

## PUBLIC RECORD

Dates: 25/03/2024 - 12/04/2024

Medical Practitioner's name: Dr Vikram Gangaiah AARELLA

GMC reference number: 6047596

Primary medical qualification: MB BS 1999 Bangalore

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

## Summary of outcome

Erasure

## Tribunal:

Legally Qualified Chair	Mrs Nessa Sharkett
Lay Tribunal Member:	Dr Matthew Fiander
Medical Tribunal Member:	Dr Janet Nicholls
Tribunal Clerk:	Mx Nate Caruso-Kelly

## Attendance and Representation:

Medical Practitioner:	Not present, not represented
GMC Representative:	Mr Ciaran Rankin, 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 - 09/04/2024

#### Background

1. Dr Aarella qualified in 1999 at the University of Bangalore. At the time of the events that led to this Tribunal Dr Aarella was working as a locum Consultant in Acute Medicine at Hull University Teaching Hospitals NHS Trust ('the Trust').
2. The conduct complained of that has led to Dr Aarella's hearing is said to have amounted to sexually motivated conduct towards two junior colleagues, Dr A and Dr B, who were XXX.
3. In relation to Dr A, it is alleged that, on 7 October 2022, while working with Dr A in the A&E Department, Dr Aarella inappropriately touched her on several occasions throughout the day, made comments about her appearance, asked questions about her private life, hugged her and kissed her on the cheek in a manner which was sexually motivated and amounted to sexual harassment as defined under the Equality Act 2010 (the '2010 Act'). It is also alleged that Dr Aarella told Dr A that she should not marry a XXX man as "They are the worst type of men. They treat people badly, are gross and creepy" and also used words to the effect that they are oppressive. It is alleged that the words spoken on this occasion amount to harassment related to race as defined by the 2010 Act.
4. In relation to Dr B, it is alleged that, on 10 October 2022, whilst working with Dr B in the Acute Admissions Unit at the Trust, Dr Aarella touched Dr B on several occasions, in a manner which was sexually motivated and amounted to sexual harassment under the 2010 Act.

#### The Outcome of Applications Made during the Facts Stage

5. The Tribunal granted the GMC's application, made pursuant to Rule 31 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules') that service has been effected, and that it would be appropriate to proceed in the absence of Dr Aarella. The Tribunal's full decision on the application is included at Annex A.

6. The Tribunal granted the GMC's application, made pursuant to Rule 34(1) of the Rules, that the witness statement of Mr D be admitted into evidence without the need for him to attend to give oral evidence. On behalf of the GMC, Mr Rankin explained that Mr D resided in the UAE, a country that has not currently granted permission for oral evidence by video link or telephone to be given to a Court or Tribunal in England or Wales whilst residing in that country. Mr Rankin explained that the GMC has through the Foreign, Commonwealth and Development Office sought permission for Mr D to give oral evidence from the UAE, however, no response had been received from the UAE and it had advised against hearing from Mr D. Mr Rankin further explained that Dr Aarella has been served with Mr D's statement several months ago, and that therefore he is aware of its contents. Mr Rankin submitted that the document is clearly relevant, and it would be fair to admit the same on the basis that the Tribunal would attach as much weight to it as it considered appropriate given that the Tribunal would not be afforded the opportunity to question Mr D on his statement. The Tribunal determined to allow the statement of Mr D to be admitted into evidence as it is relevant to the issues to be determined by the Tribunal and fair to do so. In reaching this decision the Tribunal had regard to the circumstances which has led to Mr D being unable to attend and any prejudice to Dr Aarella in admitting the statement. The Tribunal was satisfied that Dr Aarella had previously been served with a copy of the witness statement and, that in the absence of the opportunity to question Mr D for the purposes of clarification it would attach the weight it considers appropriate in the circumstances.

7. The Tribunal also granted the GMC's application, made pursuant to Rule 34(1) of the Rules, that a supplementary statement by Dr A be admitted into evidence. Mr Rankin submitted that the statement had been sent to Dr Aarella and no reply had been received, further that this statement only sought to clarify matters raised in Dr A's first statement and can therefore be admitted without prejudice to Dr Aarella. The Tribunal determined that the statement was relevant to the issues to be determined by the Tribunal, and having been sent to Dr Aarella, could be fairly admitted without prejudice to him.

8. At the close of the GMC case, the Tribunal granted the GMC's application, made pursuant to Rule 34(1) of the Rules, that a redacted version of the determination made in previous fitness to practise proceedings against Dr Aarella be admitted into evidence. Mr Rankin submitted that in September 2022 a previous Tribunal had found proven Allegations of sexually motivated conduct, towards three junior female colleagues. Mr Rankin informed the Tribunal that the previous Tribunal had found Dr Aarella's fitness to practise impaired by his misconduct and imposed an Order of suspension of his registration for a period of ten months. Mr Rankin submitted that this was relevant evidence which demonstrated a propensity on the part of Dr Aarella to behave in a manner towards female junior colleagues that was sexually motivated. Mr Rankin accepted that this document was relevant in relation to sexually motivated conduct only but submitted that it was fair to admit it and was relevant

to the Tribunal's considerations. The Tribunal admitted the determination into evidence, on the basis that it was relevant and fair to do so and may assist its decision.

### The Allegation and the Doctor's Response

9. The Allegation made against Dr Aarella is as follows:

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

#### Dr A

1. On 7 October 2022 whilst working with Dr A in the Accident and Emergency Department ('A&E') at Hull University Teaching Hospitals NHS Trust ('the Trust') you:
  - a. sat closely beside Dr A, in that your left knee and thigh were touching the right side of Dr A's right knee and thigh;  
  
**To be determined.**
  - b. on one or more occasion:
    - i. leant over Dr A to grab some papers, brushing your right arm over Dr A's breast;  
  
**To be determined.**
    - ii. whilst walking together to the Minors area:
      1. bumped into Dr A when walking down the corridor;  
  
**To be determined.**
      2. made contact with the right side of Dr A's thigh with your left hand whilst walking next to each other;  
  
**To be determined.**
  - c. brushed against Dr A's breast with your left arm and base of your left hand when reaching to open the door to the Minors area;  
  
**To be determined.**
  - d. on one or more occasion put your hand(s) on Dr A's waist;

**To be determined.**

- e. went to the A&E staff room with Dr A where you:
- i. moved very close to Dr A so that your right leg was touching her left leg;

**To be determined.**

- ii. moved closer to Dr A again after she moved away from you;

**To be determined.**

- iii. asked Dr A which specialty she wanted to go into, stating that being a medical registrar was difficult but it was better once you were a consultant because “you can work with pretty XXX like I’m working with now”, or words to that effect;

**To be determined.**

- iv. on one or more occasion, put your hand over and around Dr A’s hand whilst she was holding her mobile phone;

**To be determined.**

- v. put your right arm around Dr A and pulled her towards you, giving her a little shake of her body;

**To be determined.**

- vi. told Dr A:
  1. about when you were next working on the Acute Medical Unit, and that you should have lunch and coffee together;
  2. to email the rota co-ordinator to change her shift so that she could work with you;

or words to that effect;

**To be determined.**

- f. walked to the car park with Dr A at the end of your shift and:

- i. asked Dr A if she had a boyfriend, or words to that effect;

**To be determined.**

- ii. said to Dr A 'whatever you do don't marry a XXX man. They are the worst type of men. They treat people badly, are gross and creepy. They are oppressive', or words to that effect;

**To be determined.**

- iii. on one or more occasion said to Dr A 'give me a hug', or words to that effect;

**To be determined.**

- iv. put your arms around Dr A between her shoulders and waist;

**To be determined.**

- v. kissed Dr A on the cheek.

**To be determined.**

#### Dr B

2. On 10 October 2022, whilst working with Dr B in the Acute Admissions Unit at the Trust you:

- a. whilst on a ward round with Dr B, on one or more occasion put your hand(s) on her:

- i. shoulder(s);

**To be determined.**

- ii. upper back;

**To be determined.**

- b. blocked a cubicle door so that when Dr B had to exit, she was forced to brush past you at which point you placed your hand on her back;

**To be determined.**

- c. brushed the palm of your left hand against Dr B's stomach.

**To be determined.**

- 3. Your actions as set out at:

- a. paragraph 1 (excluding paragraph 1fii):

- i. constituted sexual harassment as defined in 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 Dr A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Dr A;

**To be determined.**

- ii. were sexually motivated;

**To be determined.**

- b. paragraph 1fii constituted harassment related to race as defined in Section 26(1) of the Equality Act 2010, in that you engaged in unwanted conduct related to race which had the purpose or effect of violating the dignity of Dr A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Dr A;

**To be determined.**

- c. paragraph 2:

- i. constituted sexual harassment as defined in 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 Dr B, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Dr B;

**To be determined.**

- ii. were sexually motivated.

**To be determined.**

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

### Witness Evidence

10. The Tribunal received evidence on behalf of the GMC from the following witnesses who also gave oral evidence:

- Dr A, witness statements dated 21 February 2023 and 11 March 2024;
- Dr E, witness statement dated 6 October 2023;
- Dr F, witness statement undated;
- Dr G, witness statement dated 16 May 2023;
- Dr B, witness statement dated 3 March 2023; and
- Dr H, witness statement dated 19 April 2023.

11. The Tribunal also received evidence on behalf of the GMC in the form of a witness statement from the following witness who was not called to give oral evidence for the reasons set out above:

- Mr D, dated 17 April 2023.

### Documentary Evidence

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

- Dr A's written account produced for Dr G on 10 October 2022,
- WhatsApp messages between Dr A and Mr D dated 7 October 2022,
- WhatsApp messages between Dr A and Dr F dated 7 October 2022,
- emails between Dr A and Dr G dated between 7 and 13 October 2022,
- notes from a meeting between Dr A, Dr G and Dr E, dated 18 October 2022,
- notes from a meeting between Dr B, Dr H and Dr E, dated 18 November 2022,
- emails between Dr E, Dr B and various colleagues dated between 12 October 22 and 12 January 2023,
- Humberside Police Occurrence Report in relation to Dr A, dated 10-21 November 2022,
- extract from Dr Aarella's appraisal,
- Dr Aarella's Rule 7 response,
- undated letter of apology to Dr A,
- various course certificates dated between November 2022 and May 2023,
- various testimonials, and



- the redacted September 2022 MPTS Determination.

### The Tribunal's Approach

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

14. The Tribunal accepted the advice of the LQC that, in determining whether or not the alleged conduct was sexually motivated the Tribunal must first consider whether, on the balance of probabilities and in light of the evidence before it, each alleged event occurred. If found proven it must then go on to decide whether the actions of Dr Aarella were sexually motivated i.e. whether they were (a) for sexual gratification and/or (b) with a view to a future sexual relationship –often referred to in other sexual misconduct cases as ‘grooming’.

15. In respect of the charges of harassment under s26 of the 2010 Act, the legislation provides: (our emphasis)

- ‘S26(1) A person (A) harasses another (B) if-*
- (a) A engages in unwanted conduct related to a relevant protected characteristic, and*
  - (b) The conduct has the purpose or effect of –*
    - (i) Violating B’s dignity, or*
    - (ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for B*
- (2) A also harasses B if –*
- (a) A engages in unwanted conduct of a sexual nature, and*
  - (b) the conduct has the purposes of effect referred to in subsection (1)(b)*
  - (3).....*
  - (4)In deciding whether conduct has the effect referred to in subsection (1)(b) each of the following must be taken into account –*
    - (a) the perception of B*
    - (b) the other circumstances of the case*
    - (c) whether it is reasonable for the conduct to have that effect.’*

16. The LQC explained each element of the test to be met in determining whether any of the alleged conduct was conduct that would amount to Harassment as defined by s26 of the 2010 Act.

17. The Tribunal has been told that Dr Aarella has previously appeared before his Regulator and a Tribunal has found proven that his conduct in respect of three female junior doctors was sexually motivated. Whilst this information may assist the Tribunal in its decision making in respect of the current allegations of sexually motivated conduct, it is not in and of itself proof that Dr Aarella has carried out the alleged misconduct and does not discharge the burden on the GMC to prove the same. The Tribunal is required in the normal way to have regard to all the documentary and oral evidence that relates to the Allegation before it, before considering whether an inference should be drawn in respect of the findings of the previous Tribunal.

### The Tribunal's Analysis of the Evidence and Findings

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

#### Paragraphs 1 (a) and 1 (b) i

19. It is not disputed that Dr Aarella was working with Dr A in the A&E department at the Trust on 7 October 2022.

20. The Tribunal had regard to the evidence of Dr A and the account which she emailed to Dr G on the evening of 10 October 2022, three days after her shift with Dr Aarella. The Tribunal noted that Dr A had been asked to provide this information following her initial complaint to Dr G on the night of the alleged events. In the email, Dr A recounted sitting next to Dr Aarella as follows:

*'When I was sat at the computer he was sitting next to me quite closely and talking to me about where I was from, my siblings and what my family did.'*

21. The Tribunal noted that in the statement which Dr A prepared for these proceedings around four months later she provided further detail of the 7 October events. In it she stated:

*'When I was sitting at a computer on an office swivel chair, Dr Aarella came and sat beside me on another office chair. His left knee and left thigh were touching the right side of my knee and thigh. Whilst talking to me and sitting this closely, Dr Aarella would lean over to grab some paper next to me so with his right upper arm and whilst doing this, his arm would brush against my breast. It was very brief but happened two or three times and I thought it must have been an accident. Dr Aarella asked me where I was from.'*

22. In oral evidence, Dr A described in detail the layout of the department, the office, and the desk. Dr A described how Dr Aarella moved his chair closer to hers because they were sharing one computer screen. Dr A also described how Dr Aarella had also moved his chair closer to the other male junior doctor when he was sharing the computer on which he was working.

