In addition, it considered Dr Higgins’ own evidence that he had found a way to hide Snapchat messages in a separate area on his phone to prevent XXX seeing them, further demonstrated some awareness of his conduct at that time.

340. The Tribunal balanced these considerations and aggravating features against the mitigating features in this case. It considered Dr Higgins’ previous good character, unblemished career and the lapse of time since the incidents to be mitigating features. It acknowledged that from the outset Dr Higgins had admitted the paragraphs of the allegation towards Ms D in respect of his interactions albeit not in respect of the interaction being unlawful harassment or sexually motivated behaviour.

341. The Tribunal also acknowledged Dr Higgins’ apology, remorse for his actions and his evidence about his personal circumstances at the time of the incidents and him feeling ‘burnt out’, to be mitigating features, that it gave weight to. It bore in mind however that Dr Higgins’ conduct was not an isolated incident which could be categorised as a temporary lapse of judgment, it was sustained over a significant period of time.

342. The Tribunal took the view that the aggravating factors in this case outweighed the mitigating features.

No action

343. The Tribunal first considered whether to conclude the case by taking no action. It noted from the SG that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

344. The Tribunal determined there were no exceptional circumstances in this case and determined that it would be neither sufficient, proportionate, nor in the public interest to conclude this case by taking no action.

Conditions

345. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Higgins’ registration.

346. The Tribunal determined that a period of conditional registration would be insufficient to mark the gravity and the seriousness of the misconduct found and would not uphold the overarching objective.

Suspension

347. The Tribunal then considered whether a period of suspension would be appropriate and proportionate, and it considered paragraphs 92, 93 and 97 of the SG.

348. The Tribunal bore in mind that suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbecoming a registered doctor.

349. It noted paragraph 92 and 93 of the SG which states:

'92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and. Maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).

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

350. The Tribunal had found that the misconduct in this case was serious, against junior colleagues where there was an imbalance of power, and that the misconduct had an adverse effect on them. It had found that the sexual misconduct was sustained and not an isolated incident. It had found that all three limbs of the Overarching Objective were engaged, and that Dr Higgins had breached a fundamental tenet of the medical profession and had brought the medical profession into disrepute. It considered that the misconduct on part of Dr Higgins was behaviour unbecoming of a registered doctor, and so serious that action must be taken to protect members of the public and maintain public confidence in the profession.

351. The Tribunal considered the following factors listed at paragraph 97 of the SG:

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

...

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.

352. The Tribunal considered all the documents within the two further bundles it had received since its finding of impairment of Dr Higgins' fitness to practise. It reminded itself of its finding of impaired fitness to practise, five months ago, when it had considered Dr Higgins to have limited developing insight and there had been no evidence of remediation. It had also considered that it could not be said that there was no risk of repetition. Since these considerations, there had been a hiatus of 5 months and in that time, Dr Higgins had completed a fourth day of the professional boundaries course, carried out further reflections XXX.

353. The Tribunal considered in particular the contents of Dr Higgins' reflective statement dated 13 February 2022 further to the Professional Boundaries Course and the letter to Panel dated 29 January 2024. It noted Dr Higgins' reflections on the importance of maintaining professional boundaries, understanding power differentials amongst other matters. Amongst other reflections, It noted Dr Higgins' statement that *'The Professional Boundaries course had taught me that Professional Power can make those involved feel a desire to please, or be afraid to stop their involvement in the unprofessional behavior once it has started which was something I had not considered before. I had assumed if someone was unhappy with a situation, they would ask for it to stop...' 'I am aware what happened at work will have an effect on those involved for the rest of their lives. They were in a working environment, which should have been professional but I let them down.'*

354. It considered the letter from Dr Higgins to the Panel dated 29 January 2024 and the further exploration of his understanding of sexual harassment and its impact on others. It considered that there had been some development of Dr Higgins' knowledge of sexual harassment in the workplace and its impact on victims and others.

355. XXX

356. The Tribunal considered that Dr Higgins' attendance at sexual harassment courses, professional boundaries course and XXX was evidence of remediation.

