Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

**Dates:** 06/03/2017 – 24/03/2017
20/06/2017 – 22/06/2017

**Medical Practitioner’s name:** Dr Shiv Prasad BAGCHI

**GMC reference number:** 2283409

**Primary medical qualification:** MB BS 1973 Patna Medical College

**Type of case**
New - Misconduct

**Outcome on impairment**
Impaired

**Summary of outcome**
Erasure

Immediate order imposed

**Tribunal:**

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<th>Lay Tribunal Member (Chair)</th>
<th>Mr Paul Curtis</th>
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<td>Lay Tribunal Member:</td>
<td>Mrs Cindy Mackie</td>
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<td>Medical Tribunal Member:</td>
<td>Mr Thomas George</td>
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<td>Legal Assessor:</td>
<td>Mr Alex Jacobs</td>
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<td>Tribunal Clerk:</td>
<td>Dr Joshua Kirby</td>
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<td>Ms Miriam Bonabana (09/03/2017 – 10/03/2017 only)</td>
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**Attendance and Representation:**

| Medical Practitioner: | Present and represented 06/03/2017 – 24/03/2017 |
|                       | Neither present nor represented 20/06/2017 – 22/06/2017 |
| Medical Practitioner’s Representative: | Miss Lydia Barnfather, Counsel, instructed by the MDU (06/03/2017 – 24/03/2017 only) |
| GMC Representative:   | Mr Thomas Moran, Counsel |
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Allegation and Findings of Fact

That being registered under the Medical Act 1983, as amended:

Miss A

1. Whilst working as a Student Selected Components supervisor at the Pallion Health Centre (‘the Practice’) on:
   
a. 20 February 2015, you:
      
i. told Miss A to lie on the examination bed; **Found proved**
   
   ii. placed your hand underneath Miss A’s trouser band; **Found proved**
   
   iii. moved Miss A’s trouser waist band; **Found proved**
   
   iv. pressed on Miss A’s groin; **Found proved**
   
   b. 26 February 2015, you:
      
i. untucked Miss A’s top garment from her trousers from behind; **Found proved**
   
   ii. placed your arms around Miss A; **Found proved**
   
   iii. kissed Miss A on the cheek; **Found proved**
   
   c. 26 February 2015, you opened the door to Miss A’s consultation room in an abrupt manner; **Found proved**
   
   d. 27 February 2015, you:
      
i. touched Miss A’s forehead; **Admitted and found proved**
   
   ii. pulled Miss A towards you for a cuddle using one arm; **Found proved**
   
   e. 2 March 2015, you told Miss A that you have, ‘bachelor blood in me’ or words to that effect; **Admitted and found proved**
   
   f. 3 March 2015, you:
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i. told Miss A that you ‘get urges like any man’, or words to that effect; **Found proved**

ii. told Miss A that when you make love it has to be someone you know, or words to that effect; **Found proved**

iii. cuddled Miss A; **Found proved**

iv. kissed Miss A’s cheek; **Found proved**

g. 4 March 2015, you:

i. told Miss A, ‘I like you’, or words to that effect; **Admitted and found proved**

ii. told Miss A that her lips looked dry, or words to that effect; **Admitted and found proved**

iii. touched Miss A’s bottom lip with your thumb. **Found proved**

Miss B

2. Whilst working with Miss B at the Practice, between 2009 and February 2014, you:

a. touched her lips and told her that they were dry; **Found proved**

b. held her hand; **Found proved**

c. tried to cuddle her; **Found not proved**

d. told her you had dreamt about her ‘dancing around a pole wearing knee high leather boots to entice patients’ or words to that effect; **Found not proved**

e. tried to kiss her on a number of occasions; **Found not proved**

f. kissed her on the cheek; **Admitted and found proved**

g. said ‘I love you, we are best friends’, or words to that effect; **Found proved**

h. asked her to look at flats with you so that you could leave your wife. **Found proved**
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Miss C

3. Whilst working with Miss C at the Practice, between April 2009 and 2013, you:
   a. touched her arm and hands and said that you loved her; **Admitted and found proved**
   b. wrote notes to her which read ‘I love you’; **Admitted and found proved**
   c. told her that you:
      i. were interested in her; **Found proved**
      ii. and your wife slept in separate rooms and did not live as man and wife; **Found proved**
      iii. were planning to leave your wife; **Found proved**
      iv. were living a single man’s life; **Found proved**
   d. tried to kiss her; **Found proved**
   e. tried to cuddle her. **Found proved**

4. In July 2010, you asked Miss C to look for another job because it was heartbreaking for you to be rejected by her. **Found proved**

Miss D

5. Whilst working with Miss D at the Practice:
   a. between 2014 and June 2015, you touched and rubbed her hands and arm when asking questions; **Found not proved**
   b. from August 2013, repeatedly made reference to her prescription error. **Found proved**

Miss E

6. Whilst working with Miss E at the Practice, between late 2009 and early 2011, you:
   a. touched her hand and knee more than once; **Found proved**
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b. tried to kiss her; Found not proved

c. kissed her on the cheek; Admitted and found proved

d. told her that you and your wife slept in separate rooms and that it was not a marriage anymore; Found proved

e. asked her to look at flats with you because you were leaving your wife. Found proved

Miss F

7. Whilst working with Miss F at the Practice, during 2011 to 2014, you:

a. stroked her hand; Found proved

b. sent emails to her personal address as set out in Schedule 1; Admitted and found proved

c. said ‘Crazy 1 loves Crazy 2’ or words to that effect; Admitted and found proved

d. wrote post-it notes which read ‘Crazy B 1 loves Crazy B 2’; Admitted and found proved

e. whispered ‘I love you’, or words to that effect; Found proved

f. said ‘I love you, anything you need, you come to me’ or words to that effect; Found proved

g. told her that you were having problems with your wife and that you were looking for a flat; Found proved

h. in 2012, invited her to your consulting room, locked the door behind you, and:

i. told her:

A. that you loved her; Found not proved

B. that she was the only one you could trust, or words to that effect; Found not proved

ii. tried to kiss her on the lips; Found not proved
iii. kissed her on the cheek. **Found not proved**

8. Your conduct as outlined at Paragraphs 1a, b, d(ii) to g, 2 to 4, 5a, 6, 7a, 7c to h above was sexually motivated.
  
  **Found proved in relation to sub-paragraphs 1(a), 1(b), and 1(d)(ii) – 1(g);**
  
  **Found proved in relation to sub-paragraphs 2(a), 2(b), 2(f) and 2(g);**
  
  **Found not proved in relation to sub-paragraph 2(h);**
  
  **Found proved in relation to paragraph 3 in its entirety;**
  
  **Found proved in relation to paragraph 4;**
  
  **Found proved in relation to sub-paragraphs 6(a) and 6(c) – 6(e);**
  
  and
  
  **Found proved in relation to sub-paragraphs 7(a) and 7(c) – 7(g).**

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

**Attendance of Press / Public**

The hearing was all heard in public.

**Determination on Facts - 24/03/2017**

Dr Bagchi:

**Admissions**

1. At the outset of these proceedings Miss Barnfather, Counsel, made admissions on your behalf to the following sub-paragraphs of the allegation, in accordance with Rule 17(2)(d) of the General Medical Council ('GMC') (Fitness to Practise) Rules 2004, as amended, ('the Rules'): 1(d)(i), 1(e), 1(g)(i), and 1(g)(ii).

2. Throughout the course of the proceedings, Miss Barnfather also made admissions on your behalf to the following sub-paragraphs of the allegation: 2(f), 3(a), 3(b), 6(c), 7(b), 7(c), and 7(d).

3. The tribunal therefore announced these sub-paragraphs of the allegation as admitted and found proved, in accordance with Rule 17(2)(e).

**Background to the Case**

4. You say you graduated with an MB BS from Patna Medical College, India, in 1971 and you have worked in the United Kingdom ('UK') since 1976. You qualified as
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a General Practitioner (‘GP’) in the UK in 1980, and in 1988 you set up your own GP practice. Your practice was based in the Pallion Health Centre in Sunderland (‘the Practice’). There you worked as ‘a single-handed GP’ until mid-2010, when your practice merged with that of Dr I and Partners, a GP partnership also practising out of the Pallion Health Centre (‘the merger’).

5. It is alleged by the GMC that your fitness to practise is impaired by reason of your misconduct. The allegation you face is that you acted in a sexually motivated manner towards six women (Miss A – Miss F) whilst working at the Practice between 2009 and 2015.

Witnesses and Evidence on Behalf of the GMC

6. In reaching its determination on the facts, the tribunal has taken into account signed witness statements from the following individuals on behalf of the GMC:

- Miss A – a medical student who was on a six week student select component (‘SSC’) placement at the Practice in early 2015, as part of her undergraduate course in the Faculty of Medical Sciences at Newcastle University (‘the University’);
- Mrs G – a Consultant Obstetrician and Course Director for the SSC programme at the University;
- Miss B – the Practice Manager at the Practice: before the merger Miss B worked for Dr I and Partners, but also worked for you at your single-handed practice from 2009 until the merger;
- Miss C – a receptionist at the Practice: Miss C has known you for over 20 years initially as a patient and later as a colleague when she worked for you at the Practice from 2009, prior to the merger;
- Miss D – a medical administrator at the Practice: from 2008 until the merger Miss D worked for Dr I and Partners;
- Miss E – a medical administrator at the Practice: before the merger Miss E worked for Dr I and Partners, but has known you for approximately 18 years from when you worked as a single-handed GP in the same building as Dr I’s practice;
- Miss F – a practice administrator at the Practice: before the merger Miss F worked for Dr I and Partners from 2004;
- Ms H – a practice administrator at the Practice: before the merger Ms H worked for Dr I and Partners from 2008;
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- Dr I – a Senior GP Partner at the Practice; and
- Dr J – a GP Partner at the Practice.

7. The above individuals, with the exception of Mrs G, Dr I, and Dr J, also gave oral evidence to the tribunal.

Application under Rule 36(1)(e)

8. On the morning of 14 March 2017 Mr Moran made an application for Miss A to be treated as a vulnerable witness under Rule 36(1)(e), which states:

36.

(1) In proceedings before the Committee or a Tribunal, the following may, if the quality of their evidence is likely to be adversely affected as a result, be treated as a vulnerable witness -

[...]

(e) any witness, where the allegation against the practitioner is of a sexual nature and the witness was the alleged victim; [...]

9. Mr Moran went on to tell the tribunal that Miss A wished to give evidence assisted by the use of screens in accordance with Rule 36(3)(d)(ii). He provided the tribunal with a signed statement from Miss A, dated 14 March 2017, outlining why she felt she needed them.

Submissions

10. The submissions of both Counsel remain a matter of record and have not been rehearsed in full in this determination.

11. Referring the tribunal to Miss A’s statement of 14 March 2017, in summary Mr Moran submitted that Miss A felt her ability to give evidence would be affected without screens. He submitted that the use of screens would put Miss A at ease and allow her the opportunity to give her best evidence. Mr Moran emphasised that the tribunal should not, if it agreed to the application, hold the use of screens against you in any way.

12. Miss Barnfather opposed the application on your behalf. In summary, she did so on the basis that although the tribunal is a professional one it is not immune from bias and/or prejudice. She submitted that Mr Moran’s application, the way it was presented, and Miss A’s statement could all very easily distort the balance of fairness.
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in the proceedings, including the perception of it. She went on to submit that Miss A’s statement of 14 March 2017 was the first time she alleged ‘sexual intent’ on your part and that allegation, coupled with the use of screens, would further distort the risk of subconscious bias on the part of the tribunal. Miss Barnfather further submitted that you had said that Miss A was ‘exceptionally anxious’, ‘nervous’, and ‘lacked confidence’; that she was ‘hyper-sensitive’. Miss Barnfather concluded her submissions by stating that given Miss A was the primary complainant in the case you should be able to observe her under cross-examination and she should give evidence in ‘the normal way’.

The Tribunal’s Decision

13. Having heard and borne in mind the representations from both parties, the tribunal determined to grant the application. It determined that Miss A was to be treated as a vulnerable witness for the purposes of these proceedings because it was clear that the allegation against you is that some of your actions were of a sexual nature (as set out in paragraph 8 of the allegation) and that Miss A is the alleged victim of some of those actions (as set out in paragraph 1 and paragraph 8 as it relates to paragraph 1).

14. In deciding to grant the application, the tribunal bore in mind the need to be scrupulously fair and that included considering fairness to both parties. In her statement of 14 March 2017 Miss A stated that without screens her ability to give evidence would be affected. The tribunal took the view that any adverse effect on Miss A’s evidence would have an impact on your case as well as the GMC’s. Miss Barnfather submitted that you have said that Miss A is ‘hyper-sensitive’. The tribunal acknowledged that submission but accepted Miss A’s statement insofar as her reasons for requiring screens.

15. On balance, the tribunal determined that it was both in the public interest and in your own interests that Miss A was able to give evidence as best as she could, and it determined that screens be used for that purpose in accordance with Rule 36(3)(d)(ii). The tribunal acknowledged that the application for screens was not of your making, and it emphasised that it would not be held against you in any way.

Miss A

16. Miss A was subjected to robust but fair cross-examination. She became distressed on several occasions whilst giving evidence but despite her obvious distress at times, the tribunal found that in general her recollection of factual issues was clear and that she was a credible witness. When she could not recall details, Miss A conceded as much. She was also clear and firm in her recollection about how she felt at the time of the alleged events.
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Miss B

17. The tribunal found Miss B to be a credible witness who gave a balanced account of events. She gave clear and straightforward answers to the questions put to her.

Miss C

18. The tribunal found Miss C to be a credible witness. She was clear in her recollection of the interactions she had with you. Her account of how she felt at the time was consistent with that in her written statement. Miss C was less clear in her recollection of the details of some of the personal issues she was having at the time of the alleged events.

Miss D

19. The tribunal found Miss D to be a credible witness. She gave balanced and straightforward answers to the questions put to her. When Miss D was unable to recall something she said as much.

Miss E

20. The tribunal found Miss E to be a credible witness. The tribunal found her to be balanced in her opinion of you. Miss E was forthright and if she could not recall something she said as much.

Miss F

21. The tribunal found Miss F to be a credible witness. She gave a clear account of what she could remember and made appropriate concessions when she could not recall exactly what happened. The tribunal was satisfied that Miss F’s evidence was consistent with her written statement, and remained so even under robust cross-examination.

Witnesses and Evidence on Your Behalf

22. You provided the tribunal with a bundle of documentary evidence included in which were the initial report you made to the Practice in respect of Miss A’s complaints against you, dated 7 April 2015, and your signed witness statement, dated 20 February 2017.

23. The bundle also included a number of positive 360 degree feedback comments from your time at the Practice, as well as a significant number of testimonial statements from colleagues. The latter included character references from GPs and nursing colleagues from other practices in Sunderland, some of whom

MPT: Dr BAGCHI
you have known for 20 years or more, as well as a large number of positive testimonials from your colleagues at Deerness Park Medical Group, Sunderland (‘Deerness Park’), where you now work and have done since March 2016.

24. The tribunal took into consideration the signed witness statements and oral evidence from the following individuals on your behalf:

- Mrs K – your wife and a Practice Nurse at the Practice: you have been married for over 20 years and Mrs K also worked with you at your single-handed practice prior to the merger;

- Mrs L – your sister-in-law and a Receptionist at the Practice: Mrs L also worked with you at your single-handed practice prior to the merger;

- Mrs M, your sister-in-law and a former Senior Receptionist at the Practice; Mrs M also worked with you at your single-handed practice prior to the merger;

- Dr N, a GP at Deerness Park;

- Dr O, a GP at Deerness Park;

- Dr P, an FY2 Trainee at the University Hospital of South Manchester NHS Trust: Dr P undertook an SSC placement with you at the Practice in September 2014; and

- Dr Q, a Trainee Anaesthetist: Dr Q undertook an SSC placement with you at the Practice in the autumn of 2011.

Applications under Rule 34(13)

25. In the course of the proceedings, Miss Barnfather made two applications under Rule 34(13), for Mrs K and Dr Q to give evidence to the tribunal by telephone link respectively.

26. In respect of Mrs K, Miss Barnfather told the tribunal that she had recently been unwell and that she was not fit enough to attend this hearing and give evidence in person, a fact supported by documentary evidence from Mrs K’s GP. Miss Barnfather submitted that it would be prejudicial to your case were Mrs K not able to give evidence by telephone.

27. In respect of Dr Q, Miss Barnfather submitted that his evidence was not controversial, was uncontested, and would be very brief. She further submitted that the time taken for Dr Q to travel to give his evidence would be ‘grossly
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disproportionate’ and that it would not be in the public interest for him to effectively ‘abandon his post’ for a whole day in order to give it in person.

28. Mr Moran did not object to either application.

29. The tribunal granted both applications because it determined that it would be in the interests of justice to do so, in accordance with Rule 34(14).

Mrs K

30. The tribunal found Mrs K to be a credible witness and to have a good recollection of events. She answered all of the questions put to her and was prepared to say so on the occasions that she could not recall details with precision.

Mrs L

31. The tribunal found Mrs L to be a credible witness. She was able to answer all the questions put to her and her responses were balanced.

Mrs M

32. The tribunal found Mrs M to be a credible witness. She tried her best to answer the questions put to her. The tribunal was satisfied that she made no attempt to mislead it.

Dr O

33. The tribunal found Dr O to be a credible witness who attested to your character and the work you have undertaken at Deerness Park since March 2016. Dr O was forthright in the answers he gave, and he was balanced and honest in his appraisal of you.

Dr N

34. The tribunal found Dr N to be a credible witness who also attested to your character and the work you have undertaken at Deerness Park since starting there in March 2016. The tribunal found her assessment of you to be both balanced and honest.

Dr P

35. The tribunal found Dr P to be a credible witness who gave straightforward factual evidence about his SSC placement at the Practice in 2014.
36. The tribunal found Dr Q to be a credible witness who gave straightforward factual evidence about his SSC placement at the Practice in 2011.

Your Evidence

37. As well as providing it with a signed witness statement, you also chose to give oral evidence to the tribunal. The tribunal found you to be a less direct witness than others. Your answers during evidence in chief were direct and clear. Whilst your recall was good in some areas, under cross-examination and in response to questions from the tribunal, however, your answers were often not straightforward, tending to be addressed in terms of what you would do, rather than what you did do on each occasion. They were sometimes unfocused and you frequently went off at a tangent. Indeed, on a number of occasions questions had to be repeated more than once before you gave a direct answer.

The Tribunal’s Approach

38. In reaching its decisions, the tribunal carefully considered all the evidence adduced, both oral and documentary, as well as the submissions made by Mr Moran, on behalf of the GMC, and those made by Miss Barnfather on your behalf. The submissions of both Counsel remain a matter of record, and the tribunal has not rehearsed them in this determination.

39. The tribunal also accepted the advice of the legal assessor. His advice also remains a matter of record. He reminded the tribunal that in these proceedings the burden of proof rests on the GMC and that it is for the GMC to prove the facts; you do not have to prove anything. He also reminded the tribunal that the standard of proof is that applicable to civil proceedings, which is the balance of probabilities.

The Tribunal’s Findings – Contextual Matters

40. Before considering the individual paragraphs and sub-paragraphs of the allegation separately and making findings in respect of each of them, the tribunal arrived at preliminary conclusions in respect of the following three broad contextual areas, each of which was addressed by both Counsel in their submissions:

The Merger

41. Having had regard to all the evidence, it was clear to the tribunal that there were differing perceptions as to the “success” of the merger between your single-handed GP practice and that of Dr I and Partners in mid-2010.
42. On the one hand, those witnesses who worked for Dr I and Partners prior to the merger, namely Misses B-F, all gave evidence to the effect that the merger was relatively unproblematic, albeit Miss B and Miss C both conceded that there were initial teething problems in respect of accommodation and information technology (‘IT’). Miss B, who was involved in operational oversight during the merger, gave evidence that the transition was ‘seamless’.

43. On the other hand, Mrs L, Mrs M, and Mrs K, all of whom were relatives of yours who worked with you prior to the merger, described the transition in negative terms. Mrs L described the behaviour of the reception staff as ‘ferocious and brutish’. Mrs M described the attitude of Dr I’s’ existing staff as unwelcoming, and said that they showed animosity towards the family. Mrs K said that there was a lot of animosity shown towards your staff and that the merger process was ‘abysmal’. She said it was made clear that your staff were not wanted. Indeed, your evidence was that the hostile atmosphere at the Practice was such that a fortnight after the merger took place Mrs M decided to leave and seek employment elsewhere. During her evidence, however, Mrs M was clear that whilst she ‘did not like the atmosphere’ she had in fact, prior to the merger, been approached by the manager of another practice, she had accepted a job there, and was, in effect, working out her notice.

44. Your evidence was that in order to promote a more harmonious working environment and overcome the isolation you felt in the wake of the merger, you tried to ‘win over’ the staff at the Practice by being supportive, offering praise, adopting terms of endearment, sharing personal information, and asking them for advice. Your further evidence was that the impression you had was that your efforts were ‘well received’, and that ‘by and large, things did improve’. Indeed, the tribunal was satisfied that this contention was supported by the evidence of Mrs K, Miss B, and that of Miss C. Mrs K’s evidence was that you had some success in befriending some of the members of staff and in establishing better working relationships with them. The evidence of both Miss B and Miss C was that any initial ‘teething problems’ were overcome.

45. The tribunal therefore concluded that the merger, whilst suffering from initial ‘teething problems’ in the transitional period (namely in respect of accommodation, IT systems, and working practices and relationships) was, by and large, a smooth one, and that the atmosphere and working environment at the Practice was not overtly hostile, ‘ferocious’, or ‘brutish’ as it was variously described by Mrs K, Mrs M, and Mrs L as well as, to a lesser extent and in less loaded terms, by you.

Your Character

46. The tribunal read and heard a significant amount of evidence about your character and your nature, and it accepted the submissions of both Counsel that it is of central importance to the allegation you face.
The tribunal was satisfied that there are no concerns about your clinical abilities and that you are widely-regarded as a hard-working, diligent, and caring GP, as attested to by the number of positive testimonial statements produced on your behalf as well as the positive 360 degree feedback you received. The tribunal also accepted the evidence of Dr P and Dr Q, both of whom clearly remembered you fondly from their time at the Practice. Both commented positively upon the informal atmosphere you encouraged with your SSC students and upon your generosity and kindness. Both said that you ‘stood out’ amongst their SSC supervisors precisely because of those qualities. Both also supported your evidence to the effect that it was your usual practice to present SSC students with a gift at the end of their placements.

The tribunal was also satisfied from the evidence, including your own, that you are quite ‘traditional’ in your working practices. It was not disputed that following the merger you had difficulties adapting to and using the IT systems in place at the Practice, particularly in respect of referrals, and that as a consequence you could be quite demanding in terms of needing and seeking IT support from non-clinical staff. From the evidence, it was clear to the tribunal that you are a task-focused individual who sets high standards for your colleagues and that you could, at times, come across to others as intolerant of what you perceived to be easily-avoided mistakes. The tribunal was satisfied that this latter aspect of your professional personality springs from your focus on patient care.

A repeated theme throughout the evidence, and a point accepted by you, was that you are tactile, and at times overly-tactile. The testimonial provided on your behalf by Dr R, who has known you for some 25 years, described you as having ‘an expressive, tactile and passionate nature’. Miss Barnfather submitted on your behalf that you may be regarded as ‘outdated and misguided’ but that your behaviour was well intentioned. You now accept that whilst at the Practice you acted inappropriately on occasion and at times crossed personal and professional boundaries. Indeed, you admitted that during your time at the Practice you touched Miss A’s forehead and kissed both Miss B and Miss E on the cheek. Mrs K’s evidence, however, was that she had never seen you kiss any of your colleagues. You also accepted that on occasion you would ‘pat’ your colleagues as an instinctive gesture of appreciation or gratitude, and that you would occasionally put an arm around someone’s shoulder as a gesture of reassurance. The tribunal heard differing evidence of you making physical contact with your colleagues at the Practice in both public and private areas, such as the reception area and consultation rooms respectively, and it concluded that it was more likely than not that you, whilst a naturally tactile individual, also had a tendency to act differently in private and in public.

Your evidence, supported by that of others, was that due to a combination of factors in the time shortly before the merger and during the time of the alleged events your marriage was ‘strained’ and that you were ‘very unhappy’ in your
personal life. Your further evidence, supported by that of Mrs K, was that the marital issues you were experiencing at the time have since been resolved. You regard yourself as being part of ‘a happy and very close family’. Nonetheless, it was clear to the tribunal that during the period with which it was concerned you sometimes came across to some of your colleagues at the Practice as sad and lonely and that you tended to turn to them seeking companionship and friendship.

51. Another repeated and related theme that ran throughout the evidence, including your own, was that you can come across to others as someone who needs to be liked. In his testimonial, for example, Dr R opined that you have ‘a major flaw’ in your personality. In his opinion you have ‘an insecure nature’, seek ‘reassurance from others’, your ‘approach is quite often open’ and you have ‘no hesitation to discuss personal matters openly to seek approval and sympathy of the listener’. He went on to state that these qualities ‘can be sometimes alarming and easily misinterpreted’ despite your ‘good intentions’. Dr N, for her part, attested to her perception of you as someone who ‘enjoys the feedback from making other people smile’ and that you have ‘a desire to be included in everything that is going on’. Her evidence was that when you first started at Deerness Park you had a tendency to spend a significant time chatting with colleagues and non-clinical staff. You were therefore asked to be a bit more ‘boundaried’, something you have since taken on board.

52. Your evidence was that in the aftermath of the merger you attempted to foster a more harmonious working environment at the Practice and create close relationships with your colleagues. Your further evidence was that you did so by sharing personal information with them and by asking them for advice, in the hope that it would make them feel reassured and show that you trusted them and valued their opinions. You accepted, for example, that you shared personal details with some of your colleagues, including about problems you were experiencing in your marriage.

53. Having had regard to the evidence of your colleagues, including that of Dr N, as well as that of Mrs G, the tribunal was satisfied that you were sometimes unaware of the candidness of some of the personal details you disclosed, how they could be perceived by others, and how they could make others feel uncomfortable. It also became apparent that you lent, and offered to lend, money to more than one of your colleagues at the Practice during the relevant time period with which this tribunal is concerned. That is not an allegation you face and the tribunal did not interpret it as a negative feature of your character. The tribunal inferred from it, however, that you are a naturally generous person and it accepted Mr Moran’s submission that the GMC’s case was not that you used money or offers of money as a means by which to further any sexual desires on your part.

54. In all the circumstances, the tribunal concluded that you are a naturally tactile and emotionally-open person, and that whilst at the Practice you had a tendency, at
times, to blur the lines between your professional and private lives, act inappropriately, display unawareness of other’s personal space, and, on occasions, cross professional boundaries.

**Delay, the Possibility of Collusion, and Potential Cross-contamination of Evidence**

55. Miss A began her SSC placement at the Practice on 16 February 2015, approximately four and a half years after the merger took place. The placement was due to last six weeks but ended on 5 March 2015, when she complained to Miss B and then Mrs G about your conduct. Her complaint was therefore made roughly two weeks after the first of your alleged actions in respect of her, on 20 February 2015, and around three weeks since she first met you and started her placement at the Practice. The tribunal was therefore satisfied that it was more likely than not that her complaint was made without knowledge of any other complaints of a similar nature against you. Your alleged behaviour towards Miss A post-dates your alleged actions towards Misses B-F chronologically, but Miss A was the first to make a formal complaint against you. The evidence showed, however, that when Miss A did raise concerns to Miss B about your behaviour Miss F was present. Ms H’s evidence was that she was also aware of the concerns.

56. All of the witnesses who gave evidence on behalf of the GMC were firm in their evidence that they have not discussed the complaints against you with each other. Misses B-F all worked with you for a number of years before Miss A made her complaint about your conduct in 2015, and their subsequent accounts of your behaviour over some years emerged only as a result of the Practice’s internal investigation into Miss A’s complaint later that year. Miss B and Miss C worked with you from 2009 until the merger in 2010 and at the Practice after that, and Misses D-F all worked directly with you at the Practice from 2010 onwards. None of them had raised formal complaints against you during that time and none of them displayed any personal animosity towards you during their evidence to the tribunal. Indeed, the tribunal found them for the most part to give balanced appraisals of you as a person.

57. The evidence shows that in September 2012 Miss F did raise concerns about your behaviour to Miss B, who agreed to change Miss F’s day off from a Thursday to a Monday so that hers did not coincide with yours. Miss F also made a personal record of what she perceived to be your inappropriate behaviour around that time, which the tribunal has read. The evidence also showed that Ms H was aware of aspects of Miss E’s concerns about your behaviour, which Miss E had from 2010 onwards, and Miss F’s concerns from 2012. In addition, Dr J’s minutes of the interview he undertook with Miss B in September 2015, as part of the Practice’s internal investigation into Miss A’s complaints, record Miss B as saying at the time words to the effect of ‘girls feeling guilty now’ which the tribunal took as an indication that some of the Practice staff were aware that concerns had been raised.
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about you, despite her evidence that by ‘girls’ she was in fact referring to herself and the worries she felt.

58. It was clear that many of the sub-paragraphs of the allegation in respect of the different non-clinical staff at the Practice who allege inappropriate behaviour on your part are similar in nature. The evidence showed that the non-clinical staff at the Practice work in close proximity with each other, have done so for a number of years, and that there was a culture of relative openness amongst some of them. Indeed, some of the witnesses described each other as friends.

59. However, there are differences, albeit sometimes subtle ones, between what is alleged on the part of each subject, and where similar actions are alleged, in their oral evidence each witness described similar events in a way that was very particular to them, and them alone. In addition, the tribunal was satisfied from the evidence that close friendship dynamics were not always evident between the GMC’s witnesses. It was also apparent to the tribunal that although Misses B-F all gave evidence to the effect that they found your alleged behaviour ‘inappropriate’ at times, not all of them viewed your alleged behaviour in the same light in terms of sexual motivation. For example, whilst not saying that your alleged behaviour was sexually motivated, Miss E was firm and consistent in her evidence that she perceived your actions towards her to amount to you ‘testing the waters’.

60. Having carefully considered both the similarities and the differences between what was alleged on the part of each of the GMC’s witnesses, as well as the absence of any direct allegation of sexual motivation on your part by them, the tribunal was satisfied that there is no evidence that there has been any collusion on the part of the GMC’s witnesses, or the ‘general hysteria’ which Miss Barnfather has, on your behalf, implied led the GMC to misconstrue and misinterpret your behaviour leading it to conclude that it was sexually motivated. However, it could not rule out entirely the possibility of some cross-contamination of evidence. It therefore determined to remain alive to the possibility of cross-contamination, related issue of delayed complaints against you, and to independently test the evidence of each of the GMC’s witnesses in turn, at the appropriate time in the course of its deliberations.

The Tribunal’s Findings - Facts

61. Having arrived at conclusions in respect of the above contextual matters, the tribunal considered the remaining paragraphs and sub-paragraphs of the allegation separately and made the following findings:
Miss A

Paragraph 1

Whilst working as a Student Selected Components supervisor at the Pallion Health Centre (‘the Practice’) on:

a. 20 February 2015, you:

i. told Miss A to lie on the examination bed; Found proved

62. It was not disputed that you were Miss A’s SSC supervisor at the Practice. Neither was it disputed that on 20 February 2015 Miss A independently saw a patient with an inguinal hernia who she could not examine because of the absence of a chaperone. Miss A’s evidence was that you examined the patient, and did so with the patient in a standing position. Your evidence is that you do not recall the patient or the examination you performed. Miss A’s consistent evidence was that she had not understood how to differentiate between indirect and direct inguinal hernias and that she asked you to help her in this understanding. Her further evidence was that at the end of the morning surgery you told her to lie on the examination bed in your consultation room and said that you would show her where a hernia is. You did not dispute that the physical demonstration took place, but your evidence was that you did not recall ‘telling’ Miss A to lie on the examination bed, but rather that she did so voluntarily. Your further evidence was that you took the fact that Miss A lay on the examination bed as her consent to you performing the demonstration on her, and that your intention was to help her learn in preparation for an objective structured clinical observation (‘OSCE’). The tribunal determined that the issue of whether you drew a diagram of where to locate a hernia and whether you did so before or after the demonstration were in effect peripheral matters not central to making its finding.

63. Dr P’s evidence was that when he undertook his SSC placement at the Practice in 2014 you performed physical demonstrations on him. His further evidence was that when you performed a demonstration of an abdominal examination on him, you ‘directed’ him to lie on the examination bed. Your consistent evidence was that you perceived Miss A to be an anxious individual lacking in confidence who sought out frequent (almost daily) reassurance that she would make a good doctor. You also accepted in your oral evidence that in order to physically demonstrate in an adequate fashion where an inguinal hernia is located, and the differences between an indirect and direct inguinal hernia, the subject of the demonstration would have to be lying down. The tribunal therefore determined that it was more likely than not that Miss A did not voluntarily lie down on the examination bed, and that you told her to do so. It therefore found this sub-paragraph proved.
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ii. placed your hand underneath Miss A’s trouser band; Found proved

64. Miss A’s evidence was that when you performed the physical demonstration of where to find an inguinal hernia she was fully-clothed and that you placed your hand underneath her trouser band. Your evidence was that you did not. In all the circumstances, the tribunal preferred Miss A’s evidence to yours. Miss A gave a very balanced account of her version of events, and the tribunal was satisfied that she did not exaggerate or embellish what happened. The evidence of Miss A, supported by that of Miss F, was that Miss A was upset by the physical demonstration and that it made her feel uncomfortable. For these reasons the tribunal determined that it was more likely than not that you did place your hand underneath Miss A’s trouser band, and it therefore found this sub-paragraph proved.

iii. moved Miss A’s trouser waist band; Found proved

65. Miss A’s evidence was that in order to carry out the physical demonstration on her you did not touch her genital area, but moved her trouser waist band down. Your evidence was that you did not touch the waist band of her trousers. The tribunal has already found that in order to carry out the demonstration you placed your hand underneath Miss A’s trouser band. The tribunal again preferred Miss A’s evidence to yours, and it was satisfied from your oral evidence that you accepted that performing an examination of an inguinal hernia would be made more difficult if the subject’s trouser waist band were not moved in any way. For these reasons, the tribunal determined that it was more likely than not that you did move Miss A’s trouser waist band during the demonstration and it therefore found this sub-paragraph proved.

iv. pressed on Miss A’s groin; Found proved

66. Miss A’s evidence was that when performing the physical demonstration of where to locate an inguinal hernia you pressed her groin, but that you did not touch her genital area. In your witness statement you stated that you would not describe the area that you touched during the demonstration as her groin, albeit a lay person might. In your oral evidence, however, you accepted that an inguinal hernia is found in the groin area. The tribunal also bore in mind your oral evidence that you performed the demonstration to help Miss A prepare for her OSCE, and that an OSCE would inevitably involve the performance of a physical examination by the student, requiring in this instance that the student touch the patient or subject’s groin area. For these reasons, the tribunal determined that it was more likely than not that you did press Miss A’s groin and it therefore found this sub-paragraph proved.
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b. 26 February 2015, you:

i. untucked Miss A’s top garment from her trousers from behind;
   Found proved

67. It was not disputed that towards the end of the day on 26 February 2015 you and Miss A had an interaction in her consultation room at the Practice. In her account of events sent to Mrs G on 5 March 2015, Miss A stated that on that occasion you mentioned to her that her top was tucked into her trousers and that you ‘tried to pull it out’ as she was walking out of the consultation room. Her evidence to the tribunal was that as she was leaving the consultation room with her back facing you her top was tucked into her trousers and that you touched it, and said to her that it was tucked into her trousers. Her further evidence was that you then used both hands to untuck her top and that she responded by turning around to say that it was ‘meant to be that way’. The tribunal noted that in her first account Miss A described an attempt at pulling the top out from her trousers, and that in her witness statement she described you having ‘untucked’ her top, ie performing a completed ‘successful’ action rather than an incomplete attempt. Miss A’s evidence on this point in her oral evidence and under cross-examination was firm and consistent with her witness statement.

68. In your initial account of events, dated 7 April 2015, you stated that you did not touch Miss A’s top. In your witness statement, however, your evidence was that you thought Miss A’s blouse was meant to be tucked in on both sides and it seemed to you that one side was ‘hanging out’ at the back, a point you demonstrated to the tribunal during your evidence with the assistance of a handkerchief, and that you mentioned this to Miss A in order to be helpful. Your further evidence was that in the course of telling Miss A about her blouse it was ‘possible’ that you touched it, but that you were certain that you did not pull it out of her waistband, as there would have been ‘no reason to’. The tribunal preferred Miss A’s evidence to yours and in all the circumstances it determined that it was more likely than not that on 26 February 2015 you did untuck her top garment from her trousers from behind, and it found this sub-paragraph proved.

ii. placed your arms around Miss A; Found proved

69. In her initial account of events to Mrs G, Miss A stated that at around 16:45 on 26 February 2015 she went to your room to ask to leave the Practice for the day. She stated that you told her it was nice to see her and that you gave her ‘a cuddle’. Her evidence was that she thought that this was the first time that you had ‘cuddled’ her and that you used both arms to do so. Her further evidence was that she ‘went really stiff’ and did not reciprocate the ‘hug’. It was after the alleged ‘cuddle’ or ‘hug’ and when Miss A was leaving the room that you untucked her blouse from her trousers.
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70. Your evidence was that on that occasion you did not cuddle Miss A or put your arms around her. You accepted, as does the tribunal, that you are a naturally tactile person and your further evidence was that there were occasions, ‘perhaps once or twice’, when you cuddled Miss A – that is, your evidence was that on occasion you put your arm on Miss A’s shoulder as a show of support and to reassure her. Your evidence was also that on occasion you would give her ‘a friendly hug’. The tribunal again preferred Miss A’s evidence to yours and in all the circumstances it determined that it was more likely than not that on 26 February 2015 you placed your arms around her. It therefore found this sub-paragraph proved.

iii. kissed Miss A on the cheek; Found proved

71. Miss A’s evidence was that when you placed your arms around her, or ‘cuddled’ her, in the consultation room on 26 February 2015 you also kissed her on the cheek. Your evidence was that on that occasion you did not kiss Miss A, but that you did give her ‘a peck on the cheek’ on other occasions, again as a gesture of support and reassurance. In your statement you stated that you did not recall this type of contact happening on that particular day, but that you accepted there were other occasions when it did. The tribunal preferred Miss A’s evidence to yours and in all the circumstances it determined that it was more likely than not that on 26 February 2015 you did kiss Miss A on the cheek, and it found this sub-paragraph proved.

c. 26 February 2015, you opened the door to Miss A’s consultation room in an abrupt manner; Found proved

72. In reaching this finding the tribunal gave the phrase ‘an abrupt manner’ its commonplace every day meaning, as a manner that was ‘sudden and unexpected’. Miss A’s evidence was that on 26 February 2015 she shadowed your morning clinic and also took part in a parallel clinic. Her evidence was that having seen a patient with multiple medical problems, she rang you to ask if you could come and see the patient and finish the consultation. This was the context in which the tribunal’s findings at sub-paragraph 1(b) occurred. Miss A’s evidence was that you said you would ‘be a few minutes’ but that not long after the telephone call ended you opened the door to her consultation room ‘rather abruptly’. Her further evidence was that she later mentioned this incident to the reception staff at the Practice, saying that ‘it felt as if the door had nearly come off its hinges’.

73. You accepted that you did open the door to Miss A’s consultation room, but stated that you could not imagine doing so in an abrupt manner. Your evidence was that there was no reason for you to be abrupt and that all you could think of by means of explanation was that the handle slipped from your hand upon opening the door and that it hit the wall of the consultation room. The tribunal accepted Miss A’s evidence and was satisfied that the way in which you opened the door to her
consultation room was sudden and unexpected to her. The tribunal also determined that your account and possible explanation for any abruptness in fact supported Miss A’s version of events. In all the circumstances the tribunal determined that it was more likely than not that on 26 February 2015 you did open the door to Miss A’s consultation room in an abrupt manner and it therefore found this sub-paragraph proved.

d. 27 February 2015, you:

i. touched Miss A’s forehead; **Admitted and found proved**

ii. pulled Miss A towards you for a cuddle using one arm; **Found proved**

74. Miss A’s consistent evidence was that on 27 February 2015 she went to work at the Practice but that she ‘didn’t feel very well’ and felt ‘a little bit anxious’, particularly as the requirements of her attendance at the Practice had been an issue raised with her by you previously. It was not disputed that she told you that she felt unwell and that she most likely had some kind of chest infection. Neither was it disputed that you and Miss A had a discussion about her going home and seeking advice from a doctor, either from the urgent care centre also based in the Pallion Health Centre, or from her own GP. Miss A’s evidence was that in the course of that conversation you offered to examine her, touched her forehead, and tried to feel her neck. You admitted that you touched her forehead and accepted that you ‘examined’ her on that occasion. Miss A’s evidence was that she refused to let you examine her neck and also rebuffed a subsequent offer from you to listen to her chest. In your evidence, you maintained that Miss A welcomed your assessment of her and that she did not say ‘no’ or give any indication that she was uncomfortable with the examination.

75. Miss A’s consistent further evidence was that during the conversation between the two of you in her consultation room on 27 February 2015 she was sitting down and you were standing and that you pulled her towards you for a cuddle. In her account of events to Mrs G of 5 March 2015 Miss A did not specify how many arms were used. Her evidence to the tribunal was that you used one arm. You denied trying to hug Miss A or attempting to pull her towards you at any stage during the encounter between the two of you on that date. However, the tribunal has already accepted your evidence that you did, on occasion, cuddle Miss A (by placing one arm around her) or offer her a ‘friendly hug’. The tribunal has also already found that the previous day you placed your arms around Miss A and kissed her on the cheek. The tribunal preferred Miss A’s evidence to yours, and in all the circumstances it determined that it was more likely than not that on 27 February 2015 you did pull her towards you for a cuddle using one arm. The tribunal therefore found this sub-paragraph proved.
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e. 2 March 2015, you told Miss A that you have, ‘bachelor blood in me’ or words to that effect; **Admitted and found proved**

f. 3 March 2015, you:

i. told Miss A that you ‘get urges like any man’, or words to that effect; **Found proved**

76. You admitted that on 2 March 2015 you told Miss A that you had ‘bachelor blood’ in you, or words to that effect. However, the context in which it was said, the meaning behind it and the motivation behind saying it were disputed by you. The tribunal addressed those matters separately in its consideration of paragraph eight of the allegation as it relates to sub-paragraph 1(e).

77. It was not disputed that the following day, 3 March 2015, you and Miss A had a conversation about a patient presenting with respiratory symptoms and swollen lymph nodes but who turned out to be HIV positive and have an HIV related chest problem. You brought up the patient as an example to demonstrate to Miss A the importance of taking a sexual history from a patient. Neither was it disputed that the discussion evolved to the topic of casual sex. Miss A’s evidence was that she was standing by the door to your consultation room and that just as she was opening it you waved your hand as if to say do not open the door. Her firm and consistent evidence was that you then said that you could tell her things about urges and casual sex and that you ‘get urges like any man’.

78. Your evidence was that the discussion of the patient led to you talking about practising safe sex and the responsibility of GPs to promote it, but that you were certain you did not discuss your own personal sex life, save for saying that you would not engage in casual sex. In your oral evidence you expanded upon your statement, and told the tribunal that you had stressed to Miss A that despite the urges men get generally, they should still practise safe sex. The tribunal preferred Miss A’s evidence to yours, and in all the circumstances it determined that it was more likely than not that you did say that you, not men generally, got urges like any other man or words to that effect. It therefore found sub-paragraph 1(f)(i) proved.

ii. told Miss A that when you make love it has to be someone you know, or words to that effect; **Found proved**

79. Miss A’s consistent evidence was that during the conversation you had with her on 3 March 2015 you told her that when you make love it has to be with someone you know. You accepted that in the course of the conversation the topic of casual sex was raised but your evidence was that you were again speaking in general terms about the difference between making love with someone who one knows well and someone one knows less well, rather than about your own personal sexual preferences, albeit you accept you told Miss A that you do not engage in casual sex. The tribunal preferred Miss A’s evidence to yours, and in all the
circumstances it determined that it was more likely than not that on 3 March 2015 you did tell Miss A that when you make love it has to be with someone you know, or words to that effect. It therefore found this sub-paragraph proved.

   iii. cuddled Miss A; **Found proved**

   iv. kissed Miss A’s cheek; **Found proved**

80. Miss A’s consistent evidence was that as she extracted herself from the conversation with you by the consultation room door on 3 March 2015 you cuddled her and kissed her cheek. Your evidence was that you may have given her a pat on the back to congratulate her on her good knowledge of chronic obstructive pulmonary disease (‘COPD’) as she exited the room, but you denied cuddling her and kissing her cheek on that occasion. The tribunal has already found that you cuddled Miss A and kissed her cheek on a previous occasion, on 26 February 2015. You also accepted that you are a tactile person and that you would, on occasion, cuddle Miss A or give her a ‘friendly hug or peck on the cheek’. The tribunal was therefore satisfied that in all the circumstances it was more likely than not that you did cuddle Miss A and kiss her cheek on 3 March 2015, and it therefore found sub-paragraphs 1(f)(iii) and 1(f)(iv) proved.

   g. 4 March 2015, you:

   i. told Miss A, ‘I like you’, or words to that effect; **Admitted and found proved**

   ii. told Miss A that her lips looked dry, or words to that effect; **Admitted and found proved**

   iii. touched Miss A’s bottom lip with your thumb. **Found proved**

81. You admitted that during a conversation with Miss A on the morning of 4 March 2015 you told her that you liked her. You also admitted that towards the end of the day, during a different conversation following a home visit carried out by both of you together, you told her that her lips looked dry, or words to that effect. Miss A’s emphatic evidence was that you also ran your thumb across her bottom lip, evidence she stuck to vehemently under robust questioning. The tribunal found your evidence on this point inconsistent. In the report you made in April 2015 you accepted that your finger may have come into ‘fleeting contact’ with Miss A’s bottom lip on that date. In your witness statement, you stated that you did not remember touching Miss A’s lip but you accepted that you may have done so to demonstrate to her how dehydrated they were. In your oral evidence, you told the tribunal that if it happened at all it happened on 27 February 2015 when Miss A attended work at the Practice when she was unwell. The tribunal preferred Miss A’s evidence to yours, and in all the circumstances it determined that it was more likely than not that on 4
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March 2015 you did touch Miss A’s bottom lip with your thumb and it therefore found sub-paragraph 1(g)(iii) proved.

Miss B

Paragraph 2

Whilst working with Miss B at the Practice, between 2009 and February 2014, you:

a. touched her lips and told her that they were dry; Found proved

82. Miss B’s consistent evidence was that whilst working with her at the Practice between 2009 and 2014 you would touch her lips and tell her that her lips were dry. The tribunal found your evidence about this allegation to be inconsistent. In your witness statement you accepted that there were occasions, perhaps when Miss B had been unwell, when you would have said that her lips looked dry by way of a clinical observation and that you may, at the same time, have touched them as a natural friendly gesture in the context of the friendship you had with her. In your oral evidence, however, you said that you could not recall ever touching Miss B’s lips. The tribunal preferred Miss B’s evidence to yours and in all the circumstances it determined that it was more likely that not that whilst working at the Practice with Miss B you did touch her lips and tell her that her lips were dry. It therefore found this sub-paragraph proved.

b. held her hand; Found proved

83. Miss B’s evidence was that she found you to be very ‘touched feely’ and that you would hold her hand. Your evidence was that you accepted patting Miss B’s hands on occasions but you denied ever holding her hand. During her oral evidence Miss B was able to demonstrate to the tribunal what she meant by ‘holding’ her hand. The tribunal was satisfied that what she described and demonstrated was a holding action rather than a patting action, and one which restricted her from moving her own hand away from yours. The tribunal therefore preferred Miss B’s evidence to yours and in all the circumstances it determined that it was more likely than not that whilst working with her at the Practice you did hold her hand. It therefore found this sub-paragraph proved.

c. tried to cuddle her; Found not proved

84. It was not disputed that on occasion whilst working at the Practice you cuddled Miss B and that you were not rebuffed from doing so. The cuddles were, on those occasions, completed actions not failed attempts. In her witness statement Miss B made the general statement that whilst working at the Practice you would try and cuddle her but she did not expand upon that in her oral evidence or provide
specific examples of times when you had attempted to cuddle her but were unsuccessful in your attempt. In all the circumstances, the tribunal was not satisfied that the GMC had proved to the required standard that you tried to cuddle Miss B. It therefore found this sub-paragraph not proved.

d. told her you had dreamt about her ‘dancing around a pole wearing knee high leather boots to entice patients’ or words to that effect; **Found not proved**

85. Miss B’s consistent evidence was that on one occasion a discussion took place in the Practice’s administrative areas about how patient numbers could be increased. You did not dispute that such a conversation took place and that other people were present, evidence supported by that of Mrs K who recalled a number of other people being present when the conversation took place. Miss B’s further evidence was that she jokingly suggested that she would stand outside the Practice wearing a tabard asking patients to come and register with the Practice. Her evidence was that the next day you told her that you had had a dream about her dancing around a pole with knee-high leather boots on to entice patients, albeit when interviewed by Dr J there is no record of her having mentioned that you referred to pole dancing. Your evidence was that you jokingly replied to Miss B during the conversation, not the following day, saying that she should climb a lamppost wearing a placard. You denied mentioning anything about dancing around a pole or wearing knee high leather boots. The only evidence at the tribunal’s disposal in respect of this sub-paragraph of the allegation comes from Miss B, you, and Mrs K, and Mrs K’s evidence supports your account of events. The tribunal was therefore not satisfied to the required standard that you said what is alleged or words to that effect. It therefore found this sub-paragraph not proved.

e. tried to kiss her on a number of occasions; **Found not proved**

86. It was not disputed that you kissed Miss B more than once whilst working at the Practice. Those kisses were completed actions, not attempts that were rebuffed by Miss B. Miss B’s evidence was that following a Practice meeting in February 2014 where you addressed Mrs K’s unhappiness at the Practice, you tried to kiss her and that she rebuffed you. Her evidence was that you never tried to kiss her again. Miss B was unable to provide examples of other occasions on which you had tried to kiss her but were unsuccessful in your attempt. The tribunal was therefore not satisfied that the GMC has proved, to the required standard, that you tried to kiss Miss B on a number of occasions. It therefore found this sub-paragraph not proved.

f. kissed her on the cheek; **Admitted and found proved**

g. said ‘I love you, we are best friends’, or words to that effect; **Found proved**
87. You admitted that whilst working with Miss B at the Practice you kissed her on the cheek. You accepted that you said to Miss B that you loved her, but you denied ever saying to her that you were best friends, or words to that effect. Miss B in her evidence to the tribunal accepted that the two of you had a relatively close friendship, a point also emphasised by you in your evidence. In her interview with Dr J Miss B said that you had said you to her that you were ‘best friends’. In her witness statement she stated that you said to her that she was your ‘only friend’. In all the circumstances, and particularly given the evident depth and extent of your friendship with Miss B at the time, the tribunal was satisfied that it was more likely than not that whilst working with her at the Practice you did say that you loved her and that you were best friends, or words to that effect. It therefore found this sub-paragraph proved.

   h. asked her to look at flats with you so that you could leave your wife.  
   **Found proved**

88. It was not disputed that whilst working at the Practice you asked Miss B to look at flats with you. It was also accepted by you that whilst at the Practice you did share personal details with your colleagues, including about the problems you were experiencing in your marriage around the time of the merger and subsequently. When interviewed at the Practice by Dr J, Miss B stated that you used to tell her about problems you were having with your wife, that you wanted to move out and wanted to look for flats. Her further consistent evidence was that you said that you wanted her to help you look for flats so that you could leave your wife and that you wanted her to attend viewings with you.

89. Your evidence was that you felt that you could trust Miss B and you accepted that you did discuss your personal problems with her. Your further evidence was that you had no definite plan to leave your wife at the time but that it was a possibility in your mind. Your evidence was also that in any event you had always wanted to purchase a second property as an investment opportunity although no witnesses apart from Mrs K can recall that. The tribunal preferred Miss B’s evidence to yours and in all the circumstances it determined that it was more likely than not that you did ask Miss B to look at flats with you so that you could leave your wife. It therefore found this sub-paragraph proved.

**Miss C**

**Paragraph 3**

Whilst working with Miss C at the Practice, between April 2009 and 2013, you:

a. touched her arm and hands and said that you loved her; **Admitted and found proved**
b. wrote notes to her which read ‘I love you’; **Admitted and found proved**

c. told her that you:

i. were interested in her; **Found proved**

90. You admitted that whilst working with Miss C at the Practice between April 2009 and 2013 you touched her arm and hands and said that you loved her. You also admitted that you wrote notes to her which read ‘I love you’.

91. You have known Miss C for over 20 years. Before working for you at the Practice she was one of your patients, and her children are patients of yours. In the course of Miss C’s evidence it became clear that whilst working with her at the Practice you lent her money and that the two of you were close friends. Miss C’s evidence was also that around the time of the merger, circa 2009-2010, you asked her if she would like to ‘go out’ with you for a meal. Her consistent evidence was that you told her that you were interested in her and that this ‘went on for years’. Her further evidence was that she told you that saying such things was inappropriate. The tribunal preferred Miss C’s evidence to yours and in all the circumstances it determined that it was more likely than not that you did tell Miss C that you were interested in her. The tribunal therefore found this sub-paragraph proved.

ii. and your wife slept in separate rooms and did not live as man and wife; **Found proved**

92. Miss C’s evidence was that whilst working with her at the Practice you would tell her that you and your wife lived separate lives, that you slept in separate rooms and that you and your wife did not live as man and wife. Your evidence, supported by that of Mrs K, was that whilst you and your wife did not sleep in separate beds, if your wife had a particularly restless night the two of you might sleep separately, with your wife sleeping in the living room. You denied that you told Miss C that you and your wife did not live as man and wife. The tribunal was satisfied that you and Miss C did confide in each other about details from your personal lives and you accepted that you told Miss C that on occasion you and your wife slept in separate rooms. In all the circumstances the tribunal determined that it was more likely than not that you did tell Miss C that you and your wife slept in separate rooms and that you did not live as man and wife. It therefore found this sub-paragraph proved.

iii. were planning to leave your wife; **Found proved**

93. Miss C’s further evidence was that whilst working at the Practice you asked her to look for a flat for you as you were planning on leaving your wife. You
accepted that your marriage was strained at the time of the merger and subsequently. Your evidence was that in moments of frustration and desperation you vocalised thoughts of leaving your wife, but that you had no active plans to do so. The tribunal preferred Miss C’s evidence to yours and in all the circumstances it determined that it was more likely than not that you did tell Miss C that you were planning to leave your wife. It therefore found this sub-paragraph proved.

iv. were living a single man’s life; Found proved

94. Miss C’s evidence was that as part of the conversations you would have with her in which you confided information about your marriage and personal life, you told her that you were living a single man’s life. You denied that you ever told her that you were living a single man’s life. The tribunal has already found that whilst working at the Practice you told Miss C that you and your wife slept in separate rooms and that you did not live as man and wife. In all the circumstances, the tribunal determined that it was more likely than not that in the context of those conversations you also told Miss C that you were living a single man’s life. It therefore found this sub-paragraph proved.

d. tried to kiss her; Found proved

e. tried to cuddle her. Found proved

95. Miss C’s evidence was that whilst working with her at the Practice there were times when she went into your consultation room and you stood in front of the door to stop her from leaving. Her further evidence was that you made attempts to kiss and cuddle her and that she told you on at least two occasions that your attempts to do so were inappropriate and that she was not interested in you. Your evidence was that on occasion you gave Miss C ‘a peck on the cheek’ but that there was never an occasion when you ‘tried’ to kiss her. Your further evidence was that on occasions you cuddled Miss C but again, there was never a time when you tried to cuddle her and were rebuffed. Having had regard to your admissions to sub-paragraphs 3(a) and 3(b) of the allegation, and its findings at sub-paragraph 3(c) as well as all the evidence, in all the circumstances the tribunal determined that it was more likely than not that whilst working at the Practice you did try to kiss and cuddle Miss C. It therefore found sub-paragraphs 3(d) and 3(e) proved.

Paragraph 4

In July 2010, you asked Miss C to look for another job because it was heart-breaking for you to be rejected by her. Found proved

96. It was not disputed that around the time of the merger, in July 2010 you had a conversation with Miss C. Miss C’s evidence was that she had rebuffed advances from you in 2009 and had told you it was inappropriate and that you should not
behave in that way because you were a married man. Miss C’s further evidence was that from the time she first worked for you until 2013 she was single, having separated from her husband. Her evidence was that when she began her relationship with her current partner your inappropriate behaviour towards her stopped. In particular, Miss C’s evidence was that in July 2010 you asked her to look for another job because it was heart-breaking for you to be rejected by her.

97. You denied asking Miss C to do so, and your evidence was that you recognised that there had been a change in the extent and depth of your friendship with her, and that you may have said something along the lines that you would look for another job. Your evidence was that you said as much because you were finding the animosity at the Practice in the immediate aftermath of the merger difficult to cope with. You denied saying anything directly related to Miss C. The tribunal noted that the conversation with Miss C occurred around the time of the merger, a merger which you accepted was something you had been looking forward to and which had been in the process of being undertaken for some time. In that context, the tribunal found it inherently implausible that you would tell Miss C that you would look for another job. The tribunal preferred Miss C’s evidence to yours and in all the circumstances it determined that it was more likely than not that in July 2010 you did ask her to look for another job because it was heart-breaking for you to have been rejected by her. It therefore found this sub-paragraph proved.

Miss D

Paragraph 5

Whilst working with Miss D at the Practice:

a. between 2014 and June 2015, you touched and rubbed her hands and arm when asking questions; **Found not proved**

98. Miss D’s evidence was that whilst working with you at the Practice she would have interacted with you between five and ten times on a day to day basis. Her evidence was that you would always pop into the office to ask queries or ask the administrative staff to carry out tasks for you. Her further evidence was that from 2014 you would rub your fingers on the top half of her palm or her arm after asking her to do something for you and that you did this several times, sometimes in the Practice office and sometimes in your consultation room. You accepted that you ‘patted’ Miss D’s hands or arms but you denied that you ‘rubbed’ them. Your evidence was that you often patted the hands and arms of the Practice’s non-clinical staff as a gesture of thanks or comfort. You accepted that sometimes you did so publicly and sometimes privately, in the consultation rooms.

99. The tribunal accepted that there is a difference between ‘patting’ and ‘rubbing’, but Miss D’s evidence was that when you touched and rubbed her hands
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and arms it was after asking questions, not when doing so. The tribunal was therefore satisfied that the GMC has not proved to the required standard that you touched and rubbed Miss D’s hands and arms when asking questions and it therefore found this sub-paragraph not proved.

b. from August 2013, repeatedly made reference to her prescription error. Found proved

100. In reaching this finding, the tribunal gave the word ‘repeatedly’ its commonplace every day meaning, of occurring over and over again. It was not disputed that in August 2013 Miss D made a mistake and administered the drug Warfarin to a patient who should not have been prescribed that medication. Her further evidence was that in the wake of her mistake you repeatedly made reference to her prescription error, and brought it up at internal Practice meetings and that you ‘bullied’ her about it. Miss D’s evidence, accepted by you, was that at the time of the prescription error Miss B, the Practice Manager, was on holiday for a period of around two-three weeks. Your evidence was that you admitted that you made reference to Miss D’s prescription error on more than one occasion. You do not accept the implication that you made excessive reference to it. Your further evidence was that you repeated your concerns about the error because of the potential consequences of that particular error and because initially you did not feel that Miss D was treating the matter with sufficient gravitas. In all the circumstances, the tribunal was satisfied that from August 2013 you did repeatedly make reference to Miss D’s prescription error, albeit within the confines of a period of around two to three weeks when Miss B was absent from the Practice. It therefore found this sub-paragraph proved.

Miss E

Paragraph 6

Whilst working with Miss E at the Practice, between late 2009 and early 2011, you:

a. touched her hand and knee more than once; Found proved

101. It was not disputed that you and Miss E have known each other for about 18 years, from your time as a single-handed GP in the same building as Dr I’s Practice prior to the merger. Miss E’s evidence was that after the merger she had a lot of contact with you on a day to day basis. Her evidence was that you ‘were in and out of [your] office a lot’ and that you also called her into your office a lot. Her evidence was that there were times when she would go into your consultation room to discuss referrals. Her further consistent evidence was that when doing so you would move your chair next to her while you told her what to write. Her evidence was that while she was writing what you told her you would touch her hand or her knee. She
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remained firm on this point in her evidence to the tribunal when she said that you would ‘lean across’ and touch her knee for a few seconds and that this would happen more than once a day.

102. Your evidence was that you accepted that on occasions you ‘patted’ Miss E’s hand, as an expression of thanks, as you did with other members of the reception staff. You denied that you ever touched Miss E’s knee. The tribunal preferred Miss E’s evidence to yours and in all the circumstances it determined that it was more likely than not that you touched Miss E’s hand and knee more than once between late 2009 and early 2011. It therefore found this sub-paragraph proved.

b. tried to kiss her; **Found not proved**

103. You admitted that you between late 2009 and early 2011 you kissed Miss E on the cheek (as set out at sub-paragraph 6(c) of the allegation below). Miss E’s evidence was that on one occasion when you were alone with her in your consultation room you tried to kiss her on the lips but that she turned away and the kiss landed on her cheek. When interviewed by Dr J as part of the Practice’s internal investigation Miss E did not refer to any attempted kisses on your part, but only to actual kisses. The tribunal took the view that her evidence on this point was consistent with yours, ie that on occasion you did kiss her. Indeed, her account of your attempted kiss on her lips did result in an actual kiss, albeit on her cheek not her lips. The tribunal was therefore not satisfied that the GMC had proved, to the required standard, that you made attempts to kiss Miss E which were unsuccessful. It therefore found this sub-paragraph not proved.

c. kissed her on the cheek; **Admitted and found proved**

d. told her that you and your wife slept in separate rooms and that it was not a marriage anymore; **Found proved**

104. When she was interviewed by Dr J as part of the Practice’s internal investigation, Miss E stated that you talked to her about your personal life and said to her that you were completely unhappy with your marriage and that you and your wife slept in separate rooms. Her evidence to the tribunal was that in the immediate aftermath of the merger you were really friendly towards her and that you used to ask her to come to your consultation room and that you told her about your marriage problems. Her evidence was that you told her that you and your wife slept in separate rooms and that it was not a marriage anymore. You accepted that conversations took place between you and Miss E in which the topic of your marital problems were raised. In all the circumstances the tribunal determined that it was more likely than not that you did tell Miss E that you and your wife slept in separate rooms and that your relationship was not a marriage anymore. It therefore found this sub-paragraph proved.
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e. asked her to look at flats with you because you were leaving your wife.  
**Found proved**

105. Miss E’s evidence was that when you told her that you and your wife slept in separate rooms and that your relationship was not a marriage anymore you also told her that you were looking for a flat. When interviewed by Dr J Miss E told him that you ‘wanted to move out’. In answer to questions from the tribunal, Miss E said that you had asked her to look at flats with you because you were leaving your wife. Her consistent evidence was that you had said to her that you wanted to leave your wife and ‘start afresh’ and that your marriage was ‘over’. You accepted that you asked Miss E to look at flats with you. You denied that you asked her to look at flats with you because you were leaving your wife. Your evidence was that despite the marital problems you were experiencing at the time, you were only considering leaving your wife and did not have an active plan to do so. The tribunal preferred Miss E’s evidence to yours and it was satisfied that it was clear in Miss E’s mind that you did intend to leave your wife at that time. It therefore found this sub-paragraph proved.

Miss F

**Paragraph 7**

Whilst working with Miss F at the Practice, during 2011 to 2014, you:

a. stroked her hand; **Found proved**

106. When interviewed by Dr J as part of the Practice’s internal investigation, Miss F told him that your inappropriate behaviour had been going on for a few years. However, despite going into some detail about your other alleged actions towards her, Dr J made no record of her complaining that you stroked her arm whilst working with her at the Practice from 2011 to 2014. The tribunal accepted that in September 2012 Miss F raised concerns about your behaviour towards her with Miss B and that Miss F made a handwritten near-contemporaneous record of her concerns.

107. In that record, Miss F refers to you ‘holding’ her hand but not ‘stroking’ it. She expanded upon this in her witness statement, and her evidence was that towards the end of 2011 you started making ‘little comments’ about her clothes and about how nice she looked. Her further evidence was that around that time you also started stroking her hand. In cross-examination, Miss F demonstrated a clear ‘stroking’ motion rather than a ‘holding’ motion. Your evidence was that in the immediate aftermath of the merger you found Miss F to be ‘obstructive and unhelpful’ but that over time you formed ‘a more amicable connection’ to the extent that you perceived you to have developed a friendship together. You admitted that between 2011 and 2014 you would, on more than one occasion, have ‘patted’ Miss F’s hand as it was a habit of yours which you adopted with all staff at the Practice as
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a means of expressing gratitude for any support they had provided to you. Your evidence was that you would not describe your actions as ‘a stroke of the hand’. Your evidence was that it was ‘a pat’ and that it was invariably done in the presence of others.

108. The tribunal preferred Miss F’s evidence to yours and in all the circumstances it determined that it was more likely than not that during the period in question you did stroke Miss F’s hand. It therefore found this sub-paragraph proved.

   b. sent emails to her personal address as set out in Schedule 1;  
      Admitted and found proved

c. said ‘Crazy 1 loves Crazy 2’ or words to that effect; Admitted and found proved

d. wrote post-it notes which read ‘Crazy B 1 loves Crazy B 2’; Admitted and found proved

e. whispered ‘I love you’, or words to that effect; Found proved

109. You admitted that during the period in question you sent emails to Miss F’s personal address, as set out in Schedule 1. It was not disputed that you began referring to yourself as ‘Crazy 1’ or ‘Crazy B 1’ and to Miss F as ‘Crazy 2’ or ‘Crazy B 2’ and you admitted saying to Miss F words to the effect of ‘Crazy 1 loves Crazy 2’. You also admitted that you wrote post-it notes to Miss F which read ‘Crazy B 1 loves Crazy B 2’. Miss F’s evidence was that in 2014 she shared a desk with Ms H, who sat opposite her. Her further evidence was that on one day in early 2014 you came into the Practice office when only she and Ms H were present. Miss F’s evidence was that on that occasion you went over to her, stood behind her and whispered ‘I love you’ before walking away. Miss F’s evidence to that effect was consistent in the handwritten record she made in 2012, some three years before Miss A made her complaint against you. In addition, Ms H’s evidence supported Miss F’s version of events, albeit Ms H said that you did not ‘whisper’ the words ‘I love you’ but said them ‘quietly’. Her evidence was that she was taken aback by what she heard and addressed the comment with Miss F. The tribunal was satisfied that what one individual may perceive as something said in a ‘quiet voice’ another might perceive it as being ‘whispered’.

110. Your evidence was that you readily admitted that on many occasions, both in the presence of others and when you were alone with Miss F, you said and used words to the effect of ‘I love you’. Your evidence was that the statement was ‘a turn of phrase’ that you readily used when speaking to reception staff as a means by which you demonstrated your affection, gratitude and appreciation of them.
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111. The tribunal preferred Miss F’s evidence, supported by that of Ms H, to yours. In all the circumstances it determined that it was more likely than not that you did whisper ‘I love you’ to Miss F whilst working with her at the Practice in 2014. It therefore found this sub-paragraph proved.

f. said ‘I love you, anything you need, you come to me’ or words to that effect; **Found proved**

112. In her manuscript record of her concerns about your behaviour, written in September 2012, Miss F recorded that you said to her that you loved her and that if she needed anything she should come to you, or words to that effect, even if it related to financial matters. That manuscript record was made before Miss A made her complaint about your inappropriate conduct in March 2015. In your witness statement you accepted that you said to Miss F words to the effect that if she needed anything she should come to you and you accepted that such a comment could well have been said at the same time that you expressed your affection for her. In all the circumstances, the tribunal was satisfied that it was more likely than not that you did say to Miss F that you loved her, and that if there was anything she needed she should come to you, or words to that effect. It therefore found this sub-paragraph proved.

g. told her that you were having problems with your wife and that you were looking for a flat; **Found proved**

113. In her manuscript record from September 2012, Miss F recorded that you told her that you were looking to buy yourself a one or two bedroomed flat as you and your wife were having ‘problems’. She went on to state that you wanted her to help you look for somewhere to buy. Her evidence to the tribunal was that you discussed your marital problems with her and that you were looking for a flat. The tribunal found Miss F’s evidence on this point to be consistent. Your evidence was that you accepted that you shared information about your marital problems with Miss F and that when sharing that information you also shared your thoughts about looking for a flat, partly for investment purposes and partly in case the situation with your wife got worse. Your further evidence was that you could understand why Miss F, and others, thought that you were looking for a flat to move to, as that was something you spoke about, but that you did not at that time have a definite and active plan to leave your wife. The tribunal preferred Miss F’s evidence to yours and in all the circumstances it determined that it was more likely than not that you did tell her that you were having problems with your wife and that you were looking for a flat. It therefore found this sub-paragraph proved.
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h. In 2012, invited her to your consulting room, locked the door behind you, and:

i. told her:

A. that you loved her; **Found not proved**

B. that she was the only one you could trust, or words to that effect; **Found not proved**

ii. tried to kiss her on the lips; **Found not proved**

iii. kissed her on the cheek. **Found not proved**

114. In considering sub-paragraph 7(h) of the allegation, the tribunal first considered whether in 2012 you invited Miss F to your consultation room and locked the door behind you. It was not disputed that on one occasion in 2012 you invited Miss F to your consultation room at the Practice. Miss F’s evidence was that you locked the door of the consultation room before telling her that you loved her, that she was the only one you could trust. Her further evidence was that on that occasion you tried to kiss her on the lips but that she turned her head away quickly so that the kiss landed on her cheek. You accepted that you closed the door to the consultation room because you wanted to discuss a recent job opportunity that Miss F had been considering and you wanted the conversation to be confidential. You denied that you locked the door, and the subsequent alleged actions.

115. Neither you nor Miss F were able to tell the tribunal what kind of lock the door to your consultation room at the Practice had. Miss F’s evidence was that she did not see you lock the door, as her back was facing the door of the consultation room, but that she clearly recalled hearing the noise of the door being locked. In her manuscript record from 2012, Miss F referred to you having ‘shut’ the door rather than having ‘locked it’, which was consistent with your account of events. Miss F was unable to tell the tribunal how it was that she managed to leave the consultation room at the conclusion of your interactions with her and whether or not she had to unlock the consultation room door in order to do so.

116. The tribunal bore in mind that the only evidence you locked the door came from Miss F’s interpretation only of a sound and that she did not see you lock it. The tribunal formed the view that it was possible that Miss F had misinterpreted the sound of the door closing for it being locked. In all the circumstances the tribunal could not be satisfied, to the required standard, that you did lock the door to your consultation room on that occasion in 2012. It therefore found this sub-paragraph 7(h) and its respective sub-sub-paragraphs not proved in their entirety.
Paragraph 8

Your conduct as outlined at Paragraphs 1a, b, d(ii) to g, 2 to 4, 5a, 6, 7a, 7c to h above was sexually motivated.

117. In considering this paragraph of the allegation in relation to those paragraphs and sub-paragraphs of the allegation it found proved, the tribunal accepted the advice of the legal assessor. It therefore determined that it would define ‘sexually motivated’ in the common sense, everyday use of language. It also determined that for each of the sub-paragraphs of the allegation it found proved, the tribunal would first ask itself whether a reasonable person would consider that, whatever the circumstances or any person’s purpose in relation to it, the action found proved would in and of itself be considered, because of its nature, sexual. If not, it would then ask itself whether because of the circumstances in which the action occurred it was sexual or the purpose of any person in relation to it was sexual.

118. The tribunal also determined to take a holistic approach to the question of whether or not your actions were sexually motivated and take into account recurrent themes. The tribunal accepted Mr Moran’s submission that whilst the views of each witness as to your apparent motivation for acting as you did were not definitive, some weight should be given to them, particularly if it concluded that there was no direct collusion between the witnesses who appeared on behalf of the GMC but that it would remain alive to the possibility that accounts had been cross-contaminated. Miss Barnfather submitted that you accepted that whilst at the Practice you acted inappropriately, crossed boundaries, and that you may be regarded as ‘outdated and misguided’ but that you denied any allegation that your words and actions were sexually motivated. The tribunal therefore determined that for each of its findings, where your behaviour is alleged to be sexually motivated, it would ask itself whether your conduct, if inappropriate, went beyond being inappropriate and further into the realms of sexual motivation.

119. In assessing the issue of sexual motivation, as well as other disputed facts, the tribunal paid particular attention to the advice it received that your positive good character may make it less likely that you acted as alleged and that it is a factor to take into account when considering whether it believed what you said in your evidence.

Found proved in relation to sub-paragraph 1(a) in its entirety

120. The tribunal’s findings at sub-paragraph 1(a) all relate to one incident, when you demonstrated a physical examination on Miss A on 20 February 2015. You denied that the physical examination took place in the manner described by Miss A. The tribunal found that you did tell Miss A to lie on the examination bed, that you placed your hand underneath her trouser band, moved her trouser waist band, and pressed her groin.
121. Having regard to all the evidence, the tribunal accepted Miss A’s account of events and has found that your actions went beyond what you described and what was required in order to teach Miss A what she wanted to understand about direct and indirect inguinal hernias. Your evidence was that you did not consider a hernia examination of that type to be an intimate examination, but you also conceded that the groin is an intimate area and one close to the genital areas. Furthermore, your evidence was that it was possible to demonstrate the examination over Miss A’s clothing. The tribunal accepted that Miss A was a relatively vulnerable student and that she has a naturally nervous disposition. In the circumstances, the tribunal was satisfied that your actions towards her on 20 February 2015 were more than inappropriate, and that a reasonable person would conclude that they were more likely than not sexually motivated. It therefore found paragraph 8 proved as it relates to sub-paragraph 1(a) proved in its entirety.

**Found proved in relation to sub-paragraph 1(b) in its entirety**

122. The tribunal found that on 26 February 2015 you untucked Miss A’s top garment from her trousers from behind, that you placed your arms around her and kissed her on the cheek. You denied those actions. The tribunal was satisfied that such actions were in and of themselves inappropriate between two colleagues, and particularly between a supervisor and supervisee. Moreover, the tribunal was also satisfied that those actions would be considered in and of themselves as sexual in nature by any reasonable person. In addition, in respect of sub-paragraph 1(b)(i) in particular the tribunal found your explanation implausible. It was satisfied that you could have communicated to her that you thought her blouse was coming untucked quite easily by verbal communication alone. Your actions at sub-paragraph 1(b) were clearly inappropriate invasions of Miss A’s personal space. In all the circumstances, the tribunal determined that it was more likely than not that your actions on that date were sexually motivated. It therefore found paragraph 8 as it relates to sub-paragraph 1(b) proved in its entirety.

**Found proved in relation to sub-paragraph 1(d)(ii)**

123. The tribunal found that on 27 February 2015 you pulled Miss A towards you for a cuddle using one arm. You were standing when you did so, and Miss A was sitting down. That was the day on which Miss A attended her placement at the Practice feeling unwell, only around 10 days after she started at the Practice and had first met you. The tribunal was satisfied that in the context of the recent supervisor-supervisee relationship you had with Miss A your actions on that date were inappropriate. However, having considered the nature of the circumstances in which that behaviour occurred, the tribunal was satisfied that your actions went beyond being inappropriate and were more likely than not sexually motivated. It therefore found paragraph 8 as it relates to sub-paragraph 1(d)(ii) proved.
Found proved in relation to sub-paragraph 1(e)

124. You admitted that on 2 March 2015 you told Miss A that you had ‘bachelor blood’ in you or words to that effect. Your evidence was that you said that phrase in the context of a conversation with Miss A during which you discussed the pastimes and hobbies you had as a single man (ie as a ‘bachelor’) and those that you had maintained as a married man, such as, for example, travelling and visiting safari parks. Your evidence was that it was ‘an off the cuff comment and nothing more’. The tribunal did not find your explanation of what you meant by the phrase ‘bachelor blood’ to be plausible. The tribunal was satisfied that the phrase ‘bachelor blood’ had a sexual connotation, in effect sexual innuendo intended to conjure up an image of you as unattached and available for sexual encounters. In the circumstances in which the comment was made as well as the nature of it, the tribunal was satisfied that a reasonable person would conclude that it was more likely than not a sexually motivated comment on your part. The tribunal therefore found paragraph 8 as it relates to sub-paragraph 1(e) proved.

Found proved in relation to sub-paragraph 1(f) in its entirety

125. The tribunal found that on 3 March 2015, the day after you told her that you had ‘bachelor blood’ in you, you told Miss A that you ‘get urges like any man’ or words to that effect, that you told her that when you make love it has to be with someone you know, or words to that effect, and that you cuddled and kissed her. You denied that those events took place. The tribunal accepted that the conversation between you and Miss A on 3 March 2015 began with you bringing up the importance of asking a patient about their sexual history, a point you knew was important from your own experience of the patient who presented with respiratory symptoms that were, ultimately, related to them being HIV positive. However, it was clear from the evidence that the conversation quickly escalated to your own views about your approach to unsafe and casual sex.

126. The tribunal was satisfied that its findings at sub-paragraph 1(f) were more than inappropriate topics of conversation between two colleagues. It was satisfied that telling Miss A that you get ‘urges’ had even more of a sexual connotation than telling her that you had ‘bachelor blood’ in you as you did the day before. It was satisfied that the sexual language used in the conversation was first raised by you, and it accepted Miss A’s evidence about how uncomfortable the conversation made her feel. The tribunal was also satisfied that cuddling Miss A and kissing her on the cheek were inappropriate actions, but actions which, because of their intimate and physical nature, were inherently sexual and therefore more likely than not had a sexual motivation behind them. In all the circumstances, the tribunal was satisfied that your actions as found proved at sub-paragraph 1(f) were all sexually motivated and it found paragraph 8 as it relates to sub-paragraph 1(f) proved in its entirety.

Found proved in relation to sub-paragraph 1(g) in its entirety
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127. The tribunal found that on 4 March 2015 you told Miss A that you liked her and that her lips looked dry, or words to that effect. It also found that you touched Miss A’s bottom lip with your thumb on that date. You accepted that your comments to Miss A on that date were inappropriate. Whilst the tribunal accepted that telling Miss A that you liked her was not as loaded as the phrases you used on previous occasions, it was also satisfied that in the context in which your comments were made on that day they went beyond simply being inappropriate comments made to a colleague. The tribunal accepted Miss A’s evidence that she was not unwell on 4 March 2015. It therefore concluded that there could have been no clinical justification for you touching her lips. It therefore determined that, taken in the round, the combination of your words and actions on 4 March 2015 were more than inappropriate and the context in which they were made suggested a sexual nature to them. It therefore determined that it was more likely than not that your actions on that date were sexually motivated and it found paragraph 8 as it relates to sub-paragraph 1(g) proved in its entirety.

  Found proved in relation to sub-paragraphs 2(a), 2(b) and 2(f)-2(g)
  Found not proved in relation to sub-paragraph 2(h)

128. The tribunal found that whilst working with Miss B at the Practice, between 2009 and February 2014 you touched her lips and told her that they were dry, held her hand, kissed her on the cheek, said that you loved her and that you were best friends, or words to that effect, and asked her to look at flats with you so that you could leave your wife.

129. The tribunal determined that your actions at sub-paragraphs 2(a), 2(b), 2(f) and 2(g) were all in and of themselves inappropriate but that they also went beyond inappropriateness and amounted to being sexually motivated because of the contexts in which they were made, namely because they all happened in private spaces at the Practice. Miss B’s evidence was that she felt so uncomfortable by your behaviour that she modified her working patterns, and tried to work in the Practice office where there would be other people around.

130. In particular, the tribunal was satisfied that a reasonable person would consider your actions at sub-paragraphs 2(f) and 2(g) to be in and of themselves sexual in nature, given that they involved kissing Miss B on the cheek and telling her that you loved her. You accepted in your evidence that the word ‘love’ has a more serious and romantic connotation than the word ‘like’. In addition, the tribunal could conceive no other motive on your part for telling Miss B that you loved her in the context that you did other than a sexual one. In all the circumstances, the tribunal was satisfied that it was more likely than not that your actions as found proved at sub-paragraphs 2(a), 2(b), 2(f) and 2(g) were sexually motivated, and it therefore found paragraph 8 as it relates to those sub-paragraphs proved.
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131. However, having considered its finding at sub-paragraph 2(h) and the circumstances in which the comment was made, the tribunal was satisfied that your actions in that regard were not sexually motivated. It was accepted that both you and Miss B used to confide in each other about details of your personal lives. In that context, the tribunal determined that whilst asking Miss B to look for flats with you so that you could leave your wife could be considered inappropriate in the circumstances it was not. Indeed, it was also satisfied that Miss B did not construe it as such, because although she did not look at flats with you, she did assist you by printing off information about flats for you. The tribunal therefore determined that it was not inappropriate of you to have asked Miss B to look for flats with you and that it was not inappropriate to have provided the reason why you wanted to look for flats. The tribunal therefore found paragraph 8 as it relates to sub-paragraph 2(h) not proved.

Found proved in relation to paragraph 3 in its entirety

132. The tribunal found that whilst working with Miss C at the Practice, between 2009 and 2013 you touched her arm and hands and said that you loved her, wrote notes to her which read ‘I love you’, told her that you were interested in her, that your wife slept in separate rooms and that you did not live as man and wife. It also found that you told Miss C that you were planning on leaving your wife and that you were living a single man’s life. The tribunal also found that you tried to cuddle and kiss Miss C but were rebuffed by her.

133. You had known Miss C for over 20 years initially as a patient and later as a colleague. The evidence showed that whilst working with her at the Practice you lent her money and on one occasion asked her to go out with you for a meal. Miss C’s evidence was that she twice rebuffed your advances, telling you that they were ‘inappropriate’ and reminding you that you ‘were a married man’. Miss C’s evidence was that at around the time of the merger she was having her own marital problems and had recently gone through a divorce.

134. The tribunal was satisfied that your actions as found proved at sub-paragraphs 3(a) and 3(b) of the allegation were inappropriate and clearly crossed the boundaries of a professional relationship, albeit a friendly one, because of the emotional connotations of the word ‘love’ that you conveyed to Miss C by saying those words. In respect of its findings at sub-paragraph 3(c), the tribunal determined that the comments were in and of themselves sexually suggestive, a fact that was further enhanced by the context in which they made. The comments you made to Miss C in those regards had strong sexual undertones. Similarly, your attempts at kissing and cuddling Miss C were clearly sexual in nature, because of the intimate and physical nature of the actions. In all the circumstances, the tribunal was satisfied that it was more likely than not that your actions as found proved at sub-paragraphs 3(a)-3(e) were all sexually motivated. It therefore found paragraph 8 as it relates to paragraph 3 found proved in its entirety.
Found proved in relation to paragraph 4

135. The tribunal also found that in July 2010 you asked Miss C to look for another job because it was heart-breaking for you to be rejected by her. The tribunal was satisfied that any reasonable person would think that such a comment was inappropriate between two colleagues in the workplace, and particularly between an employer and employee. The tribunal took the view that to mention a broken heart was to evoke strong romantic feelings and that such a remark would in and of itself be considered sexual in nature. In all the circumstances, the tribunal was satisfied that you did have a sexual motivation for saying that to Miss C, and it found paragraph 8 as it relates to paragraph 4 proved.

Found proved in relation to sub-paragraphs 6(a) and 6(c)-6(e)

136. The tribunal found that whilst working with Miss E at the Practice, between late 2009 and early 2011 you touched her hand and knee on more than one occasion, that you kissed her on the cheek, that you told her that you and your wife slept in separate rooms and that it was not a marriage anymore, and that you also asked her to look at flats with you because you were leaving your wife.

137. Miss E was firm in her evidence that she perceived you to have been ‘testing the waters’ with her to see, in effect, how far you could take things with her and that she ‘hated’ going into your consultation room because of the way in which you behaved towards her. The tribunal was satisfied that touching Miss E’s knee was in itself an act of a sexual nature, and you accepted in your evidence that touching someone’s knee would be considered a more intimate form of touching than, say, a pat on the back. Hence your explanation to the tribunal that you did not touch Miss E’s knee. However, given the tribunal found that you did touch her knee on more than one occasion, it was satisfied that your doing so was sexually motivated. Similarly, the tribunal was satisfied that kissing Miss E on the cheek was in itself an act of a sexual nature, because it involved a kiss, and because of the context in which the kiss was enacted, namely in a consultation room at the Practice.

138. In respect of sub-paragraph 6(d), the tribunal was satisfied that telling Miss E that you and your wife slept in separate rooms and that it was not a marriage anymore was sexually motivated because there is a heavy suggestion of sexual relationships contained in that comment. In respect of sub-paragraph 6(e), the tribunal was satisfied that given it found sub-paragraph 6(d) proved, you were, in effect, further underlining the message you tried to convey to Miss E by telling her that you and your wife slept in separate rooms and that it was not a marriage anymore. The tribunal was satisfied that a reasonable person would perceive a sexual undertone to your comments and that the implication of the comments is that you sought something more from Miss E than just friendship or companionship. Indeed, the tribunal accepted Miss E’s evidence to the effect that there are less
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loaded ways of establishing a friendship with someone other than saying the things that you said. In all the circumstances, the tribunal determined that it was more likely than not that your words and actions as found proved at sub-paragraphs 6(a) and 6(c)-6(e) were sexually motivated and it therefore found paragraph 8 as it relates to those sub-paragraphs proved.

Found proved in relation to sub-paragraphs 7(a)-7(g)

139. The tribunal found that whilst working at the Practice with Miss F, during 2011 to 2014 you: stroked her hand; sent emails to her personal address as set out in Schedule 1; said words to the effect of ‘Crazy 1 loves Crazy 2’; wrote post-it notes to Miss F which read ‘Crazy B 1 loves Crazy B 2’; whispered ‘I love you’; said that you loved her and that anything she needed she should come to you, or words to that effect; and that you told her you were having problems with your wife and that you were looking for a flat. The tribunal accepted the evidence that Miss F was so perturbed by your behaviour towards her that she raised concerns about you to Miss B in 2012 and that Miss B subsequently changed Miss F’s day off from a Thursday to a Monday, precisely so she could avoid going to look at flats with you. Similarly, she established a routine with Ms H whereby if she had a meeting with you in your consultation room, Ms H would telephone after a few minutes in order to allow her the opportunity to extract herself from an otherwise uncomfortable situation.

140. Having had regard to its findings at sub-paragraphs 7(a)-7(g), the tribunal was satisfied that all of your words and actions were inappropriate for the workplace, and in particular were inappropriate in context of the professional relationship you had with Miss F. Moreover, the tribunal was satisfied that the act of stroking Miss F’s arm would in itself be considered sexual by a reasonable person, as would its findings at 7(c)-7(f), each of which included you saying or writing to Miss F that you ‘loved her’ or words to that effect. Furthermore, the tribunal was also satisfied that its finding that you whispered ‘I love you’ to Miss F had a particular sexual connotation to it. Whilst it was not disputed that the event occurred in the Practice office not a consultation room – ie in a public not a private space – the tribunal was satisfied that the act of whispering the phrase ‘I love you’ increased the level of intimacy to your behaviour and gave the phrase a more secretive and conspiratorial meaning than it otherwise might have done.

141. In respect of its finding at sub-paragraph 7(g), the tribunal was satisfied that given the context in which you said to Miss F that you were having problems with your wife and that you were looking for a flat, the remarks more likely than not had a sexual motivation to them. Indeed, Miss F’s evidence was that she perceived them to be sexually suggestive and made her feel so uncomfortable that she asked to change her day off to avoid going with you. Taking its findings at sub-paragraphs 7(a)-7(g) in the round, and considering the contexts in which you said or did what
you did, the tribunal was satisfied that they were sexually motivated, and it therefore found paragraph 8 as it relates to them proved.

Determination on Proceeding in Absence and Voluntary Erasure Application - 20/06/2017

Mr Moran:

Proceeding in Absence

1. The tribunal has reconvened today, 20 June 2017, to continue its consideration of the case of Dr Shiv Bagchi. Dr Bagchi is neither present nor represented at the hearing. The tribunal therefore first considered whether to proceed with the hearing in his absence, pursuant to Rule 31 of the General Medical Council ('GMC') (Fitness to Practise) Rules 2004, as amended ('the Rules').

2. Drawing the tribunal’s attention to an email sent by Ms Eloise Aspinall of the Medical Defence Union ('MDU'), on behalf of Dr Bagchi, to both the GMC and the MPTS on 16 June 2017, you submitted that the contents of that email make it clear that Dr Bagchi is content for the tribunal to proceed in his absence.

3. In considering whether to proceed in Dr Bagchi’s absence, the tribunal bore in mind your submissions but exercised its own judgement. It bore in mind that although it has the discretion to proceed with the case in the doctor’s absence, that discretion should be exercised with the utmost care and caution and with the overall fairness of the proceedings in mind.

4. The tribunal had regard to the email sent by the MDU on behalf of Dr Bagchi to both the GMC and MPTS on 16 June 2017. It noted that in that email Ms Aspinall stated that Dr Bagchi ‘will not be attending the hearing and will not be represented’ and, moreover, that she confirmed that ‘he is content for the matter to proceed in his absence’. The tribunal also noted that Ms Aspinall refers to the fact that since the hearing adjourned in March 2017, Dr Bagchi has submitted an application to the GMC for voluntary erasure from the Medical Register.

5. In all the circumstances, the tribunal was satisfied that Dr Bagchi is aware of these proceedings and has voluntarily absented himself from them. The tribunal concluded that it would be in both the public interest and Dr Bagchi’s own interests for it to proceed in his absence and to consider his case as expeditiously as possible. The tribunal determined that it would not be contrary to the interests of justice to do so and it therefore determined to exercise its discretion in accordance with Rule 31 and proceed with the case in Dr Bagchi’s absence.
Application for Voluntary Erasure

6. The tribunal, having determined to proceed with the case in the absence of Dr Bagchi, was informed by you that since the hearing adjourned on 24 March 2017 Dr Bagchi submitted an application to the GMC for voluntary erasure from the Medical Register in accordance with Regulation 3(2) of the GMC (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations 2004, as amended (‘the Regulations’).

7. When Dr Bagchi made that application on 28 March 2017 this hearing had already commenced, albeit the hearing had adjourned four days earlier, on 24 March 2017, until today’s date. Given these circumstances, Regulation 3(8) of the Regulations applies and it reads as follows:

‘Where, on the date the Registrar receives an erasure application, an allegation against the practitioner has been referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal under the Fitness to Practise Rules and the hearing before the Medical Practitioners Tribunal has commenced, the Registrar shall refer the application to the MPTS for them to arrange for it to be determined by the Medical Practitioners Tribunal, and the application shall be determined by the Medical Practitioners Tribunal accordingly.’

8. The matter was duly referred to this tribunal to consider and determine when this hearing reconvened today, on 20 June 2017.

Background

9. Before the hearing adjourned on 24 March 2017 the tribunal announced its findings of fact. The tribunal found that, between 2009 and 2015 whilst working at the Pallion Health Centre in Sunderland, Dr Bagchi acted in a sexually motivated manner towards five women. As well as inappropriate verbal communication with the women in question, Dr Bagchi’s sexually motivated conduct elevated to include the touching of intimate areas (groin, lips) and other physical contact such as cuddling, kissing, and stroking.

Submissions

10. You opposed Dr Bagchi’s application for voluntary erasure on behalf of the GMC. Your submissions are a matter of record and the tribunal has not rehearsed them in full in this determination. In the course of your submissions, you referred the tribunal to the GMC’s Guidance on making decisions on voluntary erasure applications (April 2014 edition) (‘the Guidance’) and relevant paragraphs therein.

11. In summary, you submitted that, given the nature of the allegation and the tribunal’s findings, there would be a significant impact on public confidence were the
application to be granted by the tribunal. You submitted that Dr Bagchi should not be allowed to deny the allegation, put the complainants through a proper but robust cross-examination, to 'see how it goes', and then ‘quietly bow out’ of the process by making an application for voluntary erasure. In addition, you submitted that whilst Dr Bagchi is 68 years old, he is not so old that he could not return to practise medicine in the future. You also pointed out that the written submission appended to the application for voluntary erasure was written by Dr Bagchi’s solicitors on his behalf and does not constitute a statement written by him.

The Tribunal’s Approach

12. The decision as to whether to accede to the application for voluntary erasure or not is a matter for this tribunal alone to determine, exercising its own judgement. In reaching a decision on this matter, the tribunal had particular regard to its findings of fact. The tribunal also had regard to the Regulations, the Guidance, and the submissions made by you on behalf of the GMC. It also accepted the advice of the legal assessor.

The Tribunal’s Decision

13. The tribunal has already found that Dr Bagchi acted in a sexually motivated manner towards five women over the course of a six year period. In reaching its decision on this application, the tribunal bore in mind that when the women concerned gave evidence it was clear that Dr Bagchi’s actions had had a significant impact on them. The tribunal also bore in mind that whilst Dr Bagchi accepted that he acted inappropriately, that he crossed boundaries, and that he may be regarded as ‘outdated and misguided’, he nonetheless denied his actions were sexually motivated and he maintained that denial throughout the course of the proceedings. The tribunal has concerns about the level of Dr Bagchi’s insight into his actions at the present time.

14. The tribunal noted that Dr Bagchi chose to retire from practice and submit his application for voluntary erasure only a matter of days after this hearing adjourned following the tribunal announcing its findings of fact. Whilst the tribunal accepted that Dr Bagchi’s desire to retire from practice may be genuine, it was concerned that this application for voluntary erasure appears to have been triggered by these fitness to practise proceedings, namely the tribunal’s findings of fact. It therefore exercised considerable caution when considering what weight to attribute to those factors when making its decision.

15. Dr Bagchi is 68 years old. He has retired from medical practice and he has resigned from his last post. The tribunal noted the documentary submission appended to his voluntary erasure application. Whilst you pointed out that this was not a document written by Dr Bagchi himself, the tribunal took account of the legal assessor’s advice that it could assume that Dr Bagchi had given specific instructions to his solicitors. In the document, it is stated that ‘given his time of life’ there ‘is no realistic
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prospect’ of him returning to work. The tribunal accepted that given his time of life it may well be unlikely that Dr Bagchi would seek to return to work were it to grant the application. However, it was also mindful of the fact that whilst unlikely, it would not be impossible for him to do so and that he could seek restoration to the Medical Register in the future.

16. The tribunal accepted that granting the application for voluntary erasure would be an immediate and effective means of protecting patients from a doctor whose fitness to practise may be impaired. However, in all the circumstances, and irrespective of Dr Bagchi’s time of life and the late stage of his career, the tribunal concluded that the maintenance and promotion of public confidence in both the medical profession and the GMC’s performance of its statutory functions would be seriously undermined if it did grant Dr Bagchi’s application. It therefore determined not to grant his application for voluntary erasure.

17. The Registrar will notify Dr Bagchi of this outcome as soon as is reasonably practicable, in accordance with Regulation 3(9) of the Regulations.

Determination on Impairment - 21/06/2017

Mr Moran:

1. Having announced its determination on the facts, the tribunal has now considered, under Rule 17(2)(l) of the General Medical Council (‘GMC’) (Fitness to Practise) Rules 2004, as amended (‘the Rules’), whether, on the basis of the facts found proved, Dr Bagchi’s fitness to practise is impaired by reason of his misconduct.

Submissions

2. In summary, you submitted that the tribunal, on the basis of the facts found proved, should find that Dr Bagchi’s actions amounted to misconduct and, further, that it should find that his fitness to practise is currently impaired by reason of that misconduct.

3. In making that submission, you referred the tribunal to the documentary submission appended to Dr Bagchi’s application for voluntary erasure. You submitted that in that written submission Dr Bagchi conceded the issue of impairment. You went on to submit that the tribunal should remind itself of its determination on the facts of the case and conclude that Dr Bagchi’s concession is entirely proper. You submitted that a single instance of sexually motivated behaviour would draw a strong inference of impaired fitness to practise and in Dr Bagchi’s case there are multiple victims and multiple events over a significant period of time. You submitted that the number of victims and events showed an element of abuse of his professional position and that this was most noticeably the case with Miss A, who was a medical student under Dr Bagchi’s supervision at the time of the events.
4. You further submitted that on top of the number of victims and events, there was an absence of any real admission on the part of Dr Bagchi. You went on to submit that whilst Dr Bagchi’s representative during the first stage of the proceedings offered apologies to some of the victims before commencing cross-examination, it in fact became clear that he denied the core of the allegation against him. You submitted that a significant amount of time has elapsed since the tribunal announced its findings of fact and that in the interim period Dr Bagchi could have reflected on the tribunal’s findings. You submitted that Dr Bagchi has not shown any evidence of insight, that he has not accepted the facts, that he has not produced a reflective statement and that there is no evidence he appreciated the effect his conduct had on the people concerned.

The Tribunal’s Approach

5. In reaching its decision the tribunal has carefully considered all the evidence, the facts found proved, and the submissions made by you on behalf of the GMC.

6. The tribunal accepted the advice of the legal assessor. He reminded the tribunal that at this stage in proceedings there is no burden or standard of proof and that the issue of impairment is one for it alone to determine exercising its own professional judgement. He advised the tribunal that it should adopt a two stage approach when considering the question of impairment. First, he advised that it should consider whether the facts found proved amount to misconduct. Secondly, in the event that it does find that the facts found proved amount to misconduct, he advised that it should then go on to consider whether Dr Bagchi’s fitness to practise is currently impaired as a result.

7. Throughout its deliberations the tribunal also bore in mind its responsibility to protect the public interest. The public interest includes protecting the health, safety, and wellbeing of the public, maintaining public confidence in the profession, and declaring and upholding proper standards of conduct and behaviour.

The Tribunal’s Decision

Misconduct

8. The tribunal first considered whether the facts found proved constitute misconduct, that is, a serious falling short of the standards of conduct and behaviour expected of a doctor which would be regarded as deplorable by fellow practitioners.

9. The tribunal found that Dr Bagchi acted in a sexually motivated manner towards five women over the course of a six year period, between 2009 and 2015. Four of the women were permanent members of staff at the Pallion Health Centre. One of the women, Miss A, was a medical student on a six week placement and
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under Dr Bagchi’s supervision. The tribunal found that Dr Bagchi’s sexually motivated behaviour escalated from inappropriate verbal communication to include physical contact such as the touching of intimate areas (groin, lips) and other contact such as cuddling, kissing, and stroking of hands and arms.

10. In addition, from the evidence it was clear to the tribunal that Dr Bagchi’s inappropriate behaviour, for the most part, took place in the privacy of his consulting room when the women were alone with him. It was also clear to the tribunal from the evidence of the individuals concerned that Dr Bagchi’s actions had a significant impact on them. Miss A, for example, was distressed by Dr Bagchi’s actions towards her during her placement in February and March 2015. That distress was evident in the course of her evidence to this tribunal. Miss B, for her part, told the tribunal that she actively sought to change her working patterns in order to avoid having to work with Dr Bagchi if at all possible. Miss F told the tribunal that she changed her day off for the same reason.

11. The tribunal considered its findings in relation to both the 2006 and 2013 editions of ‘Good Medical Practice’ (‘GMP’), the principles contained in which were pertinent at the material times. Given its findings, the tribunal was satisfied that Dr Bagchi’s sexually motivated actions breached the following principles from the 2006 edition of GMP:

1 Patients need good doctors. Good doctors [...] establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity.

46 You must treat your colleagues fairly and with respect. You must not bully or harass them [...] 

57 You must make sure that your conduct at all times justifies your patients’ trust in you and the public’s trust in the profession.

It was also satisfied that his actions breached the equivalent principles contained in the 2013 edition of GMP:

1 Patients need good doctors. Good doctors [...] 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.

65 You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession.
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12. By acting in the sexually motivated manner that he did towards the five individuals concerned, Dr Bagchi failed to maintain good relationships with his colleagues. His repeated sexually motivated behaviour constituted harassment and amounted to a failure to treat his colleagues fairly and with respect. The tribunal was satisfied that his actions undermined the public’s trust in the profession.

13. The tribunal determined that by acting in the sexually motivated manner that he did Dr Bagchi abused his professional position. This was particularly the case with Miss A in the context of Dr Bagchi’s supervisor-supervisee relationship with her. Dr Bagchi was an experienced mentor and was expected to be a role model for Miss A yet he abused that position of trust. In all the circumstances, the tribunal was satisfied that the facts found proved amount to misconduct. Dr Bagchi’s actions fell seriously below the standards of conduct and behaviour expected of a doctor and his fellow practitioners would regard them as deplorable.

Impairment by reason of misconduct

14. Having determined Dr Bagchi’s sexually motivated actions amounted to misconduct, the tribunal went on to consider whether his fitness to practise is currently impaired by reason of that misconduct. In so doing, the tribunal had regard to whether the type of misconduct he exhibited is easily remediable, whether it has been remedied, and whether it is highly unlikely to be repeated. It also had regard to Dr Bagchi’s level of insight into his actions and their consequences.

15. The tribunal was satisfied that the type of behaviour Dr Bagchi exhibited is remediable, albeit sometimes it is difficult to remediate and to show evidence of that remediation. However, it has seen no evidence that Dr Bagchi has remedied his behaviour or made any attempts to do so. Dr Bagchi’s sexually motivated behaviour took place over a prolonged period of time, amounting to six years. Miss C’s evidence was that she made him aware in 2012 that some of his behaviour towards her was inappropriate and that it made her feel uncomfortable. Nonetheless, he continued to act inappropriately towards her and to others, and his behaviour escalated over the years that followed.

16. Whilst Dr Bagchi did make some admissions at the outset of these proceedings and his representative accepted on his behalf that he acted inappropriately, crossed boundaries, and that he may be regarded as ‘outdated and misguided’, he denied having acted in a sexually motivated manner towards the individuals concerned and he maintained that denial throughout the proceedings. Dr Bagchi’s representative did make some apologies on his behalf to all of the women involved apart from Miss A, but the tribunal took the view that those apologies for making them feel ‘uncomfortable’ were narrow and were not fulsome. In addition, the tribunal noted Dr Bagchi’s tendency to obfuscate when giving evidence and it found some of his explanations for his behaviour lacked credibility.
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17. The tribunal accepted that Dr Bagchi’s apparent concession that his fitness to practise was likely to be found impaired suggested a level of understanding about his actions. However, it has seen no evidence that he has accepted the tribunal’s findings or that he has reflected on them, despite the period of time which has elapsed since its findings were announced. In light of all these considerations, the tribunal concluded that Dr Bagchi has only very limited insight into his actions and their consequences for the individuals concerned and/or the public’s trust in the medical profession.

18. The tribunal accepted that since Dr Bagchi left the Pallion Health Centre and began working at the Deerness Medical Centre in March 2016 there has been no repetition of his sexually motivated behaviour. This evidence came from medical practitioners working at the same level as him at the Deerness Medical Centre who, being aware of his circumstances, were closely monitoring his behaviour.

19. Dr Bagchi’s sexually motivated behaviour towards five women brought the medical profession into disrepute. He breached a fundamental tenet of the profession, namely to ensure that his conduct justified the public’s trust in the profession. Given the lack of evidence about his insight or remediation on his part, the tribunal could not be satisfied that Dr Bagchi would not act in the same way again.

20. In all the circumstances, the tribunal determined that Dr Bagchi’s misconduct was so egregious that a finding of current impaired fitness to practise should be made. Moreover, given the seriousness and nature of Dr Bagchi’s repeated sexually motivated behaviour, the tribunal also determined that the need to uphold standards and public confidence in the profession would be undermined if a finding of impairment were not made in this case. It therefore determined that Dr Bagchi’s fitness to practise is impaired by reason of his misconduct.

Determination on Sanction - 22/06/2017

Mr Moran:

1. Having determined that Dr Bagchi’s fitness to practise is impaired by reason of his misconduct, the tribunal has now considered what action, if any, it should take with regard to his registration, in accordance with Rule 17(2)(n) of the General Medical Council (‘GMC’) (Fitness to Practise) Rules 2004, as amended (‘the Rules’).

Submissions

2. In the course of your submissions, you referred the tribunal to relevant paragraphs in the ‘Sanctions Guidance’ (July 2016 edition). You also drew the tribunal’s attention to a number of potential mitigating and aggravating factors in this case. In summary, you submitted that, given the nature and seriousness of the
tribunal findings, including the tribunal’s judgement that Dr Bagchi has only very limited insight, the only appropriate sanction in this case is one of erasure. You submitted that such a sanction would protect patients, maintain public confidence in the profession, and promote and maintain proper standards of conduct and behaviour.

**The Tribunal’s Decision**

3. In reaching its decision, the tribunal has given consideration to its findings of fact, its findings of misconduct and impaired fitness to practise, and the submissions made by you on behalf of the GMC. It also gave consideration to the documentary submission appended to Dr Bagchi’s voluntary erasure application. This stated that ‘he is fully appreciative of the fact that given the findings made, the most likely sanctions would be either a lengthy period of suspension or erasure from the Medical Register’. However, the decision as to the appropriate sanction, if any, to impose is a matter for the tribunal alone, exercising its own judgement.

4. Throughout its deliberations the tribunal had regard to relevant paragraphs of the ‘Sanctions Guidance’ and in particular paragraphs 143 and 144 which relate to sexual misconduct. The tribunal bore in mind that the purpose of sanctions is not to be punitive, but to protect the public interest. The public interest includes protecting the health, safety and wellbeing of the public, maintaining public confidence in the profession, and declaring and upholding proper standards of conduct and behaviour. In making its decision, the tribunal also had regard to the principle of proportionality, and it weighed Dr Bagchi’s interests with those of the public. It also considered and balanced the mitigating and aggravating factors in this case.

**Mitigating Factors**

5. In mitigation the tribunal had regard to the following factors:

- Dr Bagchi has engaged with his regulator throughout the process and attended the fact finding stage of the hearing;

- Dr Bagchi’s representative made some apologies on his behalf for having made four of the women involved feel ‘uncomfortable’, and for him having ‘crossed professional boundaries’;

- in his 40 year medical career Dr Bagchi has not been the subject of any other adverse fitness to practise findings and no concerns have been raised about his clinical skills;

- there is positive evidence about Dr Bagchi’s character. The tribunal has seen a number of positive 360 degree feedback comments and training records from Dr Bagchi’s time at the Pallion Health Centre as well as
supportive testimonials from colleagues, including character references from GPs and nursing colleagues from other practices in Sunderland, some of whom he has known for 20 years or more. The tribunal has also seen and heard positive testimonials from medical students who worked under his supervision, as well as positive testimonials from colleagues at the Deerness Medical Centre, where he worked from March 2016 to March 2017. His colleagues at the Deerness Medical Centre confirmed that there had been no further complaints about his conduct; and

- at the time of some of the events Dr Bagchi was experiencing some personal, marital issues.

Aggravating Factors

6. The tribunal balanced those mitigating factors against what it considered to be the aggravating factors in this case:

- the apologies offered on behalf of Dr Bagchi were narrow and not fulsome;

- Dr Bagchi’s sexually motivated behaviour was prolonged and was directed towards five different women, at various times, over a six year period;

- this behaviour was varied in nature and escalated from inappropriate verbal communication to physical touching and in most cases took place in private in the workplace;

- this behaviour towards all five women involved an abuse of his professional position; four of the women worked at his practice and one was a student on placement;

- Dr Bagchi has only very limited insight into the extent of his actions and their consequences; and

- there is no evidence that Dr Bagchi has reflected on or made attempts to remediate his misconduct.

No Action

7. The tribunal considered whether to conclude the case by taking no action. Taking no action following a finding of impaired fitness to practise would only apply in exceptional circumstances. The tribunal determined that given its findings there are no exceptional circumstances in this case and that it would not be sufficient, proportionate, nor in the public interest to conclude this case by taking no action.
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8. In deciding what sanction, if any, to impose the tribunal considered each of the sanctions available, starting with the least restrictive.

Conditions

9. The tribunal first considered whether to impose conditions on Dr Bagchi's registration. In so doing, it bore in mind that any conditions imposed would need to be appropriate, proportionate, workable, and measurable. In the light of its findings, particularly that Dr Bagchi has only very limited insight, the tribunal determined that it would not be possible to formulate a set of appropriate or workable conditions which could adequately address the seriousness of Dr Bagchi's misconduct. In any event, the tribunal concluded that a period of conditional registration would not be a sufficient, appropriate, or proportionate sanction to satisfy the public interest in the circumstances of this case.

Suspension

10. The tribunal next considered whether it would be appropriate and proportionate to suspend Dr Bagchi's registration. The tribunal acknowledged that a sanction of suspension does have a deterrent effect and can be used to send a signal to Dr Bagchi, the profession, and the public about what is regarded as behaviour unbefitting of a registered doctor. It also acknowledged that suspension is an appropriate response to misconduct which is sufficiently serious that action is required in order to protect members of the public and maintain public confidence in the profession.

11. However, the tribunal also took into account the fact that there has been no acknowledgement of fault on the part of Dr Bagchi in respect of the full findings made by the tribunal. It also bore in mind its previous finding that, given Dr Bagchi's only very limited insight and the lack of any evidence regarding his reflection or remediation, there is a risk that he could repeat the kind of misconduct he exhibited between 2009 and 2015. For these reasons, the tribunal determined that a period of suspension would not be an appropriate or proportionate sanction, nor would such a sanction satisfy the public interest in the circumstances of this case.

Erasure

12. Having determined that imposing conditions on or suspending Dr Bagchi's registration would not be commensurate with the gravity of its findings, the tribunal determined to erase his name from the medical register.

13. The tribunal found that Dr Bagchi's sexually motivated behaviour constituted a particularly serious departure from the principles set out in GMP. This behaviour took place over a prolonged period of time, amounting to six years, and continued even after he had been told by Miss C in 2012 that his behaviour towards her was
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inappropriate and made her feel uncomfortable. His behaviour also escalated from verbal comments to physical touching. By acting in the sexually motivated manner that, he did Dr Bagchi repeatedly abused his professional position. This was the case in respect of the permanent administrative and reception staff at the Pallion Health Centre and particularly the case with Miss A in the context of Dr Bagchi’s supervisor-supervisee relationship with her. In addition, Dr Bagchi has only very limited insight into the seriousness of his actions and/or their consequences for the individuals involved and on public confidence in the medical profession.

14. In all these circumstances, the tribunal concluded that Dr Bagchi’s behaviour was fundamentally incompatible with his continued registration and it determined to erase his name from the medical register in order to maintain public confidence in the profession, and declare and uphold proper standards of conduct and behaviour. Although the tribunal has limited information about what impact this sanction will have on Dr Bagchi, it accepted that it is likely to have a significant impact upon him professionally, financially, and reputationally. However, the public interest outweighed his own interests in the specific circumstances of this case.

15. The effect of this direction is that, unless Dr Bagchi exercises his right of appeal, this decision will take effect 28 days from when written notice of this determination is deemed to have been served upon him. A note explaining his right of appeal will be supplied to him.

Determination on Immediate Order - 22/06/2017

Mr Moran:

1. Having determined to erase Dr Bagchi’s name from the medical register, the tribunal has now considered whether to impose an immediate order of suspension on his registration.

2. You submitted that, given the tribunal’s findings, an immediate order of suspension is necessary to protect the public and is otherwise in the public interest. In the course of your submissions you referred the tribunal to the relevant paragraphs of the ‘Sanctions Guidance’.

3. In reaching its decision the tribunal referred to the relevant paragraphs of the ‘Sanctions Guidance’. It exercised its own judgement and had regard to the principle of proportionality. It also took into account the submissions made by you on behalf of the GMC.

4. Given the seriousness of its findings, including that there is a risk Dr Bagchi could repeat his misconduct, the tribunal concluded that it would be inappropriate for him to continue in unrestricted practice pending the substantive order of erasure
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taking effect. It determined that his registration should be suspended immediately in
order to protect the public and to otherwise satisfy the public interest.

5. The interim order of conditions currently in force will be revoked when written
notice of this decision is deemed to have been served upon Dr Bagchi.

6. The immediate order of suspension will remain in force until the substantive
direction takes effect, or until the outcome of any appeal is decided. The substantive
sanction of erasure as already announced will take effect 28 days from when written
notice is deemed to have been served upon Dr Bagchi, unless an appeal is lodged in
the interim.

7. That concludes this case.

Confirmed
Date 22 June 2017

Mr Paul Curtis, Chair
## Schedule 1

<table>
<thead>
<tr>
<th>Date</th>
<th>Email</th>
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| 15 August 2012  | Hi [Miss F] (crazyB 2)  
                 | wish you a happy birthday,enjoy yourself                            |
|                 | from crazyB xx                                                      |
| 24 August 2012  | hi crazybno2  
                 | have a nice holiday donot drink toomuch                              |
|                 | crazybno1 xx                                                      |