23. The Tribunal considered Dr Aarella's Rule 7 Response, which stated:

*'The doctor does not recall sitting too closely to Dr A or brushing over Dr A's breast whilst grabbing some papers.'*

24. The Tribunal found that, although Dr A did not specifically mention that Dr Aarella had pressed his leg against hers or brushed his hand over her breast in her initial email account to Dr G, only describing it as Dr Aarella being 'close' to her, it was satisfied that at the time of making the statement to the GMC some 4 months after the incident, the alleged events would still have been fresh in her mind and the giving of the statement was an opportunity for her to explain in more detail the events of the day. Dr A had explained that in the email to Dr G she had concentrated on those matters that had most disturbed her. The Tribunal found that Dr A was consistent in her evidence before this Tribunal and did not seek to embellish her account. The Tribunal further bore in mind that at the time of this particular incident Dr A still believed the touching was accidental and wanted to give Dr Aarella the benefit of the doubt, therefore she may not have seen this as a concerning incident when she gave her first account to Dr G.

25. The Tribunal noted that Dr Aarella has been unable to shed any further light on the incident. He did not deny this allegation, and has only stated that he 'does not recall' having sat too close to Dr A or having brushed over her breast. The Tribunal accepted the clear and consistent evidence of Dr A and found that on the balance of probabilities Dr Aarella had conducted himself in the manner set out at paragraphs 1(a) and 1(b).

26. The Tribunal therefore found paragraphs 1 (a) and 1 (b) i proved.

Paragraph 1 (b) ii 1 and 2

27. The Tribunal first considered the initial account Dr A provided to Dr G, in which she stated:

*'At around 6pm we finished clerking the patient and doing the jobs and he told [the other junior doctor] to stay in majors whilst we went down to minors. Whilst we were walking in the corridors he would change his pace and he wasn't walking in a straight line so his hands would bump into my thighs and my breast multiple times and if he*

wanted to move past me he would touch my waist to get past. This made me feel very uncomfortable but I was making excuses and tried to convince myself that it was an accident.'

28. Dr A provided further detail about this incident in her witness statement to the GMC:

*'Dr Aarella told [the other junior doctor] to stay in majors whilst I went down to minors with Dr Aarella which was in a different area of the hospital and involved a few minutes walk down a long, windy corridor. I had never been to minors so I didn't know the way and needed Dr Aarella to show me. Dr Aarella walked on my right hand side but in a very odd way. He wouldn't walk in a straight line, sometimes he would be in front of me and I'd have to walk faster to keep up with him and sometimes he'd walk slower so I'd have to slow down. If I was ahead and starting to slow down or behind and needed to speed up, Dr Aarella would physically bump into me and say, 'Oh sorry'. This happened on five or six occasions. Whilst walking next to each other, the back of Dr Aarella's left hand would make contact with the side of my right thigh and this happened on around 10 occasions. His hand was touching my thigh for a second or two but I could feel it and it made me feel uncomfortable.'*

29. The Tribunal further noted the witness statement provided by Dr F which was slightly inconsistent with the account of Dr A. Dr F had spoken to Dr A on the phone shortly after she finished her shift, and stated that Dr A said:

*'that she was asked to go to a different part of the ED to help out as they were understaffed and Dr Aarella volunteered himself to join her and whilst walking there, Dr Aarella was being physically inappropriate with her by touching her buttocks and making it seem like an accident when it clearly wasn't.'*

30. Dr Aarella's Rule 7 Response to this paragraph, in which he recalls walking to minors with Dr A is:

*'During the shift, Dr Aarella accompanied Dr A to various locations in the building through public corridors. The doctor denies that he was walking in a way where his hand bumped into Dr A's breasts and thighs and touched her waist to walk past her. He maintains that particularly given the public location of the alleged behaviour, the alleged behaviour would have been completely unprofessional.'*

31. In oral evidence Dr A described Dr Aarella's behaviour as strange, that the corridor was not busy and that she began to feel that he was taking any opportunity he could to touch her.

32. In determining this paragraph, although the evidence of Dr F was slightly inconsistent in one respect, in that he recalled Dr A referring to the touching of her buttocks and not her breast, the Tribunal was satisfied that this inconsistency may have arisen as a result of the passage of time between the alleged events and the production of Dr F's witness statement, and his ability to recall exactly the part of the body Dr A referred to. The Tribunal found that the core of Dr A's evidence remained the same and was on the whole consistent with the account that Dr F recalls her giving on the day of the alleged event. Dr A had provided a consistent and detailed account of the repeated touching in the corridor. Having had regard to the evidence in the round the Tribunal was satisfied that, on the balance of probabilities, Dr Aarella had conducted himself in the manner described in paragraphs 1(b)ii and 1 and 2.

33. The Tribunal therefore found paragraphs 1 (b) ii 1 and 2 proved.

#### Paragraph 1 (c)

34. The Tribunal first considered Dr A's account to Dr G as set out above. The Tribunal noted that Dr A did not make specific mention of Dr Aarella touching her breast as he opened a door, however she did specify that he touched '*my thighs and my breast*' while walking in the corridors.

35. The Tribunal then considered the account provided in Dr A's witness statement:

*'I couldn't open all the doors we had to get through to get to minors because of my security access so on reaching those doors, Dr Aarella put his hand out to open the door with his pass and then his left arm and base of his left hand would brush against my breast as he reached for the door.'*

36. The Tribunal accepted Dr A's evidence that XXX and it was reasonable that she would need Dr Aarella to use his pass to open some doors. In oral evidence, Dr A stated, '*I think I was feeling the same, sort of nervous, uncomfortable, a bit unsure, uncertain about what to do, when he would touch my waist or my thigh it felt like he might not have known he was doing that, but then when he opened door or the button or touching my waist - people do that knowingly*'.

37. The Tribunal found that it was plausible that Dr Aarella's arm may have brushed Dr A's breast as he was reaching across her to open a door in the manner she described. The Tribunal was mindful that Dr A did not mention this incident specifically in her account to Dr G, however it found that this incident formed, in Dr A's mind, part of the same incident in the corridor, during which she was touched repeatedly by Dr Aarella during the journey from Majors to Minors. In addition, as set out above, the Tribunal found that the statement to the

GMC was Dr A's opportunity to set out in more detail the alleged events of 7 October. The Tribunal found that Dr A had given a consistent and candid account of the manner in which the incidents in the corridors had taken place and, where asked, was able to demonstrate to the Tribunal the manner in which the touching occurred without embellishment. The Tribunal accepted Dr A's evidence and found that on the balance of probabilities Dr Aarella had brushed against Dr A's breast as alleged.

38. The Tribunal therefore found paragraph 1 (c) proved.

Paragraph 1(d)

39. The Tribunal first considered Dr A's account provided to Dr G, in which she stated, '*if he wanted to move past me he would touch my waist to get past*'.

40. The Tribunal then considered Dr A's witness statement, in which she stated:

*'When Dr Aarella had opened the door, he stood behind me and put his hand on my waist. When in the corridor, there was a desk with computers and patient notes and whilst standing next to me there for a few seconds, Dr Aarella put his hands on my waist and moved me to the side so that he could get to the notes. It just felt like he would make any excuse to touch my body'*

41. In Dr Aarella's Rule 7 Response to this paragraph he denied touching Dr A's waist as he walked past her.

42. The Tribunal had regard to Dr A's oral evidence in which she stated that she believed Dr Aarella had touched her waist knowingly, and she was not able to make the same excuses as she had for the other touching. The Tribunal noted that the touching of her waist was confirmation for Dr A that her previous suspicions were well founded and that Dr Aarella's behaviour was deliberate. As set out above the Tribunal accepted Dr A's consistent account of being touched on the waist by Dr Aarella during the journey along the corridor to Minors and found on the balance of probabilities that Dr Aarella had touched Dr A on her waist as alleged.

43. The Tribunal therefore found paragraph 1 (d) proved.

Paragraph 1 (e) i and ii

44. It is not disputed that Dr A and Dr Aarella went to the A&E staff room together. The Tribunal noted that in his Rule 7 Response, Dr Aarella recalled that he had showed Dr A the staff room.

45. The Tribunal first considered Dr A's initial account to Dr G about sitting next to Dr Aarella:

*'He asked me if I'd taken my second break yet and I told him I was waiting until 7pm as XXX that I wanted to watch by video calling my family. [...] He moved to sit closer to me so his knee was touching my knee and then I shuffled further away from him because I felt uneasy. He said he also wanted to watch XXX evening with me so he was going to take his break with me too.'*

46. The Tribunal further consider Dr A's witness statement, in which she stated:

*'I was sitting on Dr Aarella's right hand side and we were initially sitting with about a foot between us. At different points, Dr Aarella would be leaning back and his elbow was on the chair and he was half laying down. When we started to watch XXX, Dr Aarella moved very close to me, so close that he (sic) whole right leg was touching my left leg. I moved away from him so there was about one person's width between us but then he moved closer to me again but not as close as he had done the first time.'*

47. In oral evidence, Dr A described an L-shaped sofa in the staff room, and said that when she first sat down at the end of it, Dr Aarella sat about a person's width away. She explained that Dr Aarella then moved into the 'elbow' of the sofa before moving very close to her again when XXX started. Dr A explained that she moved away from Dr Aarella, but he moved closer to her again.

48. The Tribunal further consider Dr Aarella's recollection of this incident, as set out in his Rule 7 Response:

*'Dr A proceeded to show Dr Aarella some of XXX from her phone. The doctor did watch some of Dr A's XXX, but denies moving close to Dr A,'*

49. The Tribunal accepted that Dr Aarella was attempting to watch a video call on Dr A's phone, and it therefore found that it was plausible that he would have to have moved closer to her in order for both of them to have been able to see the screen. Dr A was again able to give a credible and consistent account of what happened on this occasion. The Tribunal further found that Dr A had provided a consistent, detailed account, in her initial statement to Dr G, her witness statement, and in oral evidence. Having considered the evidence in the round including the manner in which Dr Aarella had previously behaved towards Dr A that day, the Tribunal found that it was more likely than not that Dr Aarella had conducted himself in the manner alleged in the A&E staff room.

50. The Tribunal therefore found paragraphs 1 (e) i and ii proved.

Paragraph 1 (e) iii

51. The Tribunal first considered the account Dr A provided to Dr G:

*'He asked me if I knew what specialty I wanted to go into and I said I wasn't sure yet and he told me being a med reg is difficult but it's better once you're a consultant because "you can work with pretty XXX like I'm working with now". I felt extremely awkward and I wasn't sure how to react because I just wanted to watch XXX and go back to work so I just said thanks and changed the topic.'*

52. The Tribunal further had regard to the contemporaneous text messages which Dr A sent to Mr D that evening:

*'20.01 Dr A: He said you should be a consultant so you can work with pretty XXX like I am'*

53. The Tribunal also considered Dr A's oral evidence, in which she recalled this comment as being the point at which she realised that Dr Aarella was acting inappropriately on purpose and in a 'creepy' manner towards her. The Tribunal was satisfied that Dr A had given a clear and consistent account of this comment, which is confirmed by the text message set out above, which was sent within a very short period of time after it happened. Having had regard to the evidence in the round and the circumstances in which this comment is said to have been made, the Tribunal found that it is more likely than not that this comment was made by Dr Aarella to Dr A.

54. The Tribunal therefore found paragraph 1 (e) iii proved.

Paragraph 1 (e) iv

55. As set out above, the Tribunal accepted that Dr Aarella was attempting to watch a video call on Dr A's phone. The Tribunal first considered Dr A's account provided to Dr G:

*'He watched the video call and grabbed my phone a few times but because I was holding my phone in my hand he was grabbing my hand as well as my phone. At this point I felt even more uncomfortable but I felt like if I said anything he would say I was overreacting and I had less than an hour of my shift left so I thought I'd just move my phone out of his hand and ignore what happened.'*

56. The Tribunal then considered Dr A's witness statement, in which she stated:



*'I had my right hand holding the phone clasping it and right in front of my face. I told Dr Aarella when XXX came on the screen and he would get his hand, grab the phone and at the same time putting his whole hand over and around my hand. This is when I started to feel really uncomfortable and wondered why he was holding my hand. I wondered if it was because he couldn't see and needed to move the phone closer to him. He held my hand for a few seconds and then I'd move my hand away. Dr Aarella did this a few times. By now it was nearing the end of my shift and I told myself not to say anything and to keep moving, he'd get the hint and stop touching my hand.'*

57. The Tribunal noted Dr F's recollection in his statement to the GMC of what Dr A told him, he stated:

*'Dr Aarella took breaks at the same time as Dr A and during one of her breaks, she called her parents and he was grabbing her hand whilst she was on the phone with them asking her to end the call so he could talk to her.'*

58. The Tribunal noted that Dr F's recollection is not entirely consistent with the account of Dr A, however for the reasons set out above, the Tribunal are satisfied that this may be because of the passage of time before Dr F was asked to provide a statement or it may have been that he mis-interpreted the reference to Dr Aarella's instruction to Dr A to turn off the video and microphone so that nobody could see or hear people in the staff room.

59. The Tribunal found that despite this inconsistency the core of Dr A's account remained consistent and credible. It was further supported by the communication she had with Dr F about the incident very soon after it had occurred. The Tribunal found that given the fact that Dr Aarella was watching a video on Dr A's mobile phone it was more likely than not that Dr Aarella would have been sitting very close to Dr A and that on the balance of probabilities he did make contact with her hand(s) in the manner alleged.

60. The Tribunal therefore found paragraph 1 (e) iv proved.

#### Paragraph 1 (e) v

61. The Tribunal first considered Dr A's account provided to Dr G:

*'After XXX and I had ended the call the staff room was empty and he put his arm around me and said congratulations you must be really proud XXX. I just laughed it off and said thank you and he suggested going back to ED.'*

62. The Tribunal then considered Dr A's witness statement, in which she stated:

*'After the call ended, Dr Aarella put his right arm around me and pulled me towards him and gave a little shake of my body. Dr Aarella was saying something like, 'Congratulations. You must be really proud XXX.' I just said, 'Thanks', moved away and stood up to diffuse the contact.'*

63. The Tribunal found that Dr A had provided a consistent and plausible account of this incident. In oral evidence Dr A demonstrated the actions of Dr Aarella showing how he was next to her and had his arm around her shoulder, but without his hand touching her directly. Having regard to all the evidence in the round and Dr A's evidence that she felt Dr Aarella was taking every opportunity to touch her, the Tribunal found that on the balance of probabilities Dr Aarella had put his arm around Dr A's shoulder in the manner alleged.

64. The Tribunal therefore found paragraph 1 (e) v proved.

Paragraph 1 (e) vi 1 and 2

65. The Tribunal first considered Dr A's account as provided to Dr G:

*'He asked me which days I was working and I told him I was working all weekend and Wednesday and Thursday but I was in ED in reach not AMU. I said I liked in reach but I wanted to work a day shift in AMU because I had only worked nights there and I felt like it would be good for learning. He told me he was working on AMU on Sunday and that I should find him when I take my break so we can have lunch together and go for coffee. He then told me he was working next week in AMU so I should email the rota coordinator and ask to change my rota so I can work with him in AMU. I felt very on edge about the thought of working with him again, so I told him I'd think about it but I think I'd be happy working in ED in reach.'*

66. The Tribunal then considered Dr A's witness statement, in which she stated:

*'At some point, during our conversations in the staffroom, Dr Aarella told me that he was working the following Sunday and that we should have lunch and coffee. Dr Aarella told me to email the rota coordinator to change my shift so that I could work with him. I knew that he would be in AMU and I'd be in ED. I had no intention of doing this and didn't.'*

67. The Tribunal was mindful that in his Rule 7 response, Dr Aarella denied asking Dr A to go to lunch or coffee with him when they were next working together, or that he asked her to arrange to change her shift so that she could work with him.

68. The Tribunal had regard to all the evidence in the round and the pattern of Dr Aarella's behaviour towards Dr A on 7 October 2022. It found that Dr A had provided a consistent and reliable account which she did not seek to exaggerate or embellish in oral evidence. The Tribunal preferred Dr A's account to that of Dr Aarella and found, on the balance of probabilities that Dr Aarella did ask Dr A to join him for lunch and change her shift as alleged.

69. The Tribunal therefore found paragraph 1 (e) vi proved.

Paragraph 1 (f) i

70. The Tribunal accepted that Dr Aarella and Dr A walked to the car park together at the end of their shift. In his Rule 7 Response, Dr Aarella stated:

*'Dr Aarella did not suggest walking to the car park with Dr A, as he generally leaves after his handover is done. However, at the end of the shift, Dr A unexpectedly joined Dr Aarella to walk to the car park, where they had some conversation about their families and background. Dr Aarella denies that he asked Dr A whether she had a boyfriend and that he made the comment alleged at paragraph 1(f)(ii), stating that he was not particularly paying attention to the conversation as the car park was busy and he wanted to decompress from a busy day.'*

71. The Tribunal then consider Dr A's account provided to Dr G:

*'I thought he was staying in hospital accommodation because he told me that's where he stays when he locums so I didn't think he would be walking with me to the car park. He told me he was going home tonight and his car was in the car park so we could walk together. He asked me if I had a boyfriend and I told him that XXX because I thought that this would mean that he wouldn't touch me or speak to me inappropriately again. I thought this would make it clear that I wasn't interested in him at all. XXX. He asked me if I was going to have XXX and I tried moving the conversation away from me again XXX.'*

72. The Tribunal then consider Dr A's witness statement, in which she stated:

*'Dr Aarella then asked me if I have a boyfriend. I thought if I tell him I have a boyfriend, he might think I'd be open to something but if I said I didn't, then he might stop contact with me. He asked me XXX, but it felt weird a consultant asking me this because he wasn't my friend and so much older than me. It felt very strange and by now my mobile phone battery was on 1% and I was feeling very unsafe. When he asked about marriage, I said that I wasn't thinking about marriage XXX.'*

73. In oral evidence Dr A described her concerns about walking with Dr Aarella to the carpark and explained how before leaving the building she had sent WhatsApp messages to XXX expressing her concerns. The Tribunal had regard to these WhatsApp messages in which Dr A expressed concern that Dr Aarella was being ‘*super inappropriate*’ and wrote how she thought he was going to walk her to the car park. The Tribunal accepted that Dr A found that she was unable to say ‘no’ to Dr Aarella’s suggestion that they walk together as she was concerned that this may have a negative impact of their working relationship given his status. It found that Dr A had provided a consistent and credible account of the conversation. Having regard to the evidence in the round and the manner in which Dr Aarella had already been behaving towards Dr A it was plausible that Dr Aarella proceeded to ask questions of a personal nature during their walk to the car park. The Tribunal found that on the balance of probabilities Dr Aarella did ask Dr A if she had a boyfriend or words to that effect.

74. The Tribunal therefore found paragraph 1 (f) i proved.

Paragraph 1 (f) ii

75. As set out above, Dr Aarella denied making this comment to Dr A.

76. The Tribunal then considered Dr A’s account as provided to Dr G. The Tribunal noted that Dr A did not mention this comment in particular when describing the conversation she had had with Dr Aarella in the car park.

77. The Tribunal then considered Dr A’s witness statement, in which she stated:

*‘He said, ‘Whatever you do, don’t marry a XXX man. They are the worst type of men. They treat women badly, are gross and creepy. They are oppressive’. I said, ‘All races have bad men, not just XXX.’*

78. In her oral evidence, Dr A stated that she didn’t mention this comment when she spoke to Dr G or when she provided her account to him, because she had only been asked to describe what had happened in factual terms. Further she stated that she had only included things that she thought were important at the time, and she had been more offended by the repeated touching throughout the day. The Tribunal accepted Dr A’s explanation as to why this comment was not included in her initial account to Dr G and noted that she described this comment as being something she hears frequently and so didn’t take exception to it. The Tribunal found that although this comment was not included in Dr A’s account to Dr G, her statement was her opportunity to provide more detail and had been prepared only four months after the incident, when she would have retained a good recollection of it.

79. Having regard to all the evidence in the round and for the reasons set out above, and below, the Tribunal found that it was more likely that not that Dr Aarella did make this comment to Dr A. The Tribunal found that Dr A had given a reliable account of the comment and although it was not at the forefront of her mind when she gave her account to Dr G, she had given a reasonable explanation for its absence.

80. The Tribunal therefore found paragraph 1 (f) ii proved.

Paragraphs 1 (f) iii and iv

81. The Tribunal first considered Dr A's account provided to Dr G:

*'He asked me where my car was parked and his car ended up being next to my car and there was a big queue of cars trying to get out of the car park. He asked why there was a big queue and I said it was probably because they switched the permit system and he asked me to check if his permit had been switched. I started to walk towards my car and he opened his arms and told me to give him a hug. I just wanted to go back to my car and leave as soon as possible so I went in to hug him and he kissed my cheek saying and that's for XXX winning the awards. I was in shock because at this point I'd been making excuses for his behaviour but this confirmed in my mind that he was being inappropriate on purpose.'*

82. The Tribunal then considered Dr A's witness statement, in which she stated:

*'By the time I reached my car, Dr Aarella reached his and it was unlucky that our cars were in opposite spaces facing each other in the car park. I checked the permit which he showed me on his phone and then I started walking towards my car. Dr Aarella was standing in front of his car and he said, 'Dr A, give me a hug' and held both his arms out fully open. I didn't know what to do but I looked at him thinking, 'Why do you want me to hug you?' He repeated it again, 'Dr A, give me a hug'. I thought that if I give him a hug, I can leave and go home so I stepped towards him and he just put both arms around me between my shoulders and waist. I didn't hug him back. I just stood there and started to move back as it felt so strange and uncomfortable. I just wanted to get away from him when Dr Aarella kissed me on the cheek. I froze. I remember Dr Aarella saying something about XXX and that the kiss was for him winning all those awards.'*

83. In her oral evidence, Dr A was clear that Dr Aarella had called her by her first name, and instructed her a second time to hug him, after she had hesitated to approach him. Dr A stated that she was about two steps away from Dr Aarella, having moved close to look at his phone screen and check his permit. In oral evidence Dr A was clear that she recalled thinking that she had not been 'asked' to give him a hug but rather she had been told to.

84. The Tribunal noted that although enquiries had been made to check CCTV footage of the car park that night, it was stated that no useful footage had been seen. However, it is not disputed that Dr Aarella and Dr A were in the car park together that evening.

85. The Tribunal further considered messages which Dr A sent to her friend Mr D, whom she had just spoken to on the phone:

*'11.34 Dr A: That's not what you said*

*You said*

*You could have avoided this situation*

*By not hugging him*

*Or telling him to stop*

*...*

*11.36 Dr A: You think I should have just said no to hugging him*

*And I just brought it on myself.'*

86. The Tribunal found that Dr A, having previously expressed to her friend, as set out above, that Dr Aarella was making inappropriate comments to her, went to the car park with Dr Aarella, and he had instructed her to hug him. The Tribunal found that Dr A had provide a consistent account of this incident, and her contemporaneous messages to Mr D supported her evidence that, on the balance of probabilities the hug had occurred as alleged.

87. The Tribunal therefore found paragraph 1 (f) iii and iv proved.

#### Paragraph 1 (f) v

88. The Tribunal had regard to the account which Dr A gave to Dr G, as set out above and her witness statement which was consistent with her earlier account. The Tribunal further found that in oral evidence Dr A, was clear that Dr Aarella had kissed her on the cheek while he hugged her.

89. The Tribunal further had regard to Mr D's witness statement, in which he stated that in the phone call Dr A made to him immediately after the incident, she was, *'grossed out that Dr Aarella had kissed her on the cheek in the car park'*.

90. The Tribunal noted that Dr F's account of what Dr A had told him during a phone call very soon after the incident supported Mr D's recollection of what he had been told. In his witness statement, Dr F stated that:

*'She started by saying that she thought she had just been assaulted. ... When the shift ended, Dr Aarella volunteered to drop at her car and then he hugged her and kissed her on the cheek, all without asking her.'*

91. The Tribunal also took into account the messages which Dr A sent to Dr F, around 10 minutes after the incident:

*'20.41 Dr A: He kept touching me  
20.41 Dr F: what did he do  
20.41 Dr A: And then he kissed me  
20.41 Dr F: Ummmm  
20.42 Dr A: On the cheek'*

92. The Tribunal noted that very soon after Dr A had spoken to Dr F, Dr A emailed Dr G to request a meeting about the incident. The Tribunal determined that Dr A's immediate response to Dr Aarella's behaviour in messaging and calling Dr F and Mr D not only provided strong support to her account of the hug and kiss, but also showed her distress at the time. Having regard to the evidence of Dr A, the WhatsApp exchanges that took place and the recollections of Dr F and Mr D about what Dr A had told them about the incident, the Tribunal was satisfied on the balance of probabilities that Dr Aarella did kiss Dr A in the car park as alleged.

93. The Tribunal therefore found paragraph 1 (f) v proved.

#### Paragraph 2 (a) i and ii

94. The Tribunal first considered Dr B's witness statement, in which she stated:

*'To clarify Exhibit 1, Dr Aarella was very tactile with me. I was sitting down and Dr Aarella stood between me and a trainee Advanced Care Practitioner ('ACP'), though I can't remember their name, and Dr Aarella his hands on my shoulders and upper back. I'm not sure whether the ACP saw this or not. Dr Aarella did this more than once throughout the day but I'm not sure exactly how many times. We weren't working together all day but it seemed that any time I was with Dr Aarella, he would make an attempt to place his hands on my upper back. His hands just rested on my upper back and shoulder area and they were brief touches lasting no more than a few seconds at a time. Dr Aarella didn't say anything to me whilst he was doing this.'*

95. The Tribunal also considered the statement of Dr H, Dr B's educational supervisor, regarding a meeting on 1 December 2022:

*‘Dr B told me that Dr Aarella had stood very close to her, touched her back and shoulders two times and on one occasion touched her abdomen.’*

96. The Tribunal then considered an email sent by Dr B to an administrator at the Trust following her meeting with Dr H:

*‘Dr Aarella placed his hands on my shoulders and back repeatedly, particularly during the ward round and when he was standing and I was seated.’*

97. In oral evidence, Dr B stated that she didn’t tell anyone sooner about what had occurred on 10 October 2022 because she wasn’t sure whether it was something to be concerned about or not, and she had already resolved to confront Dr Aarella about his behaviour if she were to work with him again. The Tribunal found that this was consistent with Dr H’s account in oral evidence, that Dr B had been unsure of whether she should have raised the issue, but once she was encouraged to speak about it, she gave more detail.

98. The Tribunal noted Dr Aarella’s Rule 7 Response, in which he stated:

*‘Dr Aarella is unable to recall the details of the shift completed on 10 October 2022 or any interaction he had with Dr B. The Hospital was busy, as usual, and he does not recall anything occurring that has been alleged against him. Considering this, Dr Aarella is unable to make any further comments on the alleged misconduct, other than to deny the allegations being put to him’*

99. In considering this paragraph the Tribunal reminded itself that in oral evidence Dr F had told the Tribunal that Dr Aarella was a friendly person and he had placed his hand on Dr F’s shoulder when he had been talking to him on the first and only occasion that he had met him.

100. The Tribunal found that Dr B had given a clear account of the way in which she had been touched on the back and shoulders by Dr Aarella. Although Dr Aarella states he has no recollection of this day, the Tribunal found that Dr B’s evidence was consistent and reliable and was supported by Dr F’s explanation of how Dr Aarella had placed his hand on Dr F’s shoulder when speaking to him. Given its previous findings above, the Tribunal found that on the balance of probabilities, Dr Aarella did touch Dr B on the back and shoulder as alleged.

101. The Tribunal therefore found paragraph 2 (a) i and ii proved.

Paragraph 2 (b)



102. The Tribunal first considered Dr B's witness statement, in which she stated:

*'On one occasion during the day, though I don't remember what time of the day it was, when walking in AAU, Dr Aarella would block the door so I would be forced to brush past him when I walked through the door. Dr Aarella didn't say anything to me whilst this was happening'*

103. The Tribunal had regard to the email which Dr B sent to an administrator at the Trust:

*'On one occasion Dr Aarella stood in the doorway, making me walk close to him to get past at which point he placed his hand on my back.'*

104. In oral evidence, Dr B described in detail how the incident had occurred. Dr B explained that Dr Aarella was walking ahead of her. She explained that when he opened the door she expected him to go through. However, he stopped and stood in the doorway with his back to the doorframe, partially blocking the way. He gestured for Dr B to go through. Dr B stated that she had hesitated but then went through the door while Dr Aarella was still in the doorway, meaning that she was forced to brush past him.

105. The Tribunal was mindful that Dr B's first account in her email to the Trust administrator did not specifically state that she was forced to brush her body against Dr Aarella's, however in her later, more detailed statement, she did not attempt to make the incident more serious or exaggerate the physical contact.

106. The Tribunal had regard to all the evidence in the round and given its previous findings of behaviour of a similar nature in respect of Dr A the Tribunal found that on the balance of probabilities Dr Aarella behaved in the alleged manner towards Dr B who, like Dr A, was also XXX.

107. The Tribunal therefore found paragraph 2 (b) proved.

#### Paragraph 2 (c)

108. The Tribunal first considered Dr B's witness statement, in which she stated:

*'As he stood up to leave, I was facing him and he came close to me and brushed the palm of his left hand against my stomach. Dr Aarella didn't say anything to me whilst he did this and I didn't respond but after this I thought to myself, 'If I ever work with this man again, I'm going to say something'. That's when I thought, this is not an accident and it's making me feel really uncomfortable.'*

109. The Tribunal further noted Dr B's email to Trust administration in which she stated:

*'At the end of his working hours, when leaving and walking past me, he brushed his left hand across my stomach.'*

110. The Tribunal further noted the witness statement of Dr H, in which she stated:

*'... on one occasion he touched her on her abdomen. I was shocked he had put his hand on her tummy and asked her what was the circumstance surrounding that. She just said he placed his hand on her abdomen and physically showed me how. I told her no one should be touching someone, especially there and reiterated that if someone is making her uncomfortable with their behaviour, then there is an issue that needs to be addressed.'*

111. In her oral evidence, Dr B demonstrated to the Tribunal how Dr Aarella had approached her while she was standing in the same area and, as he had passed close to her, he had his left palm open and brushed it against her stomach. The Tribunal found that her recollection in oral evidence was consistent with all her earlier accounts and demonstrated clearly the way in which the touch had taken place, which the Tribunal found an entirely plausible way in which her abdomen would have been touched.

112. The Tribunal further noted the impact Dr B described it had on her which was such that she was certain Dr Aarella had been touching her deliberately, and she resolved to confront him if she were to work with him again. The Tribunal therefore concluded that on the balance of probabilities, it was more likely than not that Dr Aarella had touched Dr B on the stomach.

113. The Tribunal therefore found paragraph 2 (c) proved.

#### Paragraph 3 (a) i

114. When determining whether each sub-paragraph of paragraph 1 (excluding 1 (f) ii) amounted to sexual harassment, the Tribunal had regard to the fact it had heard evidence from several witnesses that Dr Aarella had previously appeared before a Medical Practitioner Tribunal in respect of conduct relating to junior female doctors, which she described as conduct of a similar nature. The Tribunal noted that in those proceedings, held in September 2022, it had been admitted and found proven that Dr Aarella had behaved in a manner towards female junior doctors that was sexually motivated. The Tribunal is also aware that Dr Aarella had, at the time of the events found proven above, attended courses on maintaining professional boundaries in March 2016 and November 2020. Given the above circumstances the Tribunal found that Dr Aarella would have known or should have known

the type of behaviour that would amount to unwanted or unwelcome behaviour. The Tribunal made this finding not only because of what he would have been taught on the above courses but in particular because he had only days before the above events, been made aware of what amounted to inappropriate behaviour by the findings of the Tribunal when he appeared before the MPTS Tribunal.

*Paragraph 1 (a)*

115. The Tribunal found that by sitting next to Dr A and pressing his leg against hers, Dr Aarella subjected Dr A to conduct that was unwanted, in that Dr Aarella should have been aware, that touching a colleague in that way is not appropriate. However, having considered the evidence in the round, it found that this was not touching of a sexual nature and therefore could not amount to sexual harassment as defined by the 2010 Act. The Tribunal noted that Dr Aarella had also pulled his chair close to a male junior doctor, and whilst it may amount to conduct which is sexually motivated, it was not in these circumstances an action which was of a sexual nature.

*Paragraph 1 (b) i*

116. The Tribunal found that touching on the breast is conduct which is unwanted, in that it is clearly inappropriate to touch someone in an intimate place at work or otherwise without invitation, either express or implied. The Tribunal further took into account that Dr Aarella should have been aware that touching a colleague's breast would be unwanted and that he should have taken steps to avoid touching Dr A in that manner. The Tribunal further found that touching on the breast is inherently touching of a sexual nature, being an intimate area.

117. Having found that this conduct was unwanted conduct of a sexual nature, the Tribunal then determined whether this had the purpose of violating Dr A's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment (the proscribed effect). The Tribunal found that the purpose of this behaviour was not to violate Dr A's dignity or create the proscribed environment.

118. The Tribunal then went on to determine whether the conduct had the effect of violating Dr A's dignity or creating the proscribed environment.

119. The Tribunal noted that, at the time of this particular incident, Dr A did not believe the touching was deliberate and whilst she felt uncomfortable this did not reach the threshold of violating her dignity.

120. The Tribunal found that whilst this touching was the beginning of an escalating pattern of behaviour and it began to put Dr A in an uncomfortable position, it had not, at this stage, had such an effect on Dr A that it had created the proscribed effect.

*Paragraph 1 (b) ii 1 and 2*

121. The Tribunal first determined whether this was unwanted conduct. The Tribunal found that for the same reasons as set out above, Dr Aarella should have known that such repeated touching was unwanted conduct.

122. The Tribunal then went on to determine whether this was conduct of a sexual nature. The Tribunal had regard to the circumstances of this event. Dr Aarella was a Consultant and far senior in status to Dr A XXX and was working XXX with Dr Aarella that day. She was also in a part of the hospital that was unknown to her, in a corridor that was not busy. The Tribunal considered the perception of Dr A in respect of this behaviour, and how a reasonable person may have perceived it. It also considered the intention of Dr Aarella in behaving in this way. The Tribunal had regard to the feeling Dr A described and her uncertainty and discomfort about what was happening. The Tribunal found that, in light of the circumstances of the escalating behaviour, and the way in which Dr Aarella appears to have gone out of his way to touch Dr A, whilst the conduct was not overtly of a sexual nature, it was a clear attempt to make contact with Dr A's body in a way that was not accidental or friendly. The Tribunal therefore found that this was conduct of a sexual nature.

123. Having found that this conduct was unwanted conduct of a sexual nature, the Tribunal then determined whether this had the purpose of violating Dr A's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment (the proscribed effect). The Tribunal found that the purpose of this behaviour was not to violate Dr A's dignity or create the proscribed environment.

124. The Tribunal then went on to determine whether the conduct had the effect of violating Dr A's dignity or creating the proscribed environment.

125. The Tribunal bore in mind that, at the time of this particular incident, Dr A was still trying to convince herself that the touching was accidental and whilst she felt uncomfortable this did not reach the threshold of violating her dignity.

126. The Tribunal then determined whether this was conduct which created the proscribed environment. The Tribunal found that the repeated touching in the corridor was a clear escalation of Dr Aarella's earlier behaviour, which could not be misinterpreted as accidental touching. Dr A stated, in her oral evidence, that the corridor was not busy, and Dr Aarella seemed to be going out of his way to touch her repeatedly, although she was still in denial that it was deliberate. The Tribunal had regard to the relationship between Dr A and Dr Aarella, in that he was her Consultant and clinical supervisor that day, and therefore on the balance of probabilities it is reasonable that Dr A might have struggled to object when Dr

Aarella's behaviour escalated. The Tribunal found that taken in the round this escalation in behaviour together with what Dr A saw as the deliberate touching of her waist did have the effect of creating the proscribed environment.

127. Having found that this was unwanted conduct of a sexual nature that had the effect of creating the proscribed environment it went on to consider whether it was reasonable for it to have had that effect as set out in the 2010 Act.

128. The Tribunal found that it was reasonable for Dr A to have perceived the behaviour in this way because she was a junior doctor exposed to unwanted behaviour by a senior who was also her clinical supervisor on that day.

*Paragraph 1 (c) and (d)*

129. The Tribunal first determined whether this was unwanted behaviour. The Tribunal determined that, taken as an escalation of previous unwanted behaviour, that while Dr A did not voice her discomfort, it would have been clearly unwanted conduct.

130. The Tribunal further found that it was conduct of a sexual nature, as set out above, touching on the breast is an intimate area and is inherently sexual in nature. The Tribunal also concluded that Dr Aarella placing his hand on Dr A's waist was touching of a sexual nature, in that it followed on from touching her on the breast twice and touching her repeatedly while walking down the hallway.

131. Having found that this conduct was unwanted conduct of a sexual nature, the Tribunal then determined whether this had the purpose of violating Dr A's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment (the proscribed effect). The Tribunal found that the purpose of this behaviour was not to violate Dr A's dignity or create the proscribed environment.

132. The Tribunal then went on to determine whether the conduct have the effect of violating Dr A's dignity or creating the proscribed environment.

133. The Tribunal bore in mind that, at the time of this particular incident, Dr A was still trying to convince herself that the touching was accidental and whilst she felt increasingly uncomfortable and intimidated this did not reach the threshold of violating her dignity.

134. The Tribunal finally determined whether this was conduct which created the proscribed environment. The Tribunal had regard to the nature of the contact and the circumstances in which that contact took place as set out above. The Tribunal noted that this formed part of a course of conduct which, had already formed an intimidating and hostile

environment for Dr A, who felt unable to challenge Dr Aarella given his position. The Tribunal found that this was conduct which created the proscribed environment and, for the same reasons as set out above, having regard to the perception of Dr A and the particular circumstances of this case it was reasonable for it to have had that effect.

*Paragraphs 1 (e) i, ii, iii and iv*

135. The Tribunal considered Dr Aarella's conduct while sitting next to Dr A in the A&E staff room as one continuous incident. The Tribunal first determined whether this was unwanted conduct. For the same reasons as set out above the Tribunal found as stated above, Dr Aarella, should have known that sitting so closely to Dr A would amount to unwanted conduct. The Tribunal also noted that Dr A had moved away from Dr Aarella after his leg had touched hers, and she had tried to pull her hand away when he put his over hers. This would have been a clear indicator to Dr Aarella that his conduct was not welcome. The Tribunal found that this was conduct which Dr Aarella would, or should, have known was unwanted.

136. The Tribunal then determined whether this was conduct of a sexual nature. The Tribunal was mindful that the comment about Dr A's appearance could be construed as a comment related to sex rather than of a sexual nature, however it viewed this comment in the context of the repeated deliberate touching of Dr A, and all the other prevailing circumstances as set out above. Having done so it found that the comment was of a sexual nature. The Tribunal also noted that this comment, along with Dr Aarella's repeated attempts to get close to Dr A on the sofa, was the trigger for Dr A to realise that she was right in thinking that Dr Aarella was touching her deliberately having previously doubted her interpretation of his actions.

137. Having found that this conduct was unwanted conduct of a sexual nature, the Tribunal then determined whether this had the purpose of violating Dr A's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment (the proscribed effect) The Tribunal found that the purpose of this behaviour was not to violate Dr A's dignity or create the proscribed environment.

138. The Tribunal then went on to determine whether the conduct had the effect of violating Dr A's dignity or creating the proscribed environment.

139. The Tribunal bore in mind that, at the time of this particular incident, Dr A had come to understand that Dr Aarella was not touching her accidentally, however it determined that being uncomfortable and awkward did not on this occasion reach the threshold of violating her dignity.

140. The Tribunal finally determined whether this conduct created the proscribed environment. The Tribunal had regard to Dr A's witness statement, in which she stated, '*I thought that as we were in the staffroom, there would be other people around and I'd be on a video call to my mum, I'd be safe and nothing would happen.*' The Tribunal found that this showed Dr A's discomfort had grown and she now feared for her safety. The Tribunal therefore found that this was conduct which continued to create an increasingly proscribed environment a hostile or intimidating environment.

*Paragraph 1 (e) v*

141. The Tribunal first determined whether it was unwanted conduct. The Tribunal noted Dr A's witness statement, in which she stated:

*'After the call ended, Dr Aarella put his right arm around me and pulled me towards him and gave a little shake of my body. Dr Aarella was saying something like, 'Congratulations. You must be really proud of XXX.' I just said, 'Thanks', moved away and stood up to diffuse the contact.'*

142. The Tribunal noted that Dr A had stood up and moved away from Dr Aarella, which would have indicated to him that the conduct was unwanted. Further, for the same reasons as set out above the Tribunal found that Dr Aarella, should have known that given the professional relationship between them and the clear lack of any personal relationship, putting his arm around a junior female colleague was inappropriate. The Tribunal was mindful that such a gesture could be normal between colleagues, but this was clearly not the case on this occasion and Dr Aarella should have been alert to this fact.

143. The Tribunal then determined whether this was conduct of a sexual nature. The Tribunal found that, taken as one isolated action, this could be seen as touching which is not inherently sexual, however it viewed the conduct in the context of the preceding events and all the circumstances of this case, and therefore found that this amounted to conduct of a sexual nature.

144. Having found that this conduct was unwanted conduct of a sexual nature, the Tribunal then determined whether this had the purpose of violating Dr A's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment (the proscribed effect). The Tribunal found that the purpose of this behaviour was not to violate Dr A's dignity or create the proscribed environment.

145. The Tribunal then went on to determine whether the conduct had the effect of violating Dr A's dignity or creating the proscribed environment.

146. The Tribunal bore in mind that, at this point in the day, Dr A had come to understand that Dr Aarella was not touching her accidentally, however it determined that being uncomfortable and awkward as described by her did not reach the threshold of violating her dignity.

147. The Tribunal finally determined whether this was conduct that created a proscribed environment. The Tribunal had regard to the fact that Dr A was already making attempts to deflect the actions of Dr Aarella and considered that this was an escalation of previous touching as it involved Dr Aarella holding Dr A's body and moving her towards him. The Tribunal found that this was more intimidating than previous brief touches and did create the proscribed environment.

148. Having regard to the circumstances of this case and the perception of Dr A, the Tribunal found that it was reasonable for this conduct to have had this effect on Dr A.

*Paragraph 1 (e) (vi) 1 and 2*

149. The Tribunal first determined whether this was conduct which was unwanted. The Tribunal determined that Dr Aarella's requests to see her outside of work and for her to rearrange her shifts to see him more were an invitation for her to spend more time with him so that he could seek further contact. The Tribunal found that Dr Aarella had propositioned Dr A in an attempt to extend the relationship outside the professional area and make professional opportunities to meet more frequent. The Tribunal found that this was inappropriate conduct that Dr Aarella would or should have known was unwanted.

150. The Tribunal then determined whether this was conduct of a sexual nature. The Tribunal found that, taken in the context of repeated touching and comments about Dr A's appearance which it has found were of a sexual nature, this was an attempt to extend the relationship and was therefore, given the circumstances of this case, of a sexual nature.

151. Having found that this conduct was unwanted conduct of a sexual nature, the Tribunal then determined whether this had the purpose of violating Dr A's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment (the proscribed effect). The Tribunal found that the purpose of this behaviour was not to violate Dr A's dignity or create the proscribed environment.

152. The Tribunal then went on to determine whether the conduct had the effect of violating Dr A's dignity or creating the proscribed environment.



153. The Tribunal bore in mind that, by the time of this particular incident, Dr A had come to understand that Dr Aarella had some interest in pursuing her, however it determined that being uncomfortable and awkward did not reach the threshold of violating her dignity.

154. The Tribunal finally determined whether the conduct had the effect of creating the proscribed environment. The Tribunal found that Dr Aarella's previous conduct had already created a hostile and intimidating environment, and to now be confronted with an invitation to see Dr Aarella outside of work would only increase Dr A's discomfort and feeling of intimidation. As above The Tribunal had regard to the circumstances and context in which this was taking place and Dr Aarella's senior position which would have created an imbalance of power, making the invitation hard to refuse. The Tribunal therefore found that this was conduct which created the proscribed effect. It further found that having regard to Dr A's explanation of how she felt and all the circumstances of the case, it was reasonable for it to have had that effect on her.

*Paragraph 1 (f) i*

155. The Tribunal first determined whether this was unwanted conduct. The Tribunal found that asking Dr A whether she had a boyfriend was clearly an intrusive question about her private life. For the reasons previously set out above, especially the attendance on boundaries courses, Dr Aarella would or should have known that this was an inappropriate question to ask. The Tribunal therefore found that this was unwanted conduct.

156. The Tribunal then determined whether this was conduct of a sexual nature. The Tribunal determined that while this may be a question that colleagues discuss at work, in the context of the repeated attempts to touch Dr A, and previous comments about her appearance, it was clearly of a sexual nature.

157. Having found that this conduct was unwanted conduct of a sexual nature, the Tribunal then determined whether this had the purpose of violating Dr A's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment (the proscribed effect). The Tribunal found that the purpose of this behaviour was not to violate Dr A's dignity or create the proscribed environment.

158. The Tribunal then went on to determine whether the conduct had the effect of violating Dr A's dignity or creating the proscribed environment.

159. The Tribunal noted that this question had made Dr A uncomfortable and was clearly inappropriate, however it determined that being uncomfortable and awkward did not reach the threshold of violating her dignity.

160. The Tribunal finally determined whether the conduct had the effect of creating the proscribed environment. The Tribunal found that Dr Aarella's previous conduct had already created a hostile and intimidating environment, and to now be asked an intrusive question about her private life only continued to escalate the intimidation. The Tribunal also took into account the power imbalance between Dr Aarella and Dr A, making it so that Dr A felt she had to answer. The Tribunal therefore found that this was conduct which created a proscribed environment and given the circumstances of this case, the Tribunal found that it was reasonable for Dr A to have perceived it as such.

*Paragraphs 1 (f) iii, iv, v*

161. The Tribunal first determined whether this was unwanted conduct. The Tribunal found that it would have been clear to Dr Aarella, given his previous regulatory history and attendance on relevant courses, that hugging and kissing are inappropriate in the workplace and would have been unwanted.

162. The Tribunal then determined whether the conduct was of a sexual nature. The Tribunal found, given the circumstances of this case, Dr Aarella's uninvited hugging and kissing could not be misconstrued as appropriate behaviour in the workplace and does amount to conduct of a sexual nature.

163. Having found that this conduct was unwanted conduct of a sexual nature, the Tribunal then determined whether this had the purpose of violating Dr A's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment (the proscribed effect). The Tribunal found that the purpose of this behaviour was not to violate Dr A's dignity or create the proscribed environment.

164. The Tribunal then went on to determine whether the conduct had the effect of violating Dr A's dignity or creating the proscribed environment.

165. The Tribunal noted Dr A's account in oral evidence, that Dr Aarella had called her by her first name and told her to hug him and when Dr A hesitated, he told her again. Dr A further stated that she found this incident embarrassing and felt that if she complied and didn't say anything she would be able to get in her car quickly after. The Tribunal further noted the messages which Dr A sent to Dr F and Mr D, as set out above, which show her shock and disgust at Dr Aarella's behaviour. The Tribunal also noted that Dr F, in his witness statement, said that Dr A believed she had just been sexually assaulted. The Tribunal found that this was contemporaneous evidence that the incident had a strong impact on Dr A and was deeply upsetting. The Tribunal therefore found that Dr A had clearly expressed feelings that amounted to a violation of her dignity. Given the events of the day which culminated in what Dr A described as akin to an assault, the Tribunal found that the conduct of Dr Aarella in

the car park when he left Dr A with little choice but to submit to a hug and kiss from him amounted to a violation of her dignity.

166. In summary, the Tribunal found paragraph 3 (a) i proved in relation to paragraphs 1 (b) ii, 1 (c), 1 (d), 1 (e) i, ii, iii iv, v, vi, and 1 (f) i, iii, iv, v.

Paragraph 3 (a) ii

167. The Tribunal first considered the allegations at 1 (a) and 1 (b). The Tribunal found that while these could have been accidental and not sexually motivated touching, it could not consider these incidents in isolation from the events that followed throughout the day. The Tribunal found that Dr Aarella's conduct began in a way which could have been interpreted as accidental, and indeed it was by Dr A, however it escalated throughout the day, becoming more invasive and intimate, culminating in Dr Aarella hugging and kissing Dr A.

168. The Tribunal had regard to the power imbalance between Dr A and Dr Aarella. Dr A was XXX and Dr Aarella was a consultant and her clinical supervisor while they were working together. The Tribunal considered that the repeated touching, in particular of Dr A's breast, was a clear crossing of professional boundaries. The Tribunal further noted that they had not worked together in the past and had no previous relationship.

169. The Tribunal then determined whether the conduct was in pursuit of sexual relationship or for sexual gratification. The Tribunal found that the conversations which Dr Aarella initiated around dating, as well as his requests to see Dr A outside of work and for her to change her hours to work with him more, showed an intention to form a relationship. The Tribunal further found that the repeated touching, hug and kiss, and in particular the touching of Dr A's breasts, amounted to touching for sexual gratification.

170. The Tribunal had regard to the determination of the 2022 Tribunal which showed that Dr Aarella has been found culpable of sexually motivated conduct against junior female doctors in the past, however it did not rely on this evidence when reaching its decision. The Tribunal found that there was sufficient evidence to show that Dr Aarella's conduct was sexually motivated in any event. The Tribunal found, taking into account the pattern of escalating behaviour and the power imbalance between Dr Aarella and Dr A, that Dr Aarella's conduct was on the balance of probabilities sexually motivated, absent any other reasonable explanation.

171. The Tribunal therefore found paragraph 3 (a) ii proved.

Paragraph 3 (b)

172. In considering this paragraph of the Allegation, the Tribunal first determined whether this was conduct which was unwanted. The Tribunal took into account Dr A's oral evidence, that she was not particularly bothered by the comment at the time and therefore did not record it in her email to Dr G. The Tribunal was mindful that Dr A was not upset by the comment, however it found that the comment was inherently offensive and therefore would clearly amount to unwanted conduct.

173. The Tribunal determined that the comment is clearly related to race, making mention of XXX men, and stereotypes XXX men as being abusive to their partners.

174. The Tribunal then determined whether Dr Aarella intended to violate Dr A's dignity when he made the comment. The Tribunal found that Dr Aarella's intention was a sexual motivation in pursuit of a sexual relationship and was not intended to violate her dignity.

175. The Tribunal further determined whether the comment had the effect of violating Dr A's dignity or creating an intimidating or hostile environment. The Tribunal considered Dr A's evidence that, at the time, she was not particularly bothered by the comment. The Tribunal was mindful that for Dr A it was not an unusual thing to hear and did not particularly affect her. The Tribunal found that her not being bothered was not due to any particular resilience on her part. As the conduct did not have the effect of either violating Dr A's dignity or creating the proscribed environment the allegation does not meet the threshold of harassment related to race as defined by the 2010 Act.

#### Paragraph 3 (c) i

176. The Tribunal first determined whether Dr Aarella's touching of Dr B was unwanted. The Tribunal noted that in her oral evidence, Dr B stated and demonstrated that she would try to step away from Dr Aarella when he touched her. In addition, the Tribunal found that Dr Aarella would, or should, have been aware that this type of touching was unwanted, having regard to his previous fitness to practise history and attendance on courses about professional boundaries. The Tribunal therefore determined that the conduct was unwanted.

177. The Tribunal then determined whether the behaviour was of a sexual nature. The Tribunal found that the touching on the back and shoulder was not inherently sexual and could occur between colleagues acting in a friendly manner. However, the Tribunal considered the conduct as a whole, and found that the touching on the stomach could not be seen as normal touching in the workplace. The Tribunal in particular noted that Dr B was shocked by the touch, as was Dr H when she was informed of it by Dr B. The Tribunal also took into account that the movement which Dr B demonstrated was not an accidental touch and appeared to be a stroking motion with an open palm. The Tribunal further considered

that Dr Aarella’s actions when he blocked the door and forced Dr B to brush past him showed that he was creating opportunities to touch her and using his position of power as her consultant to instruct her to move past him. The Tribunal therefore concluded that whilst the touching on the back and shoulders was not of a sexual nature, the touching in the doorway and on the stomach were of a sexual nature.

178. Having found that this conduct was unwanted conduct of a sexual nature, the Tribunal then determined whether this had the purpose of violating Dr B’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment (the proscribed effect). The Tribunal found that the purpose of this behaviour was not to violate Dr B’s dignity or create the proscribed environment.

179. The Tribunal then went on to determine whether the conduct had the effect of violating Dr B’s dignity or creating the proscribed environment.

180. The Tribunal noted Dr B’s response to the stomach touching in her witness statement:

*‘Dr Aarella didn’t say anything to me whilst he did this and I didn’t respond but after this I thought to myself, ‘If I ever work with this man again, I’m going to say something’. That’s when I thought, this is not an accident and it’s making me feel really uncomfortable.*

*I didn’t tell anyone about Dr Aarella’s behaviour on that day. I thought that if I saw him, or worked with him again, I would bring up his behaviour as being unacceptable and that he needs to stop doing it but I never saw him again.’*

181. The Tribunal noted that whilst Dr B was unhappy by the touching on her abdomen, she had only stated that it made her feel uncomfortable, and when asked in oral evidence, she did not use a stronger term. The Tribunal therefore found that while this is clearly unacceptable and unpleasant behaviour, it did not on this occasion violate Dr B’s dignity.

182. The Tribunal then determined whether Dr Aarella’s behaviour had created the proscribed environment. The Tribunal was mindful that while an environment is defined as a state of affairs, it can be created by one incident. The Tribunal noted that Dr B felt able to return to work and was prepared to confront Dr Aarella if she worked with him again. The Tribunal considered that the conduct had not disturbed Dr B to the extent that she was reticent to work with Dr Aarella or intimidated by him. The Tribunal found that whilst the conduct was clearly unacceptable in the workplace it did not meet the threshold of sexual harassment because it did not create a proscribed environment as intended by the legislation

and therefore it had not reached the threshold of creating an intimidating or hostile environment.

183. The Tribunal therefore found paragraph 3 (c) i not proved.

Paragraph 3 (c) ii

184. The Tribunal determined that, as set out above, touching a colleague on the shoulder and back is not necessarily of a sexual nature, however it considered Dr Aarella's conduct towards Dr B as a course of conduct which consisted of repeated touching. The Tribunal found that Dr Aarella had crossed a professional boundary, in particular in relation to the touching of Dr B in the doorway and the touching of her abdomen. The Tribunal also bore in mind the imbalance in power between Dr B and Dr Aarella, as she was XXX and he was a consultant and her clinical supervisor on that day. The Tribunal further noted that Dr Aarella had not provided an explanation for the touching.

185. The Tribunal therefore determined that whilst Dr Aarella's touching of Dr B's shoulders and back may seem innocuous taken in isolation, when taken together with the touching of Dr B in the doorway and the touching of her abdomen and having regard to the circumstances of Dr B's position, the conduct was sexually motivated.

186. The Tribunal found that there was little evidence to show that Dr Aarella's conduct was more likely than not to be with the intention of pursuing a future relationship. It found however, that the attempts to touch Dr B and in particular the touching of her abdomen in the manner described was more likely than not, on the balance of probabilities, having regard to all the circumstances of the case, to be for sexual gratification.

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

187. The Tribunal has determined the facts as follows:

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

Dr A

1. On 7 October 2022 whilst working with Dr A in the Accident and Emergency Department ('A&E') at Hull University Teaching Hospitals NHS Trust ('the Trust') you:
  - a. sat closely beside Dr A, in that your left knee and thigh were touching the right side of Dr A's right knee and thigh;

**Determined and found proved.**

- b. on one or more occasion:
- i. leant over Dr A to grab some papers, brushing your right arm over Dr A's breast;

**Determined and found proved.**

- ii. whilst walking together to the Minors area:
1. bumped into Dr A when walking down the corridor;
- Determined and found proved.**
2. made contact with the right side of Dr A's thigh with your left hand whilst walking next to each other;

**Determined and found proved.**

- c. brushed against Dr A's breast with your left arm and base of your left hand when reaching to open the door to the Minors area;

**Determined and found proved.**

- d. on one or more occasion put your hand(s) on Dr A's waist;

**Determined and found proved.**

- e. went to the A&E staff room with Dr A where you:

- i. moved very close to Dr A so that your right leg was touching her left leg;

**Determined and found proved.**

- ii. moved closer to Dr A again after she moved away from you;

**Determined and found proved.**

- iii. asked Dr A which specialty she wanted to go into, stating that being a medical registrar was difficult but it was better once you were a consultant because "you can work with pretty F1's like I'm working with now", or words to that effect;

**Determined and found proved.**

- iv. on one or more occasion, put your hand over and around Dr A's hand whilst she was holding her mobile phone;

**Determined and found proved.**

- v. put your right arm around Dr A and pulled her towards you, giving her a little shake of her body;

**Determined and found proved.**

- vi. told Dr A:
  - 1. about when you were next working on the Acute Medical Unit, and that you should have lunch and coffee together;
  - 2. to email the rota co-ordinator to change her shift so that she could work with you;

or words to that effect;

**Determined and found proved.**

- f. walked to the car park with Dr A at the end of your shift and:
  - i. asked Dr A if she had a boyfriend, or words to that effect;

**Determined and found proved.**

- ii. said to Dr A 'whatever you do don't marry a XXX man. They are the worst type of men. They treat people badly, are gross and creepy. They are oppressive', or words to that effect;

**Determined and found proved.**

- iii. on one or more occasion said to Dr A 'give me a hug', or words to that effect;

**Determined and found proved.**

- iv. put your arms around Dr A between her shoulders and waist;



**Determined and found proved.**

- v. kissed Dr A on the cheek.

**Determined and found proved.**

Dr B

- 2. On 10 October 2022, whilst working with Dr B in the Acute Admissions Unit at the Trust you:

- a. whilst on a ward round with Dr B, on one or more occasion put your hand(s) on her:

- i. shoulder(s);

**Determined and found proved.**

- ii. upper back;

**Determined and found proved.**

- b. blocked a cubicle door so that when Dr B had to exit, she was forced to brush past you at which point you placed your hand on her back;

**Determined and found proved.**

- c. brushed the palm of your left hand against Dr B's stomach.

**Determined and found proved.**

- 3. Your actions as set out at:

- a. paragraph 1 (excluding paragraph 1fii):

- i. constituted sexual harassment as defined in 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 Dr A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Dr A;

**Determined and found proved in relation to paragraphs 1 (b) ii, 1 (c), 1 (d), 1 (e) i, ii, iii iv, v, vi, and 1 (f) i, iii, iv, v.**

- ii. were sexually motivated;

**Determined and found proved.**

- b. paragraph 1fii constituted harassment related to race as defined in Section 26(1) of the Equality Act 2010, in that you engaged in unwanted conduct related to race which had the purpose or effect of violating the dignity of Dr A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Dr A;

**Determined and found not proved.**

- c. paragraph 2:
  - i. constituted sexual harassment as defined in 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 Dr B, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Dr B;

**Determined and found not proved.**

- ii. were sexually motivated.

**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 - 11/04/2024**

188. The Tribunal now has to consider whether Dr Aarella's Fitness to practise is impaired in relation to the findings of fact it has made. However, this Tribunal has to also conduct a review hearing relating to a decision made by a Tribunal which sat from 26 to 28 September 2022 (The 2022 Tribunal). The 2022 Tribunal imposed a sanction of Suspension of Dr Aarella's registration for 10 months and directed a review.

189. Rule 21A provides in this situation:

*“(1) If since the previous hearing a new allegation against the practitioner has been referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal, it shall first proceed with that allegation in accordance with rule 17(2)(a) to (j).*

*(2) The Medical Practitioners Tribunal shall thereafter proceed in accordance with rule 22 except when determining whether the fitness to practise of the practitioner is impaired and what direction (if any) to impose under section 35D(5), (6), (8) or (12) of the Act, it shall additionally have regard to its findings in relation to the new allegation.”*

190. The Tribunal has announced its findings of facts pursuant to Rule 17(2) (j) and therefore, in accordance with the above Rule, will consider impairment in relation to all matters before it.

## Background

### 2022 Tribunal

191. Dr Aarella was subject to a fitness to practise hearing between 26 and 28 September 2022. Dr Aarella admitted, and it was found proved, that he had acted in a sexually motivated manner towards three female colleagues between 2013 and 2015. It was further admitted and found proved that in September 2020 at Nottingham Crown Court, Dr Aarella had been made subject to an order for absolute discharge and a restraining order for a period of five years in relation to Dr K.

192. The allegations in respect of each doctor were as follows. That, on several occasions between December 2013 and April 2014, while working with Dr I, XXX, Dr Aarella acted in a sexually motivated manner towards her, in that he put his arm around her shoulder, touched her hands and sat unnecessarily close to her.

193. Dr Aarella further admitted that while working with Dr J, a XXX, in February 2014, he acted in a sexually motivated manner towards her in that he placed his hands on her back and shoulders, touched her thigh, and on one occasion touched her face in front of patients. Dr Aarella further admitted that he repeatedly asked her to meet him at lunchtimes, asked where she lived, and over a period of several weeks repeated invitations for her to come to stay at his house.

194. Dr Aarella further admitted that while working with Dr K, XXX, in January 2015, he acted in a sexually motivated manner towards her, in that he asked her to come to his house, and on 25 January he touched her on her hips, face, and stomach while commenting to her

that they ‘*had time*’ before she got married XXX. Further, Dr Aarella admitted that he had tried to kiss Dr K in exchange for assisting her with her work, and then refused to help her when he was rejected. He admitted that he had told her that he was testing her professionalism and continued to attempt to kiss her. On several occasions, later the same day he put his arm around Dr K and squeezed her. He admitted that some of these actions took place in a corridor and in front of patients.

195. The 2022 Tribunal found that Dr Aarella’s conduct amounted to serious misconduct, noting that while the conduct was at the lower end of the scale of seriousness, taken both individually and cumulatively, it was clearly inappropriate and fell so far short of the standards reasonable expected of a doctor as to meet the threshold of serious misconduct.

196. The 2022 Tribunal found that Dr Aarella’s fitness to practise was impaired by reason of misconduct, and that a finding of impairment was necessary 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 the profession.

197. In regard to insight, the 2022 Tribunal noted in particular that:

*‘ ... whilst Dr Aarella had shown significant insight, he had not demonstrated full insight into the effect that his conduct had on the victims of his unwanted sexually motivated conduct, particularly in light of Dr [K’s] assertion that she had left work early and been too scared to go to work after the index incidents. It considered that his remediation and insight had been too focused on himself rather than on how his conduct had affected Dr [I], Dr [J] and Dr [K].’*

198. When considering sanction, the 2022 Tribunal took into account that Dr Aarella had abused a position of power over his junior colleagues, had repeated his misconduct on several occasions and with several colleagues, had engaged in sexually motivated conduct in the workplace and in front of patients and had shown a reckless disregard for Good Medical Practice (2013, as amended) ('GMP'). He had also been made subject to a five-year Restraining Order in respect of Dr K. The Tribunal concluded that Dr Aarella’s conduct, whilst not fundamentally incompatible with continued registration was sufficiently serious to require a sanction to be imposed. The 2022 Tribunal imposed a suspension of ten months. The Tribunal did not impose an immediate order of suspension. The Tribunal directed that a review hearing be conducted, and suggested that it may assist the reviewing Tribunal if Dr Aarella were to provide the following:

- *Evidence of attendance at a course which focuses on the impact that sexual harassment has on the victim;*
- *A fresh up-to-date reflective statement that focuses on his misconduct;*
- *Further up-to-date testimonials;*
- *An up-to-date appraisal; and*
- *Evidence of how Dr Aarella has kept his clinical knowledge up to date.'*

### 2023 Review Hearing

199. A Review hearing convened on 10 August 2023 ('the 2023 Tribunal'). The Tribunal was informed that since the 2022 Tribunal new allegations had arisen that remained outstanding. The 2022 Tribunal was informed that matters were progressing but that a hearing date had not yet been set. Having regard to Rule 21A above the 2022 Tribunal determined to adjourn proceedings and extend the suspension on Dr Aarella's registration for a further 12 months.

200. This present Tribunal has now determined the facts relating to the new allegations referred to above and now proceeds in accordance with Rule 22.

### **The Evidence**

201. The Tribunal has taken into account all the evidence received during the facts stage of this hearing, both oral and documentary. In addition, at the conclusion of the facts stage the Tribunal received further documentary evidence as follows:

- The unredacted RoD of the September 2022 hearing;
- Email correspondence between Dr Aarella, the GMC and the MPTS dated between November 2022 and January 2024;
- Bundle of documents submitted by Dr Aarella for the Review hearing in August 2023; and
- RoD of the August 2023 Review hearing.

### **Submissions**

202. On behalf of the GMC, Mr Rankin submitted that the Tribunal should approach the issue of impairment as a two-stage process, first determining if the facts found proved in this hearing amount to misconduct, and then, taking into account the findings of the 2022 Tribunal and the findings of this Tribunal, determine whether Dr Aarella's fitness to practise is currently impaired. Mr Rankin submitted that Dr Aarella's inappropriate touching and sexually motivated behaviour towards colleagues must be misconduct. Mr Rankin further submitted that the conduct was a departure from paragraphs of GMP relating to acting with integrity, treating colleagues fairly and with respect, and being aware of how one's behaviour

may influence others within the team. Mr Rankin further submitted that Dr Aarella has brought the profession into disrepute and broken a fundamental tenet of the profession, namely integrity and treating colleagues with respect.

203. In regard to impairment, Mr Rankin submitted that although the misconduct in this case is not clinical in nature, steps need to be taken to mark that conduct as unacceptable. Taking the Review case as a discrete issue, Mr Rankin submitted that as a standalone matter, given the material Dr Aarella has provided, it may be concluded that he is not currently impaired, however Mr Rankin submitted that the facts found proved subsequently override that material, and because of that, the Tribunal can safely conclude that Dr Aarella's fitness to practise in relation to that matter is currently impaired.

204. Mr Rankin finally submitted that in regard to the public interest, two elements are relevant – maintaining public confidence in the profession and upholding proper standards for the profession. Mr Rankin submitted that an impartial observer would be appalled by Dr Aarella's pattern of behaviour, as would a fellow professional. Mr Rankin finally submitted that, taking into account the chronology of events and that Dr Aarella has brought the profession into disrepute and breached a fundamental tenet of the profession, Dr Aarella's fitness to practise is currently impaired.

### **The Relevant Legal Principles**

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

206. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted when determining the issue of impairment. First whether the facts as found proved amounted to misconduct and then whether the finding of that misconduct could lead to a finding of impairment.

207. The Tribunal must determine whether Dr Aarella's fitness to practise is impaired today, taking into account Dr Aarella's conduct at the time of the events and any relevant factors since such as in this case the repetition of misconduct. It must also consider in light of all the facts whether the matters are remediable, have been remedied and any likelihood of repetition having regard to the insight of the doctor.

208. The Tribunal were advised that in relation to impairment, there is no statutory definition. However, the Tribunal will be assisted by the guidance provided by Dame Janet

Smith in the *Fifth Shipman Report* as adopted by the High Court in *CHRE v NMC and Paula Grant [2011] EWHC 297 Admin*.

## The Tribunal's Determination on Impairment

### Misconduct

209. The 2022 Tribunal found that Dr Aarella's conduct amounted to serious misconduct. In having regard to the new allegations found proven the Tribunal reminded itself that it has made findings that his conduct amounted to sexually motivated behaviour in respect of both Dr A and B, and amounted to sexual harassment under the 2010 Act in respect of Dr A. The Tribunal further made a finding that although the comment found proven in respect of paragraph 1 (f) ii did not amount to harassment on the protected characteristic of race under section 26 (1) of the 2010 Act, it nonetheless found that this was language that is unacceptable and in clear breach of paragraphs 1, 36 and 37 of GMP, notwithstanding the fact that Dr A was not unduly affected by it.

210. The Tribunal found that Dr Aarella's conduct overall was a clear departure from paragraphs 1, 36 and 37 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.*

*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.'*

211. The Tribunal had regard to the proven allegations of sexual harassment and conduct that was sexually motivated, which showed a failure to work effectively with colleagues. The Tribunal was mindful of the power imbalance between Dr Aarella and both Drs A and B and found that this increased the impact that his conduct had upon them.

212. In finding that this conduct found proven was serious and amounted to misconduct, the Tribunal had regard to its findings and the circumstances in which his conduct took place. In particular it had regard to the power imbalance between Dr Aarella and both junior doctors and the fact that his conduct took place in the workplace. The Tribunal reminded itself that in addition to the seriousness of this behaviour it was also behaviour that had been repeated by Dr Aarella. It therefore determined that Dr Aarella's conduct had fallen far short

of the standards expected of a medical practitioner and therefore amounted to serious misconduct.

#### Impairment

213. The Tribunal, then went on to consider whether having regard to all findings, Dr Aarella's fitness to practise remains impaired following the finding of impairment of the 2022 Tribunal.

214. The Tribunal first determined whether Dr Aarella's misconduct was capable of being remediated. The Tribunal determined that conduct of this nature is capable of remediation but considered, that the repetition of his behaviour, having previously had a finding that his fitness to practise was impaired, would be more difficult. Dr Aarella now has findings of misconduct in relation to five junior colleagues and therefore it is likely to be more difficult to remediate given its persistence.

215. The Tribunal then determined whether Dr Aarella has remediated his misconduct. The Tribunal first considered the findings of the 2022 Tribunal, which noted that Dr Aarella had admitted the Allegation in its entirety and apologised for his actions, as well as having undertaken significant remediation in the form of attending boundaries courses and reflected on the inappropriateness of his conduct. The 2022 Tribunal further noted that Dr Aarella's remediation and reflections should have focussed more on the effect his unwanted sexually motivated conduct had on the junior doctors whom he targeted, as opposed to focusing more on himself, which it had found to be the case. The Tribunal noted that the 2022 Tribunal had suggested that Dr Aarella provide an up-to-date reflective statement that focuses on his misconduct and evidence of attendance at a course which focuses on the impact sexual harassment has on the victim. The Tribunal reminded itself that the doctor was under no obligation to provide this information.

216. In identifying the steps that had been taken by Dr Aarella to remediate his misconduct the Tribunal had regard to the documentary evidence in chronological order. In the appraisal document of 15 October 2022, Dr Aarella discussed his interactions with Dr A on 7 October 2022 as '*trying to be friendly*' and having an '*informal chat about non-medical things*'. Dr Aarella stated to his appraiser that Dr A '*wanted a short break to attend some meeting which he granted.*' The Tribunal noted that it is recorded in the document that Dr Aarella had apologised to Dr A '*if she felt uncomfortable and intimidated*', and it was recommended by his appraiser that he attend a further course on maintaining professional boundaries.

217. The Tribunal next considered Dr Aarella's Rule 7 response prepared on 5 July 2023 by his representatives at the time. The Tribunal noted that Dr Aarella position was that in September 2022 he was still in shock at the results of the 2022 Tribunal; he was conscious



that the decision was available for his colleagues to read online, and therefore he was trying to be friendly and put people at their ease. The Tribunal noted that other than being shocked Dr Aarella made no reference to how the 2022 Tribunal decision had impacted on him and his decision to return to work, stating simply that he was the sole bread winner in the household. In respect of the allegations in this case, Dr Aarella stated that he didn't recall sitting too close to Dr A to make her uncomfortable, and further he denied the touching in the corridor, however he later stated that it may have occurred accidentally, implying that he does recall some contact occurred. Further, he accepted that he met Dr A in the staff room but denied any touching or moving close to her, however he later apologised for his behaviour in the staff room, again implying that he was aware he had made her uncomfortable. He further denied that he made invitations to lunch or to change shifts, denied asking about Dr A's XXX or commenting on XXX men, and denied hugging or kissing Dr A. The Tribunal noted that Dr Aarella had provided a letter of apology to Dr A.

218. The Tribunal further noted that the Rule 7 response stated that Dr Aarella has '*good insight*' into his actions, however in the appraisal on 15 October 2022, there was no mention of such insight being evident. The Tribunal noted that Dr Aarella had attended a professional boundaries course on 12 October 2022.

219. In regard to Dr B, Dr Aarella did not accept that he had acted inappropriately, but he apologised to Dr B, if any of his actions on the shift made her uncomfortable by being over friendly.

220. The Tribunal noted the reflections contained within the Rule 7 response. Dr Aarella apologised for his behaviour and stated that he understands if it has been perceived as humiliating or intimidating, however it was not his intention to do so, and he is a friendly person by nature who aims to make others feel comfortable. He further stated that he can see how this may be taken the wrong way and he will endeavour to alter his behaviour. Dr Aarella stated that in the future he will keep conversations professional and recognised that questions about a colleague's personal life may be misconstrued. He reflected on the courses he had attended and stated that these have assisted his understanding of the warning signs of inappropriate behaviour and common misconceptions of conduct in the workplace.

221. The Tribunal finally considered the reflective statement of 26 July 2023 that Dr Aarella produced for the 2023 Tribunal. The Tribunal noted that the contents of the statement are similar to the Rule 7 response, prepared several weeks earlier. In his reflective statement, Dr Aarella accepted that he had damaged the reputation of the profession and wanted to build trust by being open and transparent. The Tribunal noted that whilst Dr Aarella stated his intention to be transparent, his statement makes no reference to the allegations that were

raised against him just fifteen days after the 2022 Tribunal had handed down its Determination and were outstanding at the time of writing the statement. Dr Aarella further stated that he had kept up to date with his CPD and learning despite family difficulties. He made an apology to Dr K and recognised the impact his misconduct had on her. Further, he accepted that he had abused his position of power over junior colleagues and had damaged their self-respect and dignity, creating a hostile environment. In relation to this, Dr Aarella stated he now understood the power imbalance between himself and his junior colleagues. Dr Aarella stated that in future he will be *'very careful'* in dealing with his colleagues, *'especially female colleagues'*, and he will not *'delve into their personal lives'* and avoid being *'jokey'* in the workplace on topics that are sexual in connotation. He further stated that he intended to seek help from his appraiser should such issues arise again.

222. The Tribunal recognised that Dr Aarella has attended several relevant courses and given an indication of his understanding of some of the issues in the case, for example, power imbalances and boundaries. However, the Tribunal was concerned that Dr Aarella has failed to show that he has internalised that learning and applied it to his practise. The Tribunal noted in particular that at the time he acted inappropriately with Dr A and B, he had already attended courses and provided reflections to the 2022 Tribunal. The Tribunal noted that Dr Aarella had been unable to explain to the 2022 Tribunal why he had acted in the manner that he did, and he now offered no explanation as to why he had persisted in doing so, despite having been told, several days earlier, that it was behaviour which amounted to serious misconduct. The Tribunal noted that there are no recorded complaints about Dr Aarella's behaviour between 2014 and 2022, however it was concerned that despite this extended period in which it appeared he had acted acceptably with colleagues, he repeated his misconduct very shortly after the conclusion of the 2022 Tribunal. The Tribunal determined that there remain serious concerns as to whether Dr Aarella had fully understood the concerns about his behaviour and put into practise a new approach.

223. The Tribunal further considered Dr Aarella's explanation that when he returned to work in October 2022, he was concerned that his colleagues could read the determination of the 2022 Tribunal, and he was therefore attempting to be friendly. The Tribunal found that this amounted to little more than an attempt to excuse his behaviour and did not accept it as a reasonable explanation for immediately engaging in conduct that he should have known was unacceptable. The Tribunal was of the view that the manner in which he interacted with his colleagues should have been at the forefront of his mind, having appeared before the 2022 Tribunal to respond to allegations of a similar nature several days earlier.

224. The Tribunal found that although Dr Aarella is able to set out in writing how his insight has developed it was not satisfied that Dr Aarella had demonstrated that his insight is fully developed. The 2022 Tribunal clearly highlighted the inappropriateness of Dr Aarella's

misconduct which it had found including the issue of imbalance of power, and the need for professional boundaries, yet days after the 2022 Tribunal he engaged in behaviour of a similar nature with junior colleagues. Dr Aarella seeks to excuse his behaviour by relying on his shock at the outcome of the 2022 proceedings and his desire to appear friendly towards staff because of the possibility of them reading about him on the internet. Dr Aarella has not explained, if such a situation was the real reason for his behaviour, which the Tribunal do not accept, how he would avoid conducting himself in the same manner again. The Tribunal noted that Dr Aarella would be especially careful with female colleagues. The Tribunal found that to treat female colleagues differently than males does not address the issue of his conduct and may in fact lead to female colleagues being made to feel different to their male counterparts. He further shows a lack of understanding of what amounts to sexual harassment given that it is also possible to subject someone of the same sex to sexual harassment.

225. The Tribunal determined that although Dr Aarella has made significant attempts to remediate and has shown some insight, it is not well developed.

226. In regard to the risk of repetition, the Tribunal determined that given the lack of insight as set out above and despite the lack of complaints between 2015 and 2022, it cannot be said that there is little risk of repetition. The Tribunal was concerned that Dr Aarella had been challenged by his employer in 2014 about his behaviour towards Dr I and J (in regard to the 2022 Tribunal), but persisted in his behaviour with Dr K, and following the 2022 Tribunal, he recommenced his misconduct once again with two different junior doctors (Dr's A and B). The Tribunal therefore determined that there is a high risk of repetition.

227. Having regard to the factors set out in *Grant*. The Tribunal found that Dr Aarella had, in the past, brought the profession into disrepute, breached a fundamental tenet of the profession and that in conducting himself in the manner found proved, failed to act with integrity. The Tribunal noted that the 2022 Tribunal had found there to be a residual risk to patient/colleague safety although there was no patient safety aspect in respect of the additional misconduct found proven.

228. For the reasons set out above the Tribunal is not satisfied that Dr Aarella has demonstrated sufficient insight into his misconduct and in light of the repeated conduct which has now occurred over three different time periods and in relation to five different female junior doctors there remains a high risk that Dr Aarella would repeat his behaviour.

229. The Tribunal has therefore determined that Dr Aarella's fitness to practise remains impaired by reason of misconduct.

### Determination on Sanction - 12/04/2024

230. Having determined that Dr Aarella's fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 22(1)(h) of the Rules what action if any it should take under s35D (5), (6), (8) and (12) of the Medical Act.

#### The Evidence

231. The Tribunal has had regard to all findings of fact and evidence received during the earlier stages of the hearing, where relevant, in reaching a decision on sanction.

#### Submissions

232. On behalf of the GMC, Mr Rankin submitted that erasure is the appropriate and proportionate sanction in this case. Mr Rankin submitted that Dr Aarella had acted in a sexually motivated manner towards five junior doctors over a number of time periods, and he had further sexually harassed one of them. Mr Rankin submitted that the chronology of this case is especially concerning, in that the 2022 Tribunal had imposed a period of suspension on Dr Aarella's registration which did not take effect until 28 days later. Dr Aarella, he submits, took advantage of that intervening period where he was not suspended and carried out the further acts. Mr Rankin reminded the Tribunal of the power imbalance that was present in all cases. Mr Rankin submitted that there remained very serious concerns as to Dr Aarella's understanding of his behaviour. He referred the Tribunal to Dr Aarella's attempts to excuse his behaviour and submitted that there remains a risk of repetition because his insight is not fully developed.

233. Mr Rankin submitted that Dr Aarella has breached a number of areas of GMP, as set out in the determination on impairment. Mr Rankin referred the Tribunal to The Sanctions Guidance (2024) ('SG'). Mr Rankin submitted that cases of sexual harassment against colleagues are noted as cases in which more serious action is likely to be required. Mr Rankin further submitted that Dr Aarella had engaged in predatory behaviour and abused his professional position, both of which also indicated more serious action is required. Mr Rankin further set out that sexual misconduct undermines trust in the profession, especially where there is a serious abuse of the position of trust held by a doctor.

234. In regard to the appropriate sanction, Mr Rankin submitted that nothing below suspension would be appropriate in this case, due to the serious nature of the findings. Mr Rankin submitted that in relation to suspension, it may be appropriate where there is an acknowledgement of fault and the behaviour is unlikely to be repeated. It may also be

appropriate if the behaviour falls short of being fundamentally incompatible with continued registration. Mr Rankin submitted that Dr Aarella’s behaviour does not fall within these categories and is fundamentally incompatible with continued registration. Mr Rankin submitted that whilst there has been some acknowledgement of fault from Dr Aarella, this may be regarded as nothing more than merely words, as his actions show a clear repetition of the misconduct. Mr Rankin submitted that suspension would therefore not be an appropriate or proportionate sanction.

235. Turning to erasure, Mr Rankin submitted that this is the appropriate and proportionate sanction. Mr Rankin submitted that Dr Aarella’s misconduct was a significant departure from the principles set out in GMP. He submitted that it showed a reckless disregard for the principles set out in GMP and constituted an abuse of his position of trust as a Consultant. Mr Rankin submitted that the misconduct overall had taken place over a long period of time and was calculated, predatory and unwanted. Mr Rankin finally submitted that the nature of this misconduct coupled with the lack of insight and repetition leads to the conclusion that erasure is the appropriate and proportionate sanction.

#### **The Tribunal’s Determination on Sanction**

236. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken the SG into account and has borne in mind the overarching objective.

237. The Tribunal reminded itself that the main reason for imposing any sanction is to protect the public and that sanctions are not imposed to punish or discipline doctors, even though they may have a punitive effect. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Aarella’s interests with the public interest.

238. The Tribunal first considered and balanced the aggravating and mitigating factors in this case.

#### Aggravating Factors

239. The Tribunal adopted the aggravating factors as set out by the 2022 Tribunal and determined that they remain relevant in this case. In particular the Tribunal noted that Dr Aarella has since repeated his misconduct within a very short period after the 2022 Tribunal had concluded. When he did this, he was working at Consultant level which increased the power imbalance between Dr Aarella and Drs A and B XXX. Once again, the behaviour had taken place in the workplace and was very similar in nature to his previous conduct which the previous Tribunal had found to be a reckless disregard of GMP. The Tribunal viewed this

conduct through the prism of the significant remediation Dr Aarella had relied upon at the 2022 Tribunal and found this compounded the seriousness of his conduct.

#### Mitigating Factors

240. The Tribunal had regard to the mitigating factors identified by the 2022 Tribunal, some of which were no longer relevant. In particular it noted that whereas previously there had been no history of fitness to practise issues, he did now have a history of fitness to practise proceedings and he has repeated his behaviour. The Tribunal accepted that, Dr Aarella has repeatedly apologised both for his admitted conduct in the 2022 and the unintended perceptions of Dr A and Dr B in respect of the new allegations which were all denied. Dr Aarella has attended a number of further courses which were relevant to his misconduct and shown a willingness to remediate through his reflective statements. However, the Tribunal was of the view that Dr Aarella's engagement in these courses has not been embedded into his practise and the reflective statements produced did not sufficiently demonstrate how Dr Aarella would change his behaviour in the future so as to ensure there would be no repetition.

241. The Tribunal had regard to the personal circumstances that Dr Aarella referred to, namely the death of his father and his mother's failing health. The Tribunal further had regard to Dr Aarella's reference about XXX, however Dr Aarella had not provided any medical evidence to support this.

242. The Tribunal took into account the testimonials submitted on Dr Aarella's behalf, as well as the positive feedback received from colleagues as part of his appraisal in October 2022. There remained no concerns in relation to Dr Aarella's clinical competence.

243. The Tribunal has borne in mind the aggravating and mitigating factors throughout its deliberations on the appropriate and proportionate sanction to impose, if any. The Tribunal considered each sanction in ascending order of severity, starting with the least restrictive.

#### **No action**

244. The Tribunal first considered whether to conclude the case by taking no action.

245. The Tribunal determined that, in view of the serious nature of its findings on the facts and impairment, it would be neither sufficient, proportionate nor in the public interest to conclude this case by taking no action. The Tribunal determined that there were no exceptional circumstances and therefore there could be no justification to conclude the case by taking no action.

#### **Conditions**

246. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Aarella’s registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

247. The Tribunal concluded that, even if conditions were proportionate, it would not be possible to formulate any conditions which would adequately address Dr Aarella’s misconduct and would therefore not be workable.

248. Therefore, the Tribunal determined that it would not be sufficient, appropriate or proportionate to direct that conditions be imposed on Dr Aarella’s registration. The Tribunal concluded that an order of conditions would not adequately maintain trust and confidence in the medical profession.

### Suspension

249. The Tribunal then went on to consider whether to impose a period of suspension on Dr Aarella’s registration. The Tribunal acknowledged that suspension has a deterrent effect and can be used as a declaratory signal to the doctor, the profession and the public about what is regarded as conduct unbecoming a registered doctor.

250. The Tribunal had regard to the following paragraphs of the SG which indicate circumstances in which it may be appropriate to impose a sanction of suspension.

*‘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 unbecoming 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).*

*93 Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions (see paragraphs 24–49).*

...

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

*a A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.*

...

*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 the incident*

...

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

251. The Tribunal noted that the 2022 Tribunal had imposed a period of suspension on Dr Aarella's registration which had sent a message to him that his behaviour was unacceptable. It was clear to the Tribunal that this had not had the desired deterrent effect on Dr Aarella as he had repeated his misconduct shortly after the conclusion of the 2022 Tribunal.

252. The Tribunal further noted that before the 2022 Tribunal, Dr Aarella had produced evidence of the significant steps he had taken to attempt to remediate and had reflected on his behaviour. As Dr Aarella went on to repeat the same type of behaviour only fifteen days after the conclusion of the 2022 Tribunal it is clear to this Tribunal that those matters cannot be relied upon as either effective remediation or sufficient insight. Consequently, the Tribunal is not satisfied that further attempts at remediation are likely to be successful. Finally, the Tribunal has found, in its determination on impairment, that there is a high risk of Dr Aarella repeating his behaviour.

253. Whilst the Tribunal accepted that suspension may be appropriate in cases which featured similar misconduct, it was not satisfied that it was the appropriate sanction in this case because Dr Aarella had gone on again to behave in a similar manner notwithstanding the fact that he had been suspended.

## **Erasure**

254. The Tribunal considered 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 difficult to remediate.*

*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 81: ‘You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession’).*

*...*

*j. persistent lack of insight into the seriousness of their actions or the consequences.’*

255. The Tribunal considered all of the above paragraphs are engaged in this case.

256. The Tribunal has found, in its determination on impairment, that Dr Aarella’s actions amounted to a serious departure from the principles set out in GMP. It further determined that, following the findings of the 2022 Tribunal, Dr Aarella would have been aware that his misconduct was a significant departure from the principles set out in GMP and the Tribunal found that his actions in October 2022 showed a reckless disregard for those principles. The Tribunal noted that since the 2022 hearing, which concerned Dr Aarella’s time as a registrar working with XXX, he had become a Consultant and had engaged in sexually motivated behaviour and sexual harassment towards two XXX. The Tribunal determined that this not only showed further abuse of his position, but also a lack of proper insight into the power imbalance between the parties which Dr Aarella claimed to have understood in his reflections to the 2022 Tribunal.

257. The Tribunal further took into account paragraph 138 (b) which indicates that more serious action is required:

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

...

*b sexual harassment'*

258. In conclusion, the Tribunal determined that Dr Aarella's conduct which he has now carried out against five junior colleagues, shows a reckless disregard for GMP and is fundamentally incompatible with continued registration. The Tribunal was mindful that Dr Aarella has already been subject to a period of suspension, during which he repeated his behaviour and has not demonstrated that he has been able to remediate this. The Tribunal was concerned that there remains a high risk of repetition and therefore it determined that erasure was the only appropriate sanction. In all the circumstances, the Tribunal determined that in order to uphold the overarching objective, erasure is the only appropriate and proportionate sanction to impose.

259. The Tribunal therefore determined that Dr Aarella's name be erased from the Medical Register.

260. Unless Dr Aarella exercises his right of appeal, his name will be erased from the Medical Register 28 days from the date on which written notification of this decision is deemed to have been served upon him. The suspension currently imposed on Dr Aarella's registration shall continue to have effect until the appeal period has concluded.

261. That concludes the case.

ANNEX A – 12/04/2024

### Determination on Service and Proceeding in Absence – Rule 31

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

#### Service

263. Dr Aarella is neither present nor represented today at this Medical Practitioners Tribunal (‘MPT’) hearing. The Tribunal therefore considered whether the relevant documents had been served in accordance with Rules 15 and 40 of the General Medical Council (‘GMC’) (‘Fitness to Practise’) Rules 2004 (‘the Rules’) and Schedule 4, Paragraph 8 of the Medical Act 1983.

264. Mr Rankin, representing the GMC, referred the Tribunal to the relevant documents provided and highlighted the correspondence between the GMC and Dr Aarella. In particular he signposted the Tribunal to the documents that showed that Dr Aarella has engaged with the GMC and is aware of today’s hearing. Mr Rankin therefore submitted that service has been effective.

265. The Tribunal noted the GMC information letter, enclosing the final allegations, dated 5 February 2024 and sent to Dr Aarella.

266. The Tribunal also noted that the Medical Practitioners Tribunal Service (‘MPTS’) Notice of Hearing (‘NOH’), was sent by email to Dr Aarella on 5 February 2024 in accordance with the Rules.

267. The Tribunal had regard to the email from Dr Aarella dated 7 February, in response to the MPTS email dated 5 February 2024, which stated, *‘Dear All, I have received the email’*.

268. The Tribunal had regard to all the documents provided to it and the submissions made by Mr Rankin. It noted that effective communication has taken place between Dr Aarella and the GMC. Therefore, the Tribunal was satisfied that notice of this hearing had been served in accordance with Rules 15 and 40.

#### Proceeding in the Absence

269. Having been satisfied that notice was properly served upon Dr Aarella, the Tribunal then considered whether to proceed with this hearing in the absence, of the doctor, in accordance with Rule 31 of the Rules.

270. Mr Rankin submitted that the Tribunal should proceed in Dr Aarella's absence. Mr Rankin submitted that there is no evidence to support Dr Aarella's assertion that he has XXX. Mr Rankin further submitted that there would be an adverse effect on the witnesses who are prepared to give evidence to this Tribunal and put these events behind them. Finally, Mr Rankin submitted that there is no risk of this professional Tribunal coming to improper conclusions or failing to investigate the evidence properly.

271. The Tribunal noted Dr Aarella's email to the GMC, dated 3 January 2024, in which he stated:

*'I am not a member of MDU anymore, I am currently member of MDS and even they cannot represent me unless I pay them the whole cost of hearing, which I am not able to afford due to my current circumstances.*

*I had applied for Pro Bono representation and unfortunately due to the duration of hearing they refused my application, they would only consider if the hearing was 2 or 3 days. I do not think I can attend the hearing without representation, I have been under lot of stress and really devastated by these new allegations which I have denied. XXX. I have requested 'Advocate' pro bono team to see if they at-least help me completing a defence document, and still waiting for their response.'*

272. The Tribunal has had regard to the principles established in *R v Jones* (2001) EWCA Crim 168 and *Adeogba* (2016) EWCA Civ 162, and that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution, balancing the interests of the doctor with the wider public interest.

273. XXX

274. In the light of the correspondence from Dr Aarella the Tribunal was satisfied that Dr Aarella has voluntarily absented himself from today's proceedings. The Tribunal noted that Dr Aarella did not request a postponement of the hearing in any of his correspondence with the GMC. The Tribunal decided that were it to adjourn today and reconvene at a later date, there is no indication that Dr Aarella would be able to obtain representation or would attend self-represented.

275. On the basis of the information provided and in accordance with Rule 31, the Tribunal has determined that there is a clear public interest in proceeding with the hearing today and nothing would be gained by postponing the hearing. The Tribunal considered that it is fair and reasonable, and in the interests of justice, to proceed with this hearing in Dr Aarella's absence.

Review Hearing

276. A further application was received prior to commencing the review of the 2022 Tribunal decision, on behalf of the GMC, to proceed in the absence of Dr Aarella. The Tribunal was provided with documents to show proof of service of the notice of hearing for this review which the Tribunal accepted as proof of the same.

277. The Tribunal considered Dr Aarella's previous indication that he did not intend to attend any part of the hearing listed between 25 March and 23 April 2024. The Tribunal was satisfied that Dr Aarella knew that this hearing had been listed to review the decision of the 2022 Tribunal, in addition to the new allegations. Dr Aarella had been provided with a copy of this Tribunal's determination on facts and was aware that it was open to him to indicate that he wished to attend if that was the case. In the circumstances, the Tribunal found that it was in the interest of justice to proceed with the hearing.

278. Prior to handing its decision down on impairment the Tribunal received further email confirmation that Dr Aarella did not intend to attend any other part of the hearing.