Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 19/11/2019 - 29/11/2019
Medical Practitioner’s name: Dr Sumit BASU
GMC reference number: 3446614
Primary medical qualification: MB BS 1983 Calcutta
Type of case: New - Misconduct
Outcome on impairment: Not Impaired

Summary of outcome
No action (warning not considered)

Tribunal:

<table>
<thead>
<tr>
<th>Legally Qualified Chair</th>
<th>Mr Angus Macpherson</th>
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<tr>
<td>Lay Tribunal Member:</td>
<td>Ms Elizabeth Daughters</td>
</tr>
<tr>
<td>Medical Tribunal Member:</td>
<td>Dr Keith Dunnett</td>
</tr>
<tr>
<td>Tribunal Clerk:</td>
<td>Mrs Rachel Horkin</td>
</tr>
</tbody>
</table>

Attendance and Representation:

| Medical Practitioner:            | Present and represented |
| Medical Practitioner’s Representative: | Ms Fiona Horlick, QC, instructed by Eastwood Solicitors |
| GMC Representative:              | Mr David Birrett, Counsel |

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

Overarching Objective
Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect,
Determination on Facts - 29/11/2019

Background

1. Dr Basu qualified in 1983 from the University of Calcutta, India and moved to the UK in 1986. After successfully completing his SHO and speciality training, he became a Consultant in 2001. Prior to the events which are the subject of the hearing, Dr Basu held a permanent post as a Consultant in General Internal Medicine (GIM) with a special interest in Cardiology at University Hospital, Lewisham (the hospital) from February 2004 where he worked until his retirement on 31 July 2018.

2. The allegation that has led to Dr Basu’s hearing can be summarised as follows: In late 2013 Patient A went to see her GP as she was suffering from tiredness and a high heart rate with episodes of feeling faint. Her GP referred her to a Cardiologist at University Hospital, Lewisham. During the four separate consultations which Patient A had with Dr Basu that took place between November 2013 and June 2014 it is alleged that he acted in a way that was not clinically indicated, and that was sexually motivated.

3. The initial concerns were raised with the GMC on 10 May 2015 by Patient A via a GMC online referral form.

The Allegation and the Doctor’s Response

4. The Allegation made against Dr Basu is as follows:

   1. On 15 November 2013, you consulted with Patient A and you:

      a. replied ‘yes’ after Patient A asked you whether she needed to remove her bra, or words to that effect;
         To be determined

      b. examined Patient A’s breasts;
         To be determined

      c. failed to offer a chaperone prior to the examination;
         To be determined
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d. failed to explain why the examination referred to in paragraph 1b was necessary.
   To be determined

2. On 21 February 2014, you consulted with Patient A and you:
   a. asked Patient A to remove the top half of her clothing, or words to that effect;
      To be determined
   b. examined Patient A’s breasts;
      To be determined
   c. failed to offer a chaperone prior to the examination;
      To be determined
   d. failed to explain why the examination referred to in paragraph 2b was necessary.
      To be determined

3. On 9 May 2014, you consulted with Patient A and you:
   a. asked Patient A to remove the top half of her clothing, or words to that effect;
      To be determined
   b. examined Patient A’s breasts;
      To be determined
   c. failed to offer a chaperone prior to the examination;
      To be determined
   d. failed to explain why the examination referred to in paragraph 3b was necessary.
      To be determined

4. On 27 June 2014, you consulted with Patient A and you:
   a. asked Patient A to remove the top half of her clothing, or words to that effect;
      To be determined
   b. examined Patient A’s breasts;
      To be determined
   c. asked Patient A to remove the lower half of her clothes, or words to that effect;
      To be determined
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d. inserted your fingers into Patient A’s vagina;
   To be determined

e. inappropriately asked questions about Patient A’s sex life whilst your fingers were inserted into her vagina;
   To be determined

f. failed to offer a chaperone prior to the examinations referred to in paragraphs 4b and 4d;
   To be determined

g. failed to explain why the examination referred to in paragraph 4b was necessary;
   To be determined

h. failed to fully explain why your actions referred to in paragraph 4d were necessary.
   To be determined

5. Your actions as described at paragraphs 1-4 were sexually motivated.
   To be determined

6. Your actions as described at paragraphs 1b, 2b, 3b and 4b were not clinically indicated.
   To be determined

7. Given your role as a Consultant Cardiologist, there was no indication for you to undertake the actions as described at paragraph 4d.
   To be determined

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

Factual Witness Evidence

5. The Tribunal received evidence on behalf of the GMC from the following witnesses:
   - Patient A, in person
   - Ms B, Patient A’s mother, in person

6. Dr Basu provided his own witness statement dated 23 October 2019 and also gave oral evidence at the hearing.
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7. The Tribunal also received evidence on behalf of Dr Basu in the form of testimonial evidence from persons who were not called to give evidence.

Expert Witness Evidence

8. The Tribunal received written evidence from two expert witnesses. The GMC relied on Dr E who provided a report dated 29 October 2015, a supplementary report dated 17 December 2018 and a further supplementary report dated 30 May 2019. Dr E is consultant cardiologist with a subspecialty interest in arrhythmias and cardiac implantable electronic devices. Dr E sought to assist the Tribunal in providing his expert opinion as to whether Dr Basu’s alleged breast and internal examinations of Patient A were appropriate.

9. Dr Basu relied on Dr E who provided a report dated 10 September 2019. Dr F is a consultant physician in General and Cardiovascular Medicine. Dr F sought to assist the Tribunal in providing his expert opinion as to whether Dr Basu’s alleged breast and internal examinations of Patient A were appropriate.