357. The Tribunal however remained mindful that it had found proved a pattern of sexually motivated behaviour on the part of Dr Higgins in addition to the sexual harassment which had had an adverse effect on his junior colleagues. It noted that Dr Higgins had stated that he had let down his colleagues and it was submitted on his behalf that Dr Higgins had gone to great lengths to understand why he behaved as he did. The Tribunal was mindful of Dr Higgins' ongoing right to defend and deny any or all of the allegations, found proved. However, it did not find evidence to demonstrate sufficient understanding, reflection or insight in respect of the seriousness and gravity of the sexually motivated behaviour which included sexual gratification and pursuit of a future sexual relationship by a doctor in a position of trust and power, as found proved. Accordingly, the Tribunal took the view that Dr

Higgins' insight was not holistic and remained limited. It therefore did not consider that Dr Higgins had sufficient insight such that he would not pose a significant risk of repeating his behaviour.

Erasure

358. The Tribunal considered whether erasure was the appropriate sanction. It had regard to the following paragraphs of the SG.

108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.

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 fundamentally incompatible with being a doctor.

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

...

d Abuse of position/trust (see Good medical practice, paragraph 65: 'You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession').

359. The Tribunal also had regard to the following paragraphs of the SG, in respect of cases which indicate more serious action is likely to be required.

Failure to work collaboratively with colleagues

136 Doctors are expected to work collaboratively with colleagues to maintain or improve patient care. These duties are set out in paragraphs 35–37 of Good medical practice.

137 Colleagues include anyone a doctor works with, whether or not they are also doctors.

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

...
b sexual harassment

Sexual misconduct

149 This encompasses a wide range of conduct from criminal convictions for sexual assault and sexual abuse of children (including child sex abuse materials) to sexual misconduct with patients, colleagues, patients' relatives or others...

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.

360. The Tribunal considered these paragraphs of the SG to be engaged. In finding the particular features of the facts proved, Dr Higgins' conduct was a serious and reckless departure from the principles set out in GMP. It also considered that there had been an abuse of Dr Higgins' position as the employer of his junior colleagues, and he had also departed from the principles of GMP in respect of working collaboratively with his colleagues. It also considered that the sexual misconduct found proved in this case, had the potential of seriously undermining public trust and public confidence in the profession.

361. The Tribunal considered what a reasonable and informed member of the public would think. It considered that such person would not trivialise or underestimate the seriousness of unwanted sexual misconduct at the level that was proved in this case. It weighed in the balance Dr Higgins' interest in not being able to practise as a doctor. However, it considered that the reputation of the profession, need for public protection, and to maintain public confidence and proper professional standards and conduct for the medical profession to be more important. It took the view that Dr Higgins' behaviour was fundamentally incompatible with being a doctor.

362. In all the circumstances, the Tribunal determined that Erasure was the appropriate and proportionate sanction.

363. Accordingly, the Tribunal directed that Dr Higgins' name be erased from the medical register.

Determination on Immediate Order - 31/01/2024

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

Submissions

365. On behalf of the GMC, Mr Kitching submitted that an immediate order was necessary in the circumstances of this case. He also submitted that the interim order should be revoked.

366. Mr Kitching referred the Tribunal to the relevant paragraphs of the SG to consider in relation to immediate orders. He submitted that given the seriousness of the Tribunal's findings, an immediate order was necessary to maintain public confidence in the profession. He submitted that it was necessary given the Tribunal's findings in relation to the risk of repetition.

367. On behalf of Dr Higgins, Mr Williamson did not make any submissions.

The Tribunal's Determination

368. The Tribunal had regard to the relevant paragraphs of the SG from 172 – 178. In particular, paragraphs 172 and 178 which provide:

'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...'

'178 Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect...'

369. The Tribunal considered that given the seriousness of its findings and that it had found that Dr Higgins' misconduct was fundamentally incompatible with continued registration, an immediate order of suspension is necessary in the public interest and to uphold public confidence in the profession.

370. This means that Dr Higgins' registration will be suspended from today. The substantive direction will take effect 28 days from the date on which written notification of this decision is deemed to have been served, 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.

371. The interim order is hereby revoked.

372. That concludes the case.

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