Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 11/02/2019 – 19/02/2019, 20/03/2019 and 22/03/2019

Medical Practitioner's name:	Dr Syed AKBAR
GMC reference number:	6098681
Primary medical qualification:	MB BS 2003 Frontier Medical College Abbottabad

Type of case
New - Misconduct

Outcome on impairment
Impaired

Summary of outcome
Suspension, 12 months.
Review hearing directed

Immediate order imposed

Tribunal:

Legally Qualified Chair	Mr Neil Dalton
Lay Tribunal Member:	Mrs Katriona Crawley
Medical Tribunal Member:	Dr Farhan Munawar

Tribunal Clerk:	Mr Edward Kelly

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Ms Kathryn Pitters, Counsel, instructed by Stephensons Solicitors – represented on 20/03/2019 and 22/03/2019 only
GMC Representative:	Ms Emma Gilsenan, 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 - 18/02/2019

Application under Rule 41

1. At the commencement of these proceedings, the Tribunal granted the application from the GMC for parts of the hearing be in private, in accordance with Rule 41XXX of the General Medical Council ('GMC') (Fitness to Practise) Rules 2004, as amended ('the Rules'), given that some of the matters under consideration relate to XXX.

Background

2. Dr Syed Ali Akbar qualified in 2003 and, prior to these events practised as a middle grade Registrar. At the time of the events, Dr Akbar was an on-call Clinical Research Fellow in the Cardiology Department at Sandwell and West Birmingham Hospitals NHS Trust ('the Trust'). He had been there since September 2016.

3. The allegation leading to this hearing is that, on 4 February 2017, Dr Akbar entered the Cardiology Department Administration office and encountered Nurse A. It is alleged that Dr Akbar made unsolicited comments to Nurse A about her appearance (that she was "attractive" and "looked young…" or words to that effect). He then put his arms around her in an attempted hug and pulled her towards him. She tried to break free. He pulled her towards him again, and tried to kiss her.

4. Nurse A reported the incident to the Trust and, after a Trust investigation, the matter was referred to the GMC.

The Outcome of Applications and/or Issues Made during the Facts Stage

5. The Tribunal granted Dr Akbar's application, made pursuant to Rule 34(1) of the Rules, to admit a note of a telephone conversation between Ms F and Ms E on 27 April 2017. The Tribunal's full determination on this application is included at Annex A.

6. The Tribunal also determined that there was no conflict of interest in Ms Crawley remaining a Tribunal member. The Tribunal's full determination in this regard is included at Annex B.

The Allegation and the Doctor's Response

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

1. On 4 February 2017 you attended the Sandwell and West Birmingham Hospitals NHS Trust Cardiology Office where Nurse A was present, and you:

a. said to Nurse A:

i. 'you look attractive' or words to that effect; **To be determined**

ii. 'you look young' or words to that effect; **To be determined**

b. put your arms around Nurse A's:

i. upper arms; **Admitted and found proved**

ii. upper body; **Admitted and found proved**

c. on one or more occasion:

i. pulled Nurse A towards you; **To be determined**

ii. attempted to kiss Nurse A. **To be determined**

2. Your actions as described at paragraph 1 were sexually motivated. **To be determined**

The Admitted Facts

8. At the outset of these proceedings, Dr Akbar 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

9. In light of Dr Akbar's response to the Allegation made against him, the Tribunal is required to determine the remaining matters.

Factual Witness Evidence

10. The Tribunal received written statements and oral evidence on behalf of the GMC from the following witnesses:

- Nurse A, Lead Heart Failure Nurse at the Trust, in person;
- Dr C, Consultant Obstetrician and Gynaecologist at the Trust, in person;
- Dr B, Consultant Cardiologist at the Trust, in person.

11. In general, the Tribunal found that the GMC witnesses gave straightforward and relatively clear oral evidence at the hearing which was, in key material regards, consistent with their written statements and other evidence.

12. Dr Akbar provided his own witness statements and also gave oral evidence at the hearing.

13. The Tribunal found that, in general, Dr Akbar's oral evidence was relatively clear and that, in material regards, was consistent with his previous accounts. However, at times he avoided answering direct questions.

Documentary Evidence

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

- Nurse A Initial Account, dated 6 April 2017;
- Sketch of Cardiology Secretary's Office; undated
- Trust Investigation Statement of Nurse A, dated 12 May 2017
- Email chain from Dr Akbar, dated 21 July 2017
- Statement of Dr B, dated 26 April 2017;
- Trust Investigation Statement of Dr B, dated 27 April 2017;
- Trust Investigation Statement of Dr Syed Akbar, dated 9 May 2017 and 16 May 2017;
- Meeting minutes with Dr C, HR and Nurse A, dated 1 June 2017;
- Trust Investigation Report, dated 9 June 2017;
- Transcript of Dr Akbar's Police Interview, dated 18 December 2017,
- Police Case Summary, dated 5 March 2018;
- Rule 7 Letter and Exhibits, dated 5 September 2018;
- Letter from Dr D, dated 9 October 2017;
- University of Nottingham Confirmation of Student Status, dated 16 January 2019;
- Certificate of attendance – WCCS/RCP Annual Meeting, dated 12 October 2018;
- Certificate of attendance – Acute Medicine – Loughborough, dated 18 September 2018;
- Photograph of Cardiology Office, undated;

- Note of telephone conversation between Ms E and Ms F, on 27 April 2017; and
- Signed witness statement of Dr Syed Akbar, dated 12 February 2019.

The Tribunal's Approach

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

16. The Tribunal reminded itself that it must form its own judgment about the witness evidence heard before it, and the reliability of such witnesses, including Dr Akbar. It noted that it must decide whether to accept or reject such evidence, and where it is accepted, what weight to attach to it.

17. The Tribunal also bore in mind that it should assess and determine each paragraph and sub-paragraph of the Allegation separately. It reminded itself that while it could draw inferences from the evidence, it must not speculate as to any further evidence that has not come before it.

18. The Tribunal took account of the requirement to give sufficient and clear reasons for its determination.

The Tribunal's Analysis of the Evidence and Findings

19. For the avoidance of doubt, the Tribunal has given separate consideration to each paragraph of the Allegation which remained to be determined, and has evaluated the evidence in order to make findings of fact in relation to each paragraph separately. However, the reasons are grouped together (insofar as the paragraphs of the Allegation are linked) in order to minimise repetition.

20. In essence, this was a case which turned on the word of one witness (Nurse A) against another (Dr Akbar). No one else was present during the incident, although Nurse A did make an early complaint to Dr B. Both parties agree that an incident occurred at the time and place alleged. The issue is the detail of what actually happened.

<u>Nurse A</u>

21. Nurse A's evidence (in terms) was that she had been working alone in the office when Dr Akbar arrived and engaged her in conversation. The conversation was pleasant and polite and it included discussion about their families. In the process, Dr Akbar showed Nurse A photos of his children. He said words to the

effect that she looked attractive and young. She described him as having been very complimentary.

22. However, at a certain point, Nurse A needed to end the conversation to return to her work. She touched his arm as a gesture to end the conversation. In return, he put his arms around her and pulled her towards him so that their lower bodies were in contact and their faces were close. She tried to pull away and he pulled her close to him again, this time with more force. She said his face was inches from hers and she understood by his actions that he was trying to kiss her. Nurse A told him that is was very inappropriate and Dr Akbar apologised. She confirmed in her oral evidence that she felt quite panicked and quite frightened. She pushed him away and returned to her desk. She says she felt shaken and uncertain what to do.

23. There was no further conversation between them and, eventually, he left the room. Later that day she reported Dr Akbar's behaviour to her husband and, that afternoon, to a friend and colleague Dr B.

24. On 10 February 2017, she wrote a statement detailing these events, but she did not formally report his behaviour to her employer until April 2017. She indicates that, at some point, she also broached the subject of Dr Akbar's inappropriate behaviour in general terms with Ms E

Dr Akbar

25. Dr Akbar's account of events is broadly similar, in many respects, to Nurse A's. However, matters were different in certain key respects. Dr Akbar says that they were in a friendly conversation and that they had been showing each other photographs of their children. He accepts having commented on her appearance but only insofar as he said she looked different out of uniform (or words to that effect).

26. Dr Akbar's recollection is that, at the time she moved her hand to touch him, he understood her gesture to be an attempt to embrace. Given that they had just engaged in an exchange of details, he moved to give her a friendly reciprocal hug. However, in the process of doing so, he felt dizzy and needed to hold on to her for balance. XXX.

27. Dr Akbar insists he never tried to kiss Nurse A and that – contrary to her claim - their faces were never directly opposite each other during the physical contact. He indicates that he apologised for his moment of imbalance. However, his gesture was intended purely as a platonic reciprocal hug, nothing more. He told the Tribunal that he did not consider it necessary to explain to her the dizziness he had experienced at that point, as he considered this was a private XXX matter. Moreover, he was unaware at the time that she had misconstrued these momentary events as sexually motivated.

Tribunal Assessment

28. In considering these different accounts, the Tribunal found that Nurse A had been a clear and honest witness.

29. It noted that she had provided an early report of the incident to Dr B and, that in clear and persuasive oral evidence, Dr B had recounted the description of events given to her by Nurse A in terms materially at one with Nurse A's. Dr B also attested to Nurse A's probity of character and integrity.

30. The Tribunal noted that Dr Akbar could offer no reason why Nurse A would invent the Allegation, nor did the Tribunal have any evidence before it that might explain why she would have done so.

31. The Tribunal went on to consider whether, inadvertently or otherwise, she had misconstrued the events; and/or whether, with the subsequent passage of time, she had gone on, inadvertently or otherwise, to provide subsequent accounts which added an inaccurate 'gloss' to those she provided in 2017.

32. In these regards, the Tribunal considered whether one or more of the following factors (many of which were also raised by Dr Akbar in his evidence) might amount to an inaccuracy in Nurse A's account that would render it insufficiently reliable:

I. Her alleged lack of clarity about the position of her desk;
II. Nurse A not having mentioned in her first account Dr Akbar having allegedly called her 'attractive';
III. The fact that Ms E did not recall Nurse A mentioning Dr Akbar's behaviour;
IV. The seeming variations in Nurse A's evidence about whether and when she knew the access arrangements in relation to the fire exit door and the layout behind it;
V. The indication in Dr C's '*fact findings*' that Nurse A had admitted "going over to Dr Akbar to share photos" (something which Dr Akbar says occurred, but which Nurse A insists did not);
VI. Nurse A's overall timings in relation to the events in the office;
VII. The variation in Nurse A's accounts as to whether, during the events which form the subject of paragraph 1 (b) and 1 (c) of the Allegation, Dr Akbar was 'standing',' sitting' or 'perching', and the exact spatial movements of each of them during the key moments.

33. The Tribunal considered these issues very carefully but determined that only in respect of (VII) was Nurse A inconsistent. However, in this regard, the Tribunal did not consider the inconsistency material to its determination of the essential accuracy and truthfulness of her overall account.

34. Of the rest (i.e. (I)-(VI) above), the Tribunal did not find these in any way undermined her account:

- It was not presented with persuasive evidence to gainsay Nurse A's account convincingly in relation to (I) and (IV).

- In relation to (II), while there is some variation, its material essence remained unchanged.

- In relation to (III), the Tribunal had no evidence from Ms E. Moreover, it was aware from Dr C's evidence that the way matters were put by her to Ms E was sufficiently open-ended that Ms E's inability to recollect did not, perforce, mean that the conversation Nurse A described did not happen.

- In terms of Dr C's *'fact findings'* (i.e. (V)), her account in oral evidence to the Tribunal was that, in fact, she could not attribute the said 'admission' to Nurse A. Indeed, she said it was more likely that she gleaned the information instead from an email of Dr Akbar's, dated 11 May 2017 (which she had been copied into).

- Finally, turning to (VI), Nurse A did not suggest her timings were exact. In the Tribunal's determination, her lack of precision in this regard did not undermine her credibility or the reliability of her account.

35. In addition to the above, the Tribunal also considered Nurse A's delay in reporting these matters and the reason why she eventually did so. Her explanation for this was clear, understandable and persuasive.

36. Turning to Dr Akbar, his oral evidence was also largely consistent with his previous accounts. As with Nurse A, there were also some inconsistencies in how he recollected matters – in particular in relation to 'sitting', 'standing', 'perching' issue and, again, in relation to their exact spatial movements during the key moments.

37. The Tribunal was not aware of anything to suggest Dr Akbar was other than of previous good character. The Tribunal noted Dr B's indication that Dr Akbar had never struck her as unprofessional in his bearing.

38. However, the Tribunal found Dr Akbar's evidence in person to the Tribunal to be much less persuasive and credible. At times his answers under cross examination were evasive. Ultimately the Tribunal determined that his account lacked sufficient plausibility.

39. For example, the Tribunal found it unlikely that a doctor alone in an office with a colleague he only knew professionally would misconstrue that person's gesture with her arm as an invitation to embrace. The Tribunal also found it unlikely

that, at the very moment of the unsolicited embrace, Dr Akbar would experience a bout of dizziness that would cause him to have to grip Nurse A in the way described. Moreover, the Tribunal found it unlikely that, if that had been the cause of him gripping her in that way (which the Tribunal did not accept), he would not have considered his behaviour warranted an explanation to Nurse A – especially as she had, on his account, clearly signalled concern about his actions (saying "hold on" or words to that effect).

40. On balance, therefore, applying the civil standard of proof, the Tribunal found Nurse A's account of events much more likely, and that indeed her account of events provided sufficient evidence to establish to the necessary standard that the matters alleged in paragraphs 1 (a) and 1 (c) are proved.

41. The Tribunal also determined that on the basis of the description provided by Nurse A, in pulling her towards him and attempting to kiss her, Dr Akbar's actions were sexually motivated. Therefore, the Tribunal also found paragraph 2 proved.

The Tribunal's Overall Determination on the Facts

42. The Tribunal has determined the facts as follows:

1. On 4 February 2017 you attended the Sandwell and West Birmingham Hospitals NHS Trust Cardiology Office where Nurse A was present, and you:

a. said to Nurse A:

i. 'you look attractive' or words to that effect; **Determined and found proved**

ii. 'you look young' or words to that effect; **Determined and found proved**

b. put your arms around Nurse A's:

i. upper arms; **Admitted and found proved**

ii. upper body; **Admitted and found proved**

c. on one or more occasion:

i. pulled Nurse A towards you; **Determined and found proved**

ii. attempted to kiss Nurse A. **Determined and found proved**

2. Your actions as described at paragraph 1 were sexually motivated. **Determined and found proved**

Determination on Impairment - 19/02/2019

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

The Evidence

2. In considering whether Dr Akbar's fitness to practise is impaired, the Tribunal carefully considered all the documentary and oral evidence adduced during the course of these proceedings.

3. At the impairment stage, Dr Akbar alluded to, and read from, a reflective statement that he had earlier prepared (August 2018) and had amended during the course of the hearing. He subsequently gave evidence under oath in relation to that statement, when he said he accepted the Tribunal's findings albeit his own recollection of the events remains unchanged. His position lacked complete coherence, but his evidence seemed to be that he accepted his recollection might not be entirely accurate due to the two month interval between the events occurring and Nurse A reporting it. This was in contrast to some of the phraseology he deployed in the reflective statement itself where he said, for example *"I have found the courage to embarrassingly admit wholeheartedly that all the allegations made against me are correct"* and *"I just could not control myself".*

Submissions on behalf of the GMC

4. On behalf of the GMC, Ms Gilsenan submitted that Dr Akbar's fitness to practise is currently impaired by reason of his misconduct. Ms Gilsenan directed the Tribunal's attention to paragraphs 35C(2)(a) & (b) of the Medical Act 1983, and to the Good Medical Practice (2013 edition)('GMP'); in particular, paragraphs 1, 36, 37, 65 and 72.

5. Ms Gilsenan also directed the Tribunal's attention to the following cases:

- Meadow v GMC [2006] EWCA CIV 1390;
- Cohen v GMC [2008] EWHC 581;
- Calhaem v GMC [2007] EWHC 2606 (Admin);
- R (on the application of Remedy UK Ltd) v GMC [2010] EWHC 1245 (Admin);
- Cheatle v GMC [2009] EWHC 645 (Admin);
- CHRE v NMC and Grant [2011] EWHC 927 (Admin); and
- Yeong v GMC [2009] EWHC 1923 (Admin).

6. Ms Gilsenan submitted that Dr Akbar's misconduct is serious and constitutes significant breaches of GMP.

7. She said that any form of sexually motivated misconduct by a member of the medical profession is likely to be considered serious.

8. Ms Gilsenan added that Dr Akbar's misconduct represented a significant breach of trust and a violation of his position of responsibility; that he deliberately targeted a lone female staff member in a work environment; and that he exhibited predatory behaviour. Ms Gilsenan also submitted that Dr Akbar had caused considerable distress to Nurse A.

9. She said that there is no evidence that Dr Akbar has insight into his conduct and how his actions affected Nurse A. Further, she submitted that there is no evidence of remediation and no testimonials. She submitted that the Tribunal should attach limited weight to Dr Akbar's reflective statement, and his oral evidence to the Tribunal in support of it. She described it as a further attempt by Dr Akbar to mislead the Tribunal.

10. In her view, there was a real risk of repetition in this case, and the public interest is engaged.

11. Therefore Ms Gilsenan submitted that Dr Akbar is a doctor who has brought the profession into disrepute and has breached fundamental tenets of the profession. In the circumstances, she said a finding of impairment is necessary to maintain public confidence in the profession and to uphold standards of conduct and behaviour.

Submissions from Dr Akbar

12. Dr Akbar submitted that he has considerable remorse for his behaviour and would never repeat his actions. He said that he had learned a hard lesson in relation to these matters, and had reflected over a significant period of time upon the detrimental impact of his behaviour upon Nurse A and her family. Dr Akbar indicated that he had apologised at the time of the events, in correspondence, and during the hearing, to Nurse A. He said that at the time of this incident he had been awake for 24 hours and was very fatigued from work.

13. Dr Akbar acknowledged that what he did had been wrong and that, after Nurse A touched his arm, he should have conducted himself in a professional manner. He accepted needing to engage in further learning in relation to effective communication, improved verbal and non-verbal communication, maintaining professional boundaries, and establishing and maintaining relationships with colleagues. Dr Akbar stated that he would always recognise and respect professional boundaries going forward.

14. Dr Akbar invited the Tribunal to note that this incident was two years ago and that there had been no previous fitness to practise findings against him.

15. He further submitted that he has kept his CPD up-to-date by attending courses; notwithstanding that he had been unable to work pending this hearing.

16. In short, Dr Akbar invited the Tribunal to the view that he had insight in to his behaviour and that, as a result of his period of reflection, coupled with the online courses that he had completed, he was highly unlikely to repeat this behaviour.

17. Resultantly, he submitted that his fitness to practice is not currently impaired.

The Relevant Legal Principles

18. The Legally Qualified Chair reminded the Tribunal that at this stage of proceedings, there is no formal burden or standard of proof and the decision on impairment is a matter for the Tribunal's judgment alone.

19. In approaching its decision, the Tribunal was mindful of the two stage process to be adopted. First, whether the Facts found proved were sufficient to amount to misconduct that was serious. Second, whether as a result Dr Akbar's fitness to practise is currently impaired by reason of such misconduct.

20. Throughout its deliberations, the Tribunal bore in mind the statutory overarching objective:

a. Protecting, promoting and maintaining the health, safety and well-being of the public,

b. Promoting and maintaining public confidence in the medical profession, and

c. Promoting and maintaining proper professional standards and conduct for members of that profession.

The Tribunal's Determination

21. In considering the question of impairment, the Tribunal has taken account of all of the evidence, as well as the submissions of Ms Gilsenan, on behalf of the GMC, and those from Dr Akbar.

Misconduct

22. The Tribunal reminded itself that misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances. For the doctor's conduct to amount to misconduct it

must be linked to the practise of medicine or else it must be conduct that otherwise brings the profession into disrepute, and it must be serious. As to seriousness, the Tribunal noted that this must be given its proper weight: it is conduct which would be regarded as deplorable by fellow practitioners.

23. In considering the above, the Tribunal determined that Dr Akbar, by his behaviour set out in the Allegation, and as described by Nurse A, breached the following paragraphs of GMP:

> *"1. Good doctors* […] *maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law."*
>
> *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."*

24. In the above regards, the Tribunal considered that Dr Akbar's actions caused significant distress to Nurse A, both on the day of the events, and since that time (including during the hearing itself).

25. The Tribunal determined that Dr Akbar's sexually motivated behaviour was completely unacceptable and, as such, sufficiently grave such as to amount to misconduct that was serious.

Impairment by reason of Misconduct

26. Having found that the facts found proved amounted to misconduct which was serious, the Tribunal went on to consider whether, as a result of that misconduct, Dr Akbar's fitness to practise is currently impaired.

27. In considering this issue the Tribunal reminded itself that:

- The question of whether Dr Akbar's fitness to practise is impaired is posed, and is to be answered, in the present tense; the Tribunal looks forward not back. However, in order to form a view as to the fitness of a person to practise today, the Tribunal will have to take into account the way in which Dr Akbar has acted, or failed to act, in the past (*Meadow v GMC* [2006] EWCA Civ 1390);

- Case law has established that it must be 'highly relevant' in determining if a doctor's fitness to practise is impaired '*that, first, his or her conduct which led*

to the charge is easily remediable; that, second, it has been remedied; and, third, that it is highly unlikely to be repeated' (*R (on the application of Cohen) v GMC* [2008] EWHC 581 [Admin]);

- The attitude of Dr Akbar to the matters which give rise to the specific allegation against, is (in principle) something which can be taken into account either in his favour, or against him, by the Tribunal. (*Nicholas-Pillai v GMC* [2009] EWHC 1048 [Admin]).

28. The Tribunal found that there had been no evidence to support Ms Gilsenan's submission that Dr Akbar had deliberately targeted a lone female staff member in a work environment, nor that he had exhibited predatory behaviour. Rather, the Tribunal determined that Dr Akbar's misconduct was an impulsive opportunistic act.

29. Neither did the Tribunal accept Ms Gilsenan's submission that Dr Akbar's misconduct represented a significant breach of trust and a violation of his trust and responsibility. This was a chance encounter with a senior nurse of over thirty years' experience with whom he had previously enjoyed a professional relationship, albeit with no management responsibilities.

30. Nevertheless, the Tribunal was of the clear and unequivocal view that Dr Akbar's misconduct was serious in both its nature and effect.

31. While the Tribunal considered that there was some insight and remorse exhibited by Dr Akbar, it noted that he had only articulated this for the first time at impairment stage and, therefore, the weight the Tribunal could attach to it was less than it might otherwise have been, had it been demonstrated earlier. The admissions made at the start of the hearing were limited and excluded sexual motivation. Such apology as he had made to Nurse A was likewise limited, and did not go to the essence of the misconduct. Whilst Dr Akbar's reflective statement appeared to document full admissions to the Allegation, in his oral evidence he was clear that whilst he accepted the Tribunal's findings his account remained unchanged.

32. As for the nature of the insight, the Tribunal found that Dr Akbar showed some understanding during his impairment submissions of the seriously adverse impact his actions had upon Nurse A. However, in contrast to the reflective statement, his oral evidence did not demonstrate any evidence of insight into why he acted as he did.

33. The Tribunal considered, therefore, that because his insight was incomplete, it could not find that it was '*highly unlikely'* such behaviour would be repeated.

34. Considering the position overall, the Tribunal reminded itself of the question it should ask, namely *'do the findings of fact in respect of this doctor's misconduct show that his fitness to practise is impaired in the sense that he;*

> *a. has in the past acted or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
> *b. has in the past brought and/or liable in the future to bring the medical profession into disrepute; and/or*
> *c. has in the past breached or liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
> *d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.'* (*CHRE v NMC & Grant*, quoting Dame Janet Smith in paragraph 25.67 in her Fifth Report from Shipman).

35. The Tribunal found that the answer to limbs (b) and (c) of this question was in the affirmative.

36. In all the circumstances, the Tribunal concluded that public confidence in the profession would be undermined if a finding of impairment were not made.

37. The Tribunal has therefore determined that Dr Akbar's fitness to practise is impaired by reason of his misconduct.

Determination on Sanction - 22/03/2019

1. Having determined that Dr Akbar's fitness to practise is impaired by reason of his misconduct, the Tribunal has now considered what action, if any, it should impose with regard to his registration.

2. In doing so, the Tribunal has given careful consideration to all the evidence adduced at the facts and impairment stages, together with submissions made by Ms Gilsenan, on behalf of the GMC, and Ms Pitters, now instructed on behalf of Dr Akbar.

3. In addition, the Tribunal considered the new material provided on behalf of Dr Akbar at the sanction stage. Namely, a reflective statement, dated 19 March 2019, and various evidence of courses and professional development he had undertaken between 15 July 2018 and 18 March 2019.

Submissions on behalf of the GMC

4. Ms Gilsenan submitted that the appropriate sanction in this case would be erasure of Dr Akbar's name from the Medical Register. She submitted that this is both necessary and proportionate in order to satisfy the statutory overarching objective.

5. Ms Gilsenan directed the Tribunal's attention to the Sanctions Guidance (February 2018 edition)('SG').

6. In considering, first, the potential mitigating factors referred to in the SG, she accepted that Dr Akbar had no previous regulatory findings against him (SG 25b). However, when considering Dr Akbar's character, she invited the Tribunal to bear in mind his conduct during the course of the hearing. She reminded the Tribunal that, during his oral evidence at both the facts and impairment stages, he had denied these matters. He had only today admitted them fully for the first time. In other words, when he gave evidence on oath at the earlier stages, he had deliberately sought to mislead the Tribunal. He had also challenged the accounts of the GMC witnesses, plainly causing them discomfort, despite knowing that he had behaved in the way described in the Allegation. His behaviour in these regards undermined his character and credibility.

7. Ms Gilsenan went on to submit that, in terms of the other factors suggested in SG as being capable of mitigation; few applied – and indeed, of those that did, little weight should be attributed to them:

- He had not co-operated with the process in any substantive way (SG 26d);

- He was not at a stage in his medical career where the Tribunal could, or properly should, make allowance for inexperience. Indeed he was an experienced doctor (SG 27-30);

- In terms of evidence of remediation, (SG 31-32) Ms Gilsenan acknowledged the difficulty for any doctor in remediating serious misconduct and/or sexual misconduct. Nevertheless, even in that context, the evidence Dr Akbar had produced to support his new reflective statement in this regard (namely three documents relating to potentially relevant training) was notable in that it lacked detail of course content and there was no course 'feedback' enabling the Tribunal to assess its remediatory effectiveness. While therefore his reflective statements articulated an expression of remediation, it was a process of remediation that was untested, and notable for the lack of testimonials in support. Ms Gilsenan submitted that substantial weight should be attached to Dr Akbar's failure to demonstrate to the Tribunal how he would avoid a repetition of such conduct in the future;

- Finally, Ms Gilsenan submitted that little weight could be attached to Dr Akbar's new expressions of regret and apology (SG 43-44). While he had, in

his first reflective statement, (15 August 2018, as amended 18 February 2019), seemingly made admissions following the Tribunal's findings of fact; in his subsequent oral evidence on oath at the impairment stage, he equivocated and was not prepared to adopt a clear and coherent position on the nature of his culpability. She pointed out that, in essence, his position since February 2017 had been to dispute the Allegation and challenge the GMC evidence. In view of this, his new reflective statement ought properly to be viewed as neither sincere nor credible – particularly given that he accepted having deliberately misled the Tribunal during the previous course of the hearing. Rather, Ms Gilsenan invited the Tribunal to regard that statement as self-serving and designed simply to mitigate the sanction.

8. In relating to aggravating factors, Ms Gilsenan drew attention to the following:

- The seriousness of events;
- Dr Akbar's abuse of his professional position;
- His sexual motivation;
- Breaches of GMP; and
- The question marks over his integrity arising out of his conduct during the hearing.

9. Ms Gilsenan then submitted the following in relation to sanction.

10. There were no 'exceptional circumstances' that would justify taking no action.

11. In relation to the imposition of conditions on Dr Akbar's registration, Ms Gilsenan submitted these would not be appropriate or proportionate; they would be neither sufficient to protect the public nor to maintain public confidence in the profession. In addition, in cases of sexually motivated misconduct, she submitted that it is difficult to formulate conditions that are workable and measurable.

12. Consequently, Ms Gilsenan submitted that the issue was whether Dr Akbar could be suspended or should properly be erased from the register.

13. Ms Gilsenan submitted that the sanction of suspension would not be sufficient for the Tribunal to satisfy itself that the statutory overarching objective had been met. In submitting this, she invited the Tribunal to bear in mind the following:

- The seriousness of the misconduct;

- The difficulties in remediating such misconduct and the apparent lack of remediation;

- The risk of repetition due to lack of insight; and

- The serious departure from GMP.

14. She submitted that the appropriate sanction would be one of erasure. She submitted that this would be adequate and proportionate to reflect the seriousness of Dr Akbar's misconduct.

15. Ms Gilsenan referred the Tribunal to paragraph 109 of the SG. She submitted that the following limbs are all engaged in this case:

> *"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').*
>
> *f. Offences of a sexual nature, including involvement in child sex abuse materials…*
>
> *j. Persistent lack of insight into the seriousness of their actions or the consequences."*

16. Ms Gilsenan concluded that, balancing all the evidence, in order to protect the public, maintain confidence in the profession and uphold proper standards, it is necessary for the Tribunal to erase Dr Akbar's registration from the Medical Register.

Submissions on behalf of Dr Akbar

17. On behalf of Dr Akbar, Ms Pitters submitted that the appropriate and proportionate sanction is one of suspension. She submitted that a suspension for a period of three months would mark the seriousness of the offence and was a proportionate way to mark the findings at facts and impairment stages.

18. In support, Ms Pitters relied firstly upon paragraphs 28 and 29 of the Tribunal's impairment determination.

19. Ms Pitters submitted that this had been accepted by the Tribunal an opportunistic act and amounted to a single incident of misconduct in the context of Dr Akbar's whole career.

20. While not attempting to minimise its gravity, Ms Pitters observed that Dr Akbar's behaviour could be viewed as occupying the 'lower end' of the sexual misconduct 'scale'. In was unpremeditated act involving one person on one occasion.

21. Ms Pitters also observed that the Tribunal had previously determined that Dr Akbar has developed some insight; and she submitted that, while incomplete, he continues to develop insight. He has now provided full admissions and further reflections on his misconduct.

22. She acknowledged that Dr Akbar did not make full admissions at the outset of the hearing, but submitted that the process of appearing before the Tribunal had been instrumental in assisting Dr Akbar in developing his insight, providing focus to his remediation, and coming to understand the gravity of his misconduct. She submitted that he did have genuine remorse and had now undertaken courses in *Building Professional Relationships, Professional Boundaries* and *Cultural Communications*. These have assisted his evolving understanding of the impact of his actions upon Nurse A, and upon the profession and the wider public.

23. Ms Pitters submitted that an important feature was that Dr Akbar had worked for many years in Pakistan and England and had no previous regulatory findings against him. She submitted that, given his developing insight and efforts at remediation, the chances of repetition of such conduct were very low. Having acknowledged his fault, his behaviour was unlikely to be repeated. Consequently, his position falls within the specification of paragraphs SG 91 - 93, and therefore a sanction of suspension would be appropriate.

24. Finally, she submitted that the sanction of erasure must be reserved for only the most serious of cases. In this case, there has been no harm to patients; and, given the factual basis of this case, coupled with Dr Akbar's developing insight, remorse and remediation, it would be disproportionate to consider a sanction more restrictive than suspension.

The Tribunal's Approach

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

26. In reaching its decision, the Tribunal has taken account of the Sanctions Guidance (2018) and Good Medical Practice (2013). It has borne in mind that the purpose of a sanction is not to be punitive, but to protect patients and the wider public interest, although it may have a punitive effect.

27. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Akbar's interests with the public interest. It has taken account of the statutory overarching objective, which includes the protection of the public, the maintenance of public confidence in the profession, and the promoting and maintaining of proper professional standards and conduct for members of the profession.

28. The Tribunal has already given a detailed determination on facts/impairment and has taken those matters into account during its deliberations on sanction.

Mitigating and Aggravating Factors

29. The Tribunal first identified the mitigating factors in this case.

30. First, it noted that Dr Akbar had no previous regulatory findings recorded against him. The Tribunal considered that this was a clear mitigating factor (SG 25b).

31. The Tribunal then went on to consider whether other factors mitigated in Dr Akbar's favour. However, the Tribunal could find little of any force in relation to those matters set out in SG 25-49, nor could it identify anything else that might do so (bearing in mind SG did not suggest that its 'factors' were intended to be exhaustive):

- While there had been a two-year lapse since the commission of the misconduct, and the Tribunal had no evidence of repetition since then, the mitigating weight of this was diminished because the doctor had not practised medicine during most (if any) of that time. (SG 25e)

- Dr Akbar is an experienced doctor and so could not attribute his misconduct to inexperience (SG 27-29). In any event, the Tribunal noted that *"in cases involving serious misconduct* […] *the stage of a doctor's UK medical career will have limited influence on the Tribunal's decision about what action to take"* (SG 30).

- In terms of remediation of concerns (SG 26, 31 - 33), while Dr Akbar had presented evidence at the sanction stage by which he sought to attest to his growing insight and remediation, the Tribunal noted that his new reflective

statement ran directly contrary to the position he had adopted in his oral evidence and oral submissions at both the facts and impairment stages.

Moreover, two of the three courses he now relied upon as evidence of gaining insight and developing remediation preceded, by several months, the start of this hearing. Therefore, given the nature of his evidence at this hearing (which he now concedes was untruthful), it suggests those courses had limited impact in terms of Dr Akbar's insight and their remedial reach.

The Tribunal accepted the force of Ms Gilsenan's point, too: that in relation to all three courses, the Tribunal had scant information before it about their content (Dr Akbar did not give evidence at the sanction stage), nor did it have any independent feedback on its impact in terms of any resultant changes others had perceived in relation to Dr Akbar's subsequent attitudes and behaviour.

Taking these matters together, the Tribunal determined that any process of remediation was in its infancy.

- There were no references or testimonials in support of Dr Akbar (SG 34-40). While, to be clear, the Tribunal was aware that *'there may be cultural reasons for not requesting references and testimonials…'*(SG 41b); nevertheless, as a matter of fact, no such mitigating evidence was provided.

- Expressions of regret and apology (SG42-44). While the Tribunal noted that, in Dr Akbar's new reflective statement, he had expressed regret and apology for his conduct and had done so in clear and detailed terms; the Tribunal considered that its mitigating weight was diminished due to the stage at which it had been evinced. The Tribunal was certainly not aware of any earlier such expressions of regret or apology going to the gravamen of the Allegation. (It accepted, of course, that his first reflective statement at impairment had started to do this, but his oral evidence had run directly contrary.) Dr Akbar's apology to Nurse A was limited and of little weight given that he had cross examined Nurse A to the effect that she was untruthful in her account.

- The doctor's insight into the concerns (SG 45-49). It will follow from the foregoing that, while there is some evidence of insight emerging – somewhat confusedly and obliquely expressed at impairment stage, and more clearly in submissions and supporting evidence at sanction stage – its mitigating value is limited. In other words, Dr Akbar cannot be said to have taken `*timely steps to remediate and apologise at an early stage before the hearing'* (SG 46b). Insofar as he had previously apologised, it did not go to the essence of the misconduct. Nor can he be said to have demonstrated convincingly *'the timely development of insight during the investigation and hearing'* (SG 46c).

32. Turning to the aggravating factors, the Tribunal considered the following relevant:

- Sexual misconduct was, of itself, an aggravating factor (SG 55e); and
- As indicated, Dr Akbar had not demonstrated a timely development of insight (SG 52c) and, by his own admission, he had *'failed to tell the truth during the hearing'* (SG 52d).

The Tribunal's Determination on Sanction

33. The Tribunal considered each sanction in ascending order of seriousness, starting with the least restrictive.

No action

34. The Tribunal first considered whether to conclude this case by taking no action. However, the Tribunal determined that there were no exceptional circumstances that would justify this.

Conditions

35. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Akbar's registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measureable.

36. Reflecting on this, the Tribunal determined that, given the nature of its concerns and the basis for its finding of impairment, conditions would not be appropriate in this case.

Suspension

37. The Tribunal determined that the appropriate sanction in this case would be one of suspension.

38. In reaching its decision, the Tribunal was mindful of the essence of the Allegation.

39. At its fullest extent, this was a doctor who had used inappropriate language towards a colleague (calling her young and attractive) and had gone on inappropriately to put his arms around her and to try to kiss her.

40. The Tribunal was unequivocal that this was serious, and clear too that such sexually motivated conduct was wholly unacceptable. At the same time, having seen

and heard the evidence, the Tribunal considered that, while serious, it was nevertheless at the lower end of sexually motivated misconduct. It was a momentary act – impulsive, misjudged and entirely improper – but it was also (on the evidence before the Tribunal) out of character. It did not form part of a pattern of behaviour, and Dr Akbar had no other Fitness to Practise findings against him (SG 97f). The Tribunal were bound therefore to regard him as otherwise of good character.

41. In short, Dr Akbar's conduct represented a departure from proper standards of conduct and behaviour, and went directly to the issue of eroding public confidence in the profession. Against that background, the Tribunal considered that a period of suspension would have a deterrent effect and could be used to send out a signal to Dr Akbar, the profession, and the public about what is regarded as behaviour unbefitting a registered doctor. A period of suspension is appropriate in this case because it has involved conduct on Dr Akbar's part that is serious but falls short of being fundamentally incompatible with continued medical registration (SG 97a).

42. For completeness, the Tribunal wishes to add that, in reaching its decision, it considered carefully whether such misconduct justified erasure as the least restrictive sanction. In doing so, it reflected on all the evidence, as well as upon the submissions from parties.

43. However, fundamentally the Tribunal did not consider Dr Akbar's misconduct could be characterised (per SG 109a) as *'a particularly serious departure from the principles set out in* [GMP] *where the behaviour is fundamentally incompatible with being a doctor'*. Rather considering all the facts, the Tribunal determined that this isolated occurrence was more accurately characterised in SG 97a (see above).

44. Reflecting upon the other factors relied upon in Ms Gilsenan's submissions in relation to SG 109 (and while bearing in mind that *'any of those* [factors] *being present may indicate erasure is appropriate')*, the Tribunal's view was this:

- The Tribunal found on the facts that this was not a deliberate or reckless disregard from the principles set out in GMP and/or patient safety (SG 109b);

- While the misconduct was manifestly of a sexual nature (SG 109f), the Tribunal's assessment of its gravity has been set out above;

- The Tribunal determined that Dr Akbar's actions had not amounted to an abuse of his position (SG 109d), in the sense that it was not his 'position' as such which had, in any substantive sense, facilitated the misconduct. Meanwhile, in terms of 'trust', while plainly any finding of impairment can impact adversely on public 'trust' in the profession (SG 109d), this did not perforce mean that erasure should always properly follow (hence the wording

in SG 109 that a factor *'may indicate erasure is appropriate')*. It was a question of fact and degree.

- Finally, in assessing the relevance of SG 109j, the Tribunal determined that Dr Akbar had denied the Allegation until the sanction stage; that his conduct during the hearing (prior to that stage) had done him discredit; and that his insight was far from complete. Nevertheless, when assessing whether the position overall could enable the Tribunal to attribute Dr Akbar with *'a persistent lack of insight into the seriousness of* [his] *actions or the consequences'* (SG 109j), it also bore in mind that in his newest reflective statement, Dr Akbar had begun to articulate a clear understanding of the seriousness of his actions and their consequences. Moreover, this was against a background where notably he had not been brought before the Tribunal for multiple discrete acts of misconduct, but rather an isolated occurrence. Taken together, the balance of the evidence was not sufficiently strong to persuade the Tribunal that this factor was engaged.

45. It was against this background that, taking into account proportionality and the requirement to impose the least restrictive sanction that would satisfy the statutory overarching objective, the Tribunal determined Dr Akbar's misconduct did not warrant the sanction of erasure. In the Tribunal's judgment, the correct sanction was one of suspension.

46. The Tribunal went on to consider the length of suspension, taking into account the SG in that regard.

47. Given the seriousness of the misconduct and Dr Akbar's current level of insight and remediation, the appropriate period of suspension was determined to be twelve months. This would be sufficient time for Dr Akbar to address his impairment and to signal that his conduct represented a departure from proper standards of conduct and behaviour, and went to the issue of eroding public confidence in the profession.

Review hearing directed

48. The Tribunal considered whether it would be appropriate to direct a review hearing in Dr Akbar's case. It has borne in mind that no doctor should be allowed to resume unrestricted practice following a period of suspension unless the Tribunal considers that they are safe to do so. The Tribunal had regard to paragraph 163 of the SG which states:

> "*163. It is important that no doctor is allowed to resume unrestricted practice following a period of conditional registration or suspension unless the tribunal considers that they are safe to do so."*

49. The Tribunal determined to direct a review hearing in this case. The Tribunal wished to clarify that, at the review hearing, the onus will be on Dr Akbar to demonstrate how he has developed his insight into, reflected upon and remediated his misconduct.

50. A reviewing Tribunal will be assisted by:

(a) Evidence that Dr Akbar has kept his clinical skills and knowledge up-to-date;

(b) A reflective diary to demonstrate the evolution of his insight and remediation to a point of completion; and

(c) Testimonials to support his progress.

51. Dr Akbar will also be able to provide any other evidence or information that he considers would assist a Tribunal.

Determination on Immediate Order - 22/03/2019

1. Having determined that Dr Akbar's registration be made subject to suspension, the Tribunal has now considered in accordance with Rule 17(2)(o) of the Rules, as amended, whether to impose an immediate order on his registration.

Submissions

2. Ms Gilsenan submitted that the Tribunal should revoke the current Interim Order of suspension currently in place on Dr Akbar's registration and impose an immediate order of suspension. She referred the Tribunal to Section 38 of the Medical Act 1983 and paragraphs 172, 173, 177 and 178 of the Sanctions Guidance (SG).

3. Ms Gilsenan stated that in the particular circumstances of this case, and considering the Tribunal's determinations on the facts, impairment and sanction, it is necessary and in the public interest to impose an immediate order of suspension.

4. On behalf of Dr Akbar, Ms Pitters made no submissions regarding the imposition of an immediate order.

The Tribunal's Decision

5. In reaching its decision, the Tribunal has exercised its own judgement, and balanced the interest of the doctor to those of the public. The Tribunal has borne in

mind that it may impose an immediate order where it is satisfied that it is in the public interest, or is in the best interests of the practitioner. It has also borne in mind the guidance given in the relevant paragraphs of the SG, specifically 172, 173, 177 and 178.

6. The Tribunal determined that in light of its findings during the facts, impairment and sanction stages and considering the particular circumstances of this case, an immediate order of suspension is appropriate and necessary. It determined that this is necessary in the public interest; and is required to uphold and maintain proper professional standards.

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

8. The Interim Order currently imposed on Dr Akbar's registration will be revoked when the immediate order takes effect.

9. That concludes this case.

Confirmed
Date 22 March 2019 Mr Neil Dalton, Legally Qualified Chair

ANNEX A – 11/02/2019

Application to admit further evidence

1. Dr Akbar made an application to admit a note of a telephone conversation between Ms E and Ms F.

Submissions

2. Dr Akbar submitted that this could add useful context to the veracity of the Trust investigation and supported his own evidence and account of events. In particular, it provided evidence that, contrary to Nurse A's claim, she did not raise Dr Akbar's behaviour with Ms E.

3. Ms Gilsenan submitted that, while she did not object to the admission of the document, in the absence of its author, its contents could not be tested or verified and, therefore, could only have a limited weight attached to it.

Tribunal decision

4. The Tribunal considered Rule 34(1) of the Rules:

> *"The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law."*

5. In reaching its decision, the Tribunal has borne in mind the principle of fairness to both parties.

6. The Tribunal first considered whether the note was relevant to the matters before it, and determined that as per paragraph 2 above, it was capable of being relevant.

7. The Tribunal next considered whether it would be fair to admit the document in evidence. It bore in mind that its author was not available to speak to its contents and considered therefore whether its admission would be unfair. However, the tribunal determined that absence of the document's author was an issue it could take in to account in assessing the weight the Tribunal might seek to attach to that document.

8. Accordingly, the Tribunal has determined to accede to Dr Akbar's application under Rule 34(1) and admit the document into evidence

ANNEX B – 11/02/2019

Determination on Identification of a Potential Conflict of Interest

Background

1. When the GMC witness Dr C was called to give evidence, lay Tribunal member, Ms Crawley, declared that although she had not recalled the witness's name, she recognised Dr C as someone she had previously worked alongside.

2. Consequently, the Tribunal, in open session, elicited the nature of their previous contact. Ms Crawley indicated that she had worked alongside Dr C on a MPTS Tribunal on one occasion approximately three years ago.

3. They had no professional or personal relationship either before then or since, and had only seen each other once since that time, when they were in each other's presence in a coffee room. They had never discussed this case, nor any other case, other than the one they worked on together.

4. Dr C agreed with Ms Crawley's description of the nature and extent of their previous contact.

5. Ms Crawley indicated that nothing in their previous contact would predispose her to any particular view of Dr C's evidence.

Relevant Legal Principals

6. The overriding consideration is whether the proceedings are fair and would be seen to be fair.

7. The Legally Qualified Chair directed the Tribunal's attention to a number of judgments which set out legal principles relating to recusal.

8. The test for bias is as set out by the House of Lords in **Porter v Magill** [2002] 2 AC 357: namely, whether the fair-minded and informed observer, having considered the relevant facts, would conclude that there was a real possibility that the tribunal was biased.

9. This test was subsequently endorsed in **Helow v Secretary of State for the Home Department** [2008] 1 WLR 2416: *"Would a fair minded and informed observer, not unduly sensitive or suspicious, on considering the facts, conclude that there was a real possibility of bias?"*

10. In the context of health regulatory proceedings, the test was also articulated in **Rasool v General Pharmaceutical Council [2015] EWHC 217 (Admin)**:

"Would a fair minded observer, having considered the relevant facts, consider there was a real possibility that the Tribunal was consciously or unconsciously biased?"

Submissions

11. Dr Akbar and Ms Gilsenan, on behalf of the GMC, each indicated that they were content that there was no conflict of interest in the circumstances, and neither party requested that Ms Crawley should recuse herself.

The Tribunal's Decision

12. Notwithstanding the submissions from parties, the Tribunal was clear that the overarching consideration was whether the procedures were fair and would be seen to be fair.

13. The Tribunal considered the following factors relevant to its decision:

- Dr C and Ms Crawley had only encountered each other once, in a purely professional context, approximately three years ago;
- since then, their only other contact was to acknowledge one another in the MPTS Tribunal members' lounge;
- they had no social or other relationship;
- they have never discussed this case; and
- Ms Crawley was not predisposed to any view of any evidence Dr C might provide as a result of her previous dealings with her.

14. The Tribunal therefore determined that a fair-minded observer would judge that there is not a real possibility of bias and, accordingly, the Tribunal determined that Ms Crawley would not need to recuse herself from these proceedings.

ANNEX C – 19/02/2019

Application for Adjournment under Rule 29(2) – 19 February 2019

1. This case was listed until 19 February 2019. Due to there being insufficient time to conclude the case the Tribunal has determined to adjourn this hearing part-heard, under Rule 29(2).

2. The Tribunal determined that it will reconvene for 2 days, in order to complete the case on the following dates: 20 March 2019 and 22 March 2019.

3. The hearing is now adjourned.