10. Dr E and Dr F also provided a joint statement dated 28 October 2019.

Documentary Evidence

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

- Witness statement of Ms B dated 19 December 2015;
- Witness statement of Ms C, Deputy Chief Nurse at Lewisham and Greenwich NSH Trust (‘The Trust’) dated, 19 December 2015;
- Witness statement provided to the police by Patient A dated, 11 May 2016 and supplementary report dated, 17 November 2016;
- Notes of PALS meeting with Patient A, dated 10 July 2014;
- Initial written account provided by Patient A to the GMC, undated;
- Letter from Patient A to Ms C dated 14 July 2014;
- Record of telephone interview between Ms B and Ms C dated 29 September 2014;
- Witness statement provided to the police by Ms C dated 19 May 2016;
- Statement provided by Dr Basu to the Trust dated 6 August 2014;
- The Trust Chaperoning Policy dated February 2014;
- Patient A medical records various dates;
- Plan and photographs of Hospital Outpatient Suite 2 at University Hospital, Lewisham.
The Tribunal’s Approach

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

The Tribunal’s Analysis of the Evidence and Findings

13. The Tribunal made the following general observations about the witnesses:

Patient A
She explained to the Tribunal that she informed Dr Basu at the outset of her first consultation that she wished to become a doctor and had identified University College London (UCL) as her first choice on her UCAS application form. She said that Dr Basu had disclosed to her that he was a tutor at UCL.
She explained that she had attended a breast consultation at the hospital on 14 November 2013 with a breast Consultant following which she was discharged. In oral evidence she admitted the information she had provided at that appointment regarding her periods was inaccurate.
Three of the consultations took place in the eight months before Patient A sat her A level exams in May/June 2014, one shortly after. During this time, she was living at home with her mother and father. She was concerned about several medical conditions including an abnormally fast heart rate, fainting, urinary tract infections and, towards the end of that time, heavy bleeding. Patient A said she had not experienced any bleeding since she had a contraceptive implant some years before.
She had had a boyfriend from the beginning of 2014 with whom she was sexually active. She said that they had planned to live together from the summer of that year, but the plans fell through when he went on holiday without her. She said that since the beginning of the year 2014, for two, three or four months, she had taken LSD every two weeks and Ecstasy once or twice. She did not tell Dr Basu about this, although she recognises that it could possibly have been relevant to her cardiac symptoms. She said she trusted Dr Basu. In her oral evidence, she could not remember the details of the breast examinations which she said Dr Basu had carried out. Her explanation about any inconsistencies in her accounts was that, if she said something at a particular time, she must have believed it at that time. She made mistakes as to when she was accompanied to examinations by her mother and boyfriend. She said her mother was unwell and that it was on account of this that an arrangement for her to accompany her on the second appointment was abandoned. She said that her mother had a poor memory but kept a diary.

Ms B
She was Patient A’s mother. She accompanied Patient A to the first consultation. She said that Patient A put her off coming to other consultations. She said that Patient A
did not discuss much of her life with her. She did not know about Patient A’s plans to live with her boyfriend in the summer and she was not clear when their relationship ended.

Dr Basu

His evidence was straightforward – he strongly denied all of the Allegations. He said that the results of the several tests carried out on Patient A were inconsistent with the cardiac symptomatology of which she complained. He was therefore unable to firmly establish a diagnosis for her cardiac condition which was the reason for the original referral. However, at the second and subsequent consultations, Patient A was complaining about UTIs and he performed relevant and appropriate abdominal examinations. He accepted that, in respect of the alleged internal examination, there was no room for a misunderstanding. He had come to the conclusion by the fourth appointment that Patient A had been suffering from anxiety.

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

Paragraph 1 (a) of the Allegation

15. The Tribunal recognised, that for this charge to be found proved, it needed to find that Patient A asked the question whether she needed to remove her bra or words to that effect and that Dr Basu replied ‘yes’.

16. The Tribunal noted Patient A’s evidence that Dr Basu was scrupulous in not being present whenever she was undressing in respect of an examination. It accepted that Patient A has been consistent up to a point in all of her accounts of this appointment in stating that Dr Basu told her to take her bra off. However, the manner in which she maintained her account of this differed; sometimes it was a direct instruction; sometimes an answer to her question.

17. Her account was broadly supported by Ms B who stated that Dr Basu instructed Patient A to take her bra off. The Tribunal noted Ms B’s witness statement in which she stated, ‘... I did find it a bit strange and thought I’ve attended appointments before but never been asked to remove my bra.’ However, the Tribunal also noted Ms B’s oral evidence in which she indicated that she had not been listening to any conversation that took place between Dr Basu and Patient A once the consultation had started. The Tribunal accepted that it was likely that Ms B had heard part of the conversation about whether Patient A should remove her bra but it was concerned as to whether Ms B had properly heard Dr Basu’s response. The Tribunal also considered that, if Ms B had been concerned about Dr Basu’s instructions to Patient A, it would have been reasonable for Ms B to question Dr Basu about them. The Tribunal also noted that Ms B had accompanied Patient A at her breast examination on 14 November 2013, the day before.
18. The Tribunal next considered the evidence of Dr Basu who said that his ‘standard phrase’ was to ask patients to ‘remove the top half of your clothing’. Dr Basu told the Trust Investigation Panel in his interview which took place on 31 July 2014,

‘Patient A states that I asked her to go behind the curtain and remove her top and bra. I can categorically say that I would not have asked her to do this. My standard Instruction to a patient is to remove clothes from the chest but to keep the bra on. I am absolutely certain that this is the wording I would have used with this patient, as with all my other patients on whom I am about to perform a cardiac or chest examination. I have then had rare situations when the patient either does not hear or does not understand the whole instruction and removes their underwear. In this situation, I would either tell the patient to put her bra back on or to cover herself with the blanket that is always on the examination couch. I do not recall this happening recently and so I have no reason to think that it happened here. In any event, as I say, I would always ask the patient to cover up in some way.’

Dr Basu was firm in his evidence that he did not tell Patient A to remove her bra in answer to any question which she may have asked. The Tribunal did not have any evidence which contradicted Dr Basu’s statement as to his normal practice.

19. The Tribunal did take into account statements of colleagues of Dr Basu in which they indicated that some cardiologists or practice nurses do require removal of the bra in order to carry out clinically indicated, appropriate examinations. It considered that, in the light of this, it would have been open to Dr Basu to accept that he might have required Patient A to remove her bra, but he flatly rejected this possibility.

20. The Tribunal considered the context of Dr Basu asking Patient A to remove her bra before her examination. Dr Basu’s case is that it was only in very exceptional circumstances that he would require a patient to do this, those circumstances did not pertain to this examination and he did not ask her to do it. It is also the case that he was an assiduous record keeper, both in his clinical note keeping and in his letters to the General Practitioner (GP). It follows that, if he had undertaken a breast examination for clinical reasons, he would have recorded it. He was a Consultant in GIM as well as a specialist in Cardiology. If he had undertaken a breast examination for clinical reasons, the Tribunal could understand that he would require Patient A to remove her bra. The clinical record does not suggest that there was any reason for Dr Basu to require Patient A to remove her bra. That being so, the only reason why he would require Patient A to remove her bra would be for an improper purpose, a purpose which he would not have recorded. The issue which the Tribunal has therefore to address was whether he, in answer to Patient A’s enquiry, told her to remove her bra for an improper purpose.
21. The appointment on 15 November 2013 was arranged by Patient A’s GP for him to consider her presenting condition. By the time Patient A and Dr Basu had the conversation about whether she should remove her bra, he knew what her presenting conditions was: palpitations and a racing heart – very rapid on a daily basis up to 30 minutes, can feel faint, weak and tired with ‘associated central chest pain in her left breast’. It is therefore being alleged that Dr Basu on this first occasion on meeting Patient A, when she was accompanied throughout by her mother and had these presenting symptoms, has formed an intention to achieve an improper purpose by asking her to remove her bra. And this in respect of a patient who may well meet him on subsequent occasions in his role as a tutor at UCL. The Tribunal has formed the view that such a scenario is improbable. It did not consider that the evidence in support of the contention that he asked her to remove her bra was of sufficient quality to warrant the conclusion that that is what he did.

22. This subparagraph of the Allegation is found not proved.

Paragraph 1 (b) of the Allegation

23. The Tribunal noted Patient A’s evidence that she had undergone a breast examination on the day prior to her first appointment with Dr Basu and that, in her oral evidence, Patient A said that she was aware of the differences between a chest exam and a breast exam. Patient A also indicated to the Tribunal that it was inconceivable that she did not know what a breast examination was.

24. The Tribunal noted that there was no evidence that Patient A mentioned to anyone that she had had a breast examination at the first or any consultations with Dr Basu until she went to see her GP (about a different matter) on 4 July 2014. Following that latter consultation, she was interviewed by the Trust on 10 July 2014. In that interview, she is alleged to have said that during the examination on 15 November 2013, Dr Basu had palpated and squeezed her breasts. However, in a police statement dated 11 May 2016, albeit in relation to the second examination of 21 February 2014, she said Dr Basu never squeezed her breast. In her first written statement to the Trust dated 14 July 2014, she does not give a description of any of the breast examinations, simply observing that Dr Basu did a breast examination. When questioned further in relation to the first examination by the Trust on 14 August 2014 she said Dr Basu had felt around both breasts and underneath both of them. A fuller account of the breast examination came in her first witness statement to the GMC on 18 September 2015 when she said;

‘He then examined my breasts by cupping both breasts with both hands whilst I was lying down on the bed. He then felt each breast by pressing down with his fingers around the side of the breast and over the nipples making direct contact with the nipples.’

In her account to the police on 11 May 2016 she said,
'He said "I'm going to check your breasts now... He pushed down on my breast with the palm of his hand and rolled it to the left then rolled it back, this is known as palpation. He then examined the bottom part almost like he was cupping it. Then he did the top part of my breast with the pads of his fingers. He also touched my nipple with tips/pads of his fingers.'

As mentioned, Patient A was not able to present a clear description of the breast examinations to the Tribunal in her oral evidence.

25. The Tribunal noted Dr Basu’s flat denial that he had carried out a breast examination at this first (or any) consultation. It did note his record of that first examination in her medical notes as follows,

<table>
<thead>
<tr>
<th>Assoc. Central CP &gt; L breast</th>
<th>Associated central chest pain radiating to the left breast (uncommon)</th>
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</thead>
<tbody>
<tr>
<td>(uncommon)</td>
<td></td>
</tr>
<tr>
<td>1+2+0 Apex</td>
<td>Heart sounds normal apex beat normal</td>
</tr>
</tbody>
</table>

In his evidence Dr Basu explained that in carrying out the cardiac examination, he will have palpated the areas underneath Patient A’s left breast (the apex). He also explained in his written statement that,

'...Thereafter the cardiac impulse is also felt with the edge of the hand immediately to the left of the breastbone and also higher up to the right of the breastbone.'

The Tribunal noted that both the medical experts agreed that the manner in which Dr Basu said he carried out the examinations was appropriate. Dr E stated in his initial report, ‘...Dr Basu appears to have...performed competent cardiovascular examinations...’

26. The Tribunal considered that it is possible that a thorough heart examination could be misconstrued as a breast examination. Although Patient A may have known the difference when she came to give her account to the police in May 2016, by which time she had become a medical student, this may not have been the case when she was considering it in July 2014. Had Patient A described Dr Basu’s examination in the detailed terms which she used to the police in May 2016 in her account to the Trust, the Tribunal would have been more likely to accept that this was the way in which Dr Basu had examined her. However, she made no criticism of Dr Basu’s examination to him or anyone else at the time, notwithstanding that she had had a breast examination the day before and that she had a developed interest in medicine at the time.
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27. Taking into account the evidence before it and its previous finding that Patient A did not remove her bra, the Tribunal concluded that Dr Basu did not undertake an examination of Patient A’s breasts.

28. This subparagraph of the Allegations is found not proved.

Paragraph 1 (c) of the Allegation

29. The Tribunal noted the observation by counsel for the GMC that the GMC accepts that this charge specifically relates to the obligation that Dr Basu would have had to offer a chaperone to Patient A if a breast examination took place.

30. The Tribunal has determined that the GMC has not proved that Dr Basu undertook a breast examination on the 15 November 2013.

31. This subparagraph of the Allegation is therefore not found proved.

Paragraph 1 (d) of the Allegation

32. The Tribunal has determined that the GMC has not proved that Dr Basu undertook a breast examination of Patient A on the 15 November 2013. In these circumstances there was no obligation upon him to offer an explanation for an examination which he did not carry out.

33. This subparagraph of the Allegation is found not proved.

Paragraph 2 (a) of the Allegation

34. When considering this subparagraph of the Allegation, the Tribunal was mindful of the GMC’s opening statement that the Tribunal was to take the charge as drafted namely, ‘asked Patient A to remove the top half of her clothing, or words to that effect’ to include her bra.

35. The Tribunal first considered the statements and oral evidence of Patient A. In her interview to the Trust on the 10 July 2014, it noted that she stated that at all four appointments she was ‘asked to take bra off.’ In Patient A’s written statement to the Trust dated 14 July 2014 she does not specify that Dr Basu told her to remove her bra at this appointment. In her written statement given to the police in May 2016, Patient A stated, ‘He asked me to go behind the curtain and take everything off from my top half.’ In her oral evidence to the Tribunal, Patient A indicated that at the second appointment, Dr Basu did not ask her to remove her bra, she just understood that she should do so from what she alleged had happened at the
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previous appointment. Patient A was therefore inconsistent about the manner in which she says she was instructed to remove her bra at the second appointment.

36. The Tribunal then reminded itself of Dr Basu’s statement that he would not ask a patient to remove their bra and, if the patient had done so, he would ask them to put it back on or to cover themselves with a blanket.

37. The Tribunal did note that Patient A was unaccompanied at this appointment and that there was no chaperone in the room. The Tribunal noted that the GMC allege that Dr Basu conducted a breast examination at this second appointment. Had Dr Basu conducted a breast examination at this appointment, it would have been more likely that he would have required her to remove her bra. However, as will be seen from its determination in respect of paragraph 2 (b) of the Allegation the Tribunal has rejected the GMC’s case in that regard.

38. The Tribunal considered the probability of whether Dr Basu would have required Patient A to remove the top half of her clothing including the bra at this, the second consultation in the sequence. It has already found that he did not do so at the first consultation. Moreover, there was evidence that the clinic that Patient A was attending was busy and that colleagues of Dr Basu would come into his consultation room either to deliver documentation or to seek his advice. This was confirmed in the statement of Ms D, registered general nurse with a specialist qualification in cardiology who worked at the hospital at the same time as Dr Basu. Ms D said, ‘...there are colleagues that do pop in and out...’ and ‘...healthcare assistants come in and out with notes...they pop in and out frequently...’ It formed the view that it was improbable that he would ask his patient to remove her bra in these particular circumstances.

39. The Tribunal was concerned with the inconsistencies in Patient A’s evidence regarding whether Dr Basu asked her to remove her bra. Taking into account its reasoning in respect of paragraph 1 subparagraph (a) of the Allegation, the Tribunal found that, on the balance of probabilities, Dr Basu did not ask Patient A to remove her bra at the second consultation.

40. This subparagraph of the Allegation is found not proved

Paragraph 2 (b) of the Allegation

41. The Tribunal reminded itself of the evidence which it has recorded and the conclusion it reached in relation to paragraph 1 (b) of the Allegation and, in particular, concerning the developing detail of Patient A’s account of the breast examination in contrast to the absence of detail when she first made a complaint
about it. It noted that Patient A gave the following account to the police concerning this alleged examination in May 2016:

‘He then examined my breasts. He examined them one at a time and then did them together. The tips of his fingers were over my nipple and the palm of his hand was over my breast. He always used an open palm and he never squeezed my breast. I felt confused during the (breast) examination because there was nothing wrong with my breast [sic] but he was still checking them. But I just thought that as it was the same areas as my heart it was connected. He was a doctor and I trusted him.’

42. The Tribunal noted that on this consultation, Dr Basu recorded the following,

<table>
<thead>
<tr>
<th>Palps: no bad attacks- no A/E visits</th>
<th>Palps: no bad attacks – no A/E visits</th>
</tr>
</thead>
<tbody>
<tr>
<td>h running fast all the time</td>
<td>Running fast all the time.</td>
</tr>
<tr>
<td>tired all the time</td>
<td>Tried all the time.</td>
</tr>
<tr>
<td>v Platelets</td>
<td>(low) platelets.</td>
</tr>
<tr>
<td>has been ref. to haem</td>
<td>Has been referred to haematology</td>
</tr>
<tr>
<td>1+2+0</td>
<td>1+2+0</td>
</tr>
<tr>
<td>Tender in L Axilla/Lat side of L breast</td>
<td>Tender in left axilla/lateral side of left breast</td>
</tr>
</tbody>
</table>

The Tribunal accept that Patient A’s presentation and her examination were somewhat different to that on the first occasion. In his evidence, Dr Basu maintained his denial of any allegation by Patient A that he had ever examined her breasts.

43. For the same reasons as it has set out in relation to paragraph 1 (b) of the Allegation, it is not satisfied on the balance of probabilities that Dr Basu carried out a breast examination.

44. The subparagraph of the Allegation is found not proved.

Paragraph 2 (c) of the Allegation

45. The Tribunal noted the observation by counsel for the GMC that the GMC accepts that this charge specifically relates to the obligation that Dr Basu would have had to offer a chaperone to Patient A if a breast examination took place.

46. The Tribunal was aware that Patient A attended this appointment alone and that the Trust had introduced a Chaperoning Policy by the time of the second appointment on 21 February 2014.
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47. The Trust Chaperoning policy defines an ‘intimate examination’ as, ‘an examination, investigation, procedure or photography involving for example, breast genitalia, rectum, groin, thigh. The list is not exhaustive.’

48. The Tribunal also considered the opinion of Dr F, ‘A chest or cardiovascular examination where the breasts remained covered would not generally be considered an intimate examination and therefore would not generally require a chaperone.’

49. Patient A told the Tribunal that she was not offered a chaperone.

50. Dr Basu stated that it was his standard policy to offer a chaperone for a female patient attending alone. He confirmed this stance in his statement to the Trust, ‘...I always offer female patients a chaperone unless they are accompanied by a companion. Even then I frequently ask whether they would prefer to have a nurse present.’ Dr Basu accepts that he did not make a note in Patient A’s records regarding a chaperone and that he should have done. In his oral evidence Dr Basu told the Tribunal that Patient A must have declined the offer of a chaperone.

51. The Tribunal acknowledged the conflict concerning this issue in the evidence of Patient A and Dr Basu. However, in the light of the concession made by counsel for the GMC, it did not consider that it had to resolve this conflict. In the light of its finding that there was no breast examination carried out by Dr Basu on 21 February 2014, it is not alleged that he was under any obligation to offer a chaperone.

52. This subparagraph of the Allegation is found not proved.

Paragraph 2 (d) of the Allegation

53. The Tribunal has determined that the GMC has not proved that Dr Basu undertook a breast examination on the 21 February 2014. In these circumstances there was no obligation upon him to offer an explanation for an examination which he did not carry out.

54. This subparagraph of the Allegation is found not proved.

Paragraph 3 (a) of the Allegation

55. When considering this subparagraph of the Allegation, the Tribunal was mindful of the GMC’s opening statement that the Tribunal was to take the charge as drafted namely, ‘asked Patient A to remove the top half of her clothing, or words to that effect’ to include her bra.

56. The Tribunal has carefully considered the reasoning and the basis of its determination relating to this issue in respect of paragraph 2 (a) of the Allegation. The circumstances in which Dr Basu consulted with Patient A on 9 May 2014 were a
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little different. On this occasion she was complaining of ‘palpitations all the time, can’t run for a bus - can’t keep running more than 50 of 60 yards. Dyspnoea + chest hurts/feels achy. Now definitely increased symptoms.’

57. On this occasion, Patient A was accompanied by her boyfriend. There was an issue relating to the circumstances in which her boyfriend left Dr Basu’s consulting room. Patient A had alleged that Dr Basu sent him away for no very clear reason whereas Dr Basu explained that following Patient A’s request for evidence for her college that she had attended the consultations with Dr Basu, he invited her boyfriend to collect documentation which he had printed out on a printer in the reception area. Patient A was inconsistent in her oral evidence and in her written accounts as to why her boyfriend left the consultation room. In her oral evidence she said she had no memory of the explanation which she gave in her written account that it was she who had requested Dr Basu to provide evidence to her college explaining her absences. The Tribunal preferred Dr Basu’s account and therefore accepted that he did not send him out for any reason other than to comply with Patient A’s request. In any event it is common ground that Patient A’s boyfriend left the consultation room for a period of time between when Patient A was seated next to Dr Basu explaining her symptoms and when she was behind the curtain on the examination couch. Patient A’s boyfriend was not therefore able to provide evidence as to the instructions given by Dr Basu concerning Patient A removing her upper clothing. He was not called to give evidence.

58. The Tribunal has reached the conclusion that there is no reason to depart from its findings in relation to the instructions which Dr Basu gave to Patient A concerning the removal of the top half of her clothing as set out in relation to paragraph 2 of the Allegation. The probabilities of him issuing an instruction to remove her bra remain, in the Tribunal’s view, low; they are rendered even lower by the fact that Patient A was accompanied, albeit her boyfriend was absent for a short period of time. It would be very odd if on this, the third consultation, he instructed Patient A to remove her bra when he had not done so on the previous two occasions.

59. The Tribunal noted that the GMC allege that Dr Basu conducted a breast examination at this third appointment. Had Dr Basu conducted a breast examination at this appointment, it would have been more likely that he would have required her to remove her bra. However, as will be seen from its determination in respect of paragraph 3 (b) of the Allegation the Tribunal has rejected the GMC’s case in that regard.

60. This subparagraph of the Allegation is found not proved.
Paragraph 3 (b) of the Allegation

61. The Tribunal reminded itself of the evidence which it has recorded and the conclusion which it reached in relation to paragraphs 1 (b) and 2 (b) of the Allegation and, in particular, concerning the developing detail of Patient A’s account of the breast examination in contrast to the absence of detail when she first made a complaint about it. It noted that Patient A gave the following account to the police concerning this alleged examination in May 2016,

‘...he then carried out the breast examination, which was exactly the same as the first two times.’

62. The Tribunal accept that Patient A’s presentation and her examination were somewhat different to that on the first occasion. In his evidence, Dr Basu maintained his denial of any allegation by Patient A that he had ever examined her breasts.

63. The Tribunal has already set out the matters that were concerning Patient A at this appointment. The focus of his attention related to her extreme breathlessness on exercise. In those circumstances, it is improbable that he would have conducted an unnecessary breast examination rather than examine the matters which caused her presenting complaint.

64. For these and the same reasons as it has set out in relation to paragraphs 1 (b) and 2 (b) of the Allegation, it is not satisfied on the balance of probabilities that Dr Basu carried out a breast examination.

65. The subparagraph of the Allegation is found not proved.

Paragraph 3 (c) of the Allegation

66. The Tribunal noted the GMC’s statement that the GMC accepts that this charge specifically relates to the obligation that Dr Basu would have had to offer a chaperone to Patient A if a breast examination took place.

67. The Tribunal was aware that Patient A was accompanied at this appointment by her boyfriend. It has already recited the Trust chaperoning policy.

68. Broadly Patient A maintains that she was not offered a chaperone.

69. The Tribunal has already recited Dr Basu’s position in relation to chaperones.

70. The Tribunal acknowledged the conflict concerning this issue in the evidence of Patient A and Dr Basu. However, in the light of the concession made by counsel for the GMC, it did not consider that it had to resolve this conflict. In the light of its
finding that there was no breast examination carried out by Dr Basu on 09 May 2014, it is not alleged that he was under any obligation to offer a chaperone.

71. This subparagraph of the Allegation is found not proved.

Paragraph 3 (d) of the Allegation

72. The Tribunal has determined that the GMC has not proved that Dr Basu undertook a breast examination on the 09 May 2014. In these circumstances there was no obligation upon him to offer an explanation for an examination which he did not carry out.

73. This subparagraph of the Allegation is found not proved.

Paragraph 4 (a) of the Allegation

74. When considering this subparagraph of the Allegation, the Tribunal was mindful of the GMC’s opening statement that the Tribunal was to take the charge as drafted namely, ‘asked Patient A to remove the top half of her clothing, or words to that effect’ to include her bra.

75. In her written statement to the Trust on 14 July 2014, Patient A makes no mention of Dr Basu asking her to remove the top half of her clothing or words to that effect. In the police report, Patient A stated, ‘He asked me to go behind the curtain and to take off the top half of my clothes.’ In her statement to the GMC Patient A stated, ‘Just as before Dr Basu asked me to go behind the curtain and remove my top and bra so he could examine me. At this point I was beginning to wonder what the relevance of the breast examinations were but I trusted his judgment.’

76. The Tribunal took account of Dr Basu’s contemporaneous medical records and letter to Patient A’s GP which state, ‘Her palpitations improved significantly...’. In the circumstances Patient A’s presentation did not warrant a thorough cardiac examination. He was more focused on her other complaint, namely ‘multiple UTI’s since late May.’

77. In these circumstances the Tribunal is not satisfied on the balance of probabilities that Dr Basu would have required Patient A to remove her bra to carry out any examination.

78. This sub-paragraph of the Allegation is found not proved.
Paragraph 4 (b) of the Allegation

79. In the light of the foregoing reasoning both in relation to the consultation of the 27 June 2014 and relation to the previous consultations, the Tribunal concluded that, on the balance of probabilities, a breast examination did not take place.

80. This subparagraph of the Allegation is found not proved.

Paragraph 4 (c) of the Allegation

81. The allegation made by Patient A that Dr Basu asked her to remove the lower half of her clothes or words to that effect, is closely associated with whether he carried out an internal examination by inserting his fingers into her vagina as alleged in paragraph 4 (d) of the Allegation. The Tribunal determined to approach the allegation in paragraph 4 (c) of the Allegation in conjunction with the allegation in paragraph 4 (d) of the Allegation. The detail of its determination is set out under the heading of 4 (d) of the Allegation. The Tribunal does not repeat it here.

82. By reason of the matters set out under paragraph 4 (d) of the Allegation, the Tribunal does not find on the balance of probabilities that Dr Basu asked Patient A to remove the lower half of her clothes as it does not find that he intended to or did carry out an internal examination.

83. The subparagraph of the Allegation is found not proved.

Paragraph 4 (d) of the Allegation

84. By the date of the fourth consultation Patient A, in addition to any other problems, was complaining of her ‘frequent UTIs’. She had first told Dr Basu about UTI’s at the consultation on 21 February 2014. He had carried out an abdominal examination on that occasion, on the 09 May 2014 and on the 27 June 2014.

85. Patient A gave evidence to the effect that Dr Basu informed her that he was going to do an internal examination to check her bladder on the 27 June 2014. Prior to that alleged statement he had conducted his abdominal examination of her and noted that she was ‘tender paraspinally over renal areas left and right + suprapubic tenderness on deep palp:’. She explained in her initial witness statement to the GMC dated 18 September 2015 that after she had removed her lower clothing he returned and,

‘He put gloves on. He used KY Jelly and asked her to move her legs apart. He then inserted two fingers, the index and middle finger. It was quite painful he turned his fingers round. He asked me what hurt and I said the whole thing. I would say it lasted about 4-5 minutes. He kept asking if it was tender and I kept repeating that all of it hurt.’
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She said that

‘During the examination he asked me what my sex life was like. He had never asked before. He asked if it hurt whilst having sex, how often I had sex and if I used contraception. I was surprised he was asking his as he already knew I had a contraceptive implant. After the examination was over he did not provide me with a tissue to clean myself but cleaned me himself. He said my bladder seemed tender. I am not sure how he can tell that from an internal examination. My bladder was empty as I had been to the toilet prior to the appointment.’

86. This account is more detailed than the account which Patient A gave to the Trust on 10 July 2014. In her statement to the Trust on 14 July 2014 she described the internal examination as a ‘bimanual examination.’ She told the Tribunal that she had found this description on Google and used it as it accurately described the examination. She understood it to mean that Dr Basu used two fingers.

87. The most detailed account of the alleged internal examination as provided by Patient A to the police on 11 May 2016. It reads as follows;

‘Dr Basu put on gloves and got some form of lubricant. He asked me to open my legs, like I was giving birth position, my legs were up and knees bent. He put the lubricant on his gloves, the tops of his right index and middle fingers; he inserted the two fingers into my vagina. I don’t know what he did but it was hurting. He was at the side of the couch and had his hands /arm around my leg and into my vagina. ...He had the entire length of his fingers inside my vagina. He was wiggling his fingers from side to side and moving them up and down. He was also pressing into the walls.’

88. The Tribunal observed that Patient A’s accounts of the internal examination were consistent in the several statements which she made, save that there was increasing detail each time there was a later account.

89. Patient A advanced no complaint about the alleged internal examination when she returned home. By that time she had already undergone certain tests which Dr Basu had asked her to undertake at the hospital. On her return home she simply observed to her mother, ‘I think I have had my first internal examination.’ In her account to the police in May 2016 she said that she had sent a text to her boyfriend telling him what had happened as she was leaving the hospital but that text message was not presented as evidence.

90. Patient A attended her GP on 4 July 2014 complaining of ‘pain on passing urine over the last two months and back pain.’ According to the GP’s notes, she did not attend the GP because she had any complaint about Dr Basu, nor because she
was experiencing any symptoms attributable to the alleged internal examination. In the course of that consultation she did disclose to the GP that Dr Basu had carried out an internal vaginal examination – with patient consent and that her breasts had been examined on each appointment. She was interviewed by the Trust on 10 July 2014.

91. Dr Basu flatly denied that he had undertaken an internal examination of Patient A. He stated that although he was a consultant in GIM there were three areas which he completely avoided namely, obstetrics, gynaecology and orthopaedics. Although he examined her for her UTI condition, that examination would never have and did not include an internal examination. Dr Basu made no note of any internal examination in the medical records.

92. There were a number of matters which troubled the Tribunal about Patient A’s complaint that she had had an internal examination. Apart from the developing detail, she had given inconsistent accounts as to whether she had at any stage been covered by a blanket. She told the police that Dr Basu had extended his arm around her legs which were bent when he inserted his fingers into her vagina, but she told the Tribunal that his arm was over her legs which were lying apart but flat on the couch. She made an observation that in preparing for the examination Dr Basu had gone behind the curtain in order to wash his hands, yet it seems from photographs that the basin in the consulting room would not have been out of her view. Further the language which Patient A used to refer to her internal examination to her mother suggested an element of uncertainty as to the nature of the examination. It seemed to the Tribunal that the detail of her account was provided substantially later. There was moreover an inconsistency concerning the symptoms which she experienced following the alleged internal examination. Although she did not mention any bleeding to her GP on 4 July 2014, in her later accounts she attributed significant and prolonged bleeding to the alleged internal examination on the 27 June 2014. For example, she telephoned the GP on 25 July 2014 and commented bleeding heavily started on the day of the internal examination and ‘bleeding occurred two days later, very heavy bleeding clotting a lot.’ Yet on 27 August 2014 at an appointment at the GP’s she said she had experienced continuous bleeding since 07 July 2014. The Tribunal was concerned that Patient A was endeavouring to support her account of an internal examination by attributing to it significant bleeding, although she did not mention it at the GP appointment on 4 July 2014.

93. The Tribunal has considered the probability of Dr Basu undertaking an internal examination of Patient A as she alleges. The Tribunal has excluded the possibility that he undertook such an examination for proper clinical reasons related to her UTI. Both the experts agree that such an examination would be wholly inappropriate for that purpose. Dr Basu agreed. There was no suggestion that Dr Basu undertook an internal examination for a gynaecological reason and in any event he stated that he would never undertake an examination for that purpose. If
he carried out the internal examination, the explanation for it must therefore be that he did it for improper reasons.

94. The Tribunal therefore has to consider the likelihood of Dr Basu conducting an internal examination for improper reasons. It noted, of course, that Patient A was not accompanied at this consultation. It also noted that there has never been any suggestion of inappropriate behaviour by Dr Basu towards any patient in his career at the Trust or elsewhere; moreover, there is no suggestion of his ever having behaved dishonestly. The only criticism of him, which was not really a criticism, was that he was a stickler for politeness. The Tribunal recognised that there is only one person who is making these allegations against Dr Basu. The Tribunal has already made findings against Patient A’s evidence that Dr Basu carried out breast examinations and asked her to remove her bra before those alleged examinations. It is aware of a number of matters which were perhaps crystallising with Patient A at the time this examination is alleged to have taken place. They include the UTI problem which had not yet been resolved, problems with bleeding and possible problems with her relationship with her boyfriend. The Tribunal has to wrestle with the issue as to the credibility of the only witnesses who gave evidence concerning this alleged incident. The Tribunal does not depart from the proposition advanced earlier in this determination that it is improbable that Dr Basu would behave as alleged and conduct an internal examination. It therefore has to consider whether Patient A’s evidence is sufficient to persuade it that the event in question did indeed happen. It is in her favour that, when she consulted her GP on 4 July 2014, she was not making a complaint about the internal examination, she was merely mentioning it. However, that is weakened by her apparent uncertainty as to the nature of the examination which she had had as she expressed to her mother when she returned home.

95. The Tribunal does not think that the evidence upon which the GMC rely is sufficient to persuade it on the balance of probabilities that Dr Basu carried out the internal examination as alleged by Patient A on 27 June 2014.

96. This subparagraph of the Allegation is found not proved.

Paragraph 4 (e) of the Allegation

97. The Tribunal has found on the balance of probabilities that Dr Basu did not insert his fingers into Patient A’s vagina. It is right to observe that although this allegation cannot be found proved unless Dr Basu was carrying out an internal examination, for the avoidance of doubt it does not find proved that Dr Basu asked inappropriate questions as alleged. The Tribunal found that he would not have asked such questions if he was not undertaking the alleged internal examination.

98. This subparagraph of the Allegation is found not proved.
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Paragraph 4 (f) of the Allegation

99. Having previously concluded that no intimate examination took place, the Tribunal considered that Dr Basu had no duty to offer Patient A a chaperone.

100. This subparagraph of the Allegation is found not proved.

Paragraph 4 (g) of the Allegation

101. Having determined that, on the balance of probabilities, no breast examination took place, the Tribunal concluded that Dr Basu was not under an obligation to explain the examination as it had not occurred.

102. This subparagraph of the Allegation is found not proved.

Paragraph 4 (h) of the Allegation

103. Having determined that, on the balance of probabilities, no internal examination had taken place, the Tribunal concluded that Dr Basu was not under an obligation to explain the examination as it had not occurred.

104. This subparagraph of the Allegation is found not proved.

Paragraph 5 of the Allegation

105. Having found that, on the balance of probabilities, Dr Basu did not undertake the actions detailed in paragraphs 1 – 4 of the Allegation the Tribunal therefore found that Dr Basu had not performed any actions which were sexually motivated.

106. This paragraph of the Allegation is found not proved.

Paragraph 6 of the Allegation

107. Having found that, on the balance of probabilities, Dr Basu did not undertake the actions detailed in paragraphs 1(b), 2(b), 3(b) and 4(b) it therefore followed that it could not be found that his actions were clinically indicated as these actions had not taken place.

108. This paragraph of the Allegation is found not proved.

Paragraph 7 of the Allegation

109. The Tribunal found that Dr Basu had not undertaken the actions as described at paragraph 4(d).
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110. This paragraph of the Allegation is found not proved.

The Tribunal’s Overall Determination on the Facts

111. The Tribunal has determined the facts as follows:

1. On 15 November 2013, you consulted with Patient A and you:
   a. replied ‘yes’ after Patient A asked you whether she needed to remove her bra, or words to that effect;
      Determined and found not proved
   b. examined Patient A’s breasts;
      Determined and found not proved
   c. failed to offer a chaperone prior to the examination;
      Determined and found not proved
   d. failed to explain why the examination referred to in paragraph 1b was necessary.
      Determined and found not proved

2. On 21 February 2014, you consulted with Patient A and you:
   a. asked Patient A to remove the top half of her clothing, or words to that effect;
      Determined and found not proved
   b. examined Patient A’s breasts;
      Determined and found not proved
   c. failed to offer a chaperone prior to the examination;
      Determined and found not proved
   d. failed to explain why the examination referred to in paragraph 2b was necessary.
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Determined and found not proved

3. On 9 May 2014, you consulted with Patient A and you:

a. asked Patient A to remove the top half of her clothing, or words to that effect;
   
   Determined and found not proved

b. examined Patient A’s breasts;
   
   Determined and found not proved

c. failed to offer a chaperone prior to the examination;
   
   Determined and found not proved

d. failed to explain why the examination referred to in paragraph 3b was necessary.
   
   Determined and found not proved

4. On 27 June 2014, you consulted with Patient A and you:

a. asked Patient A to remove the top half of her clothing, or words to that effect;
   
   Determined and found not proved

b. examined Patient A’s breasts;
   
   Determined and found not proved

c. asked Patient A to remove the lower half of her clothes, or words to that effect;
   
   Determined and found not proved

d. inserted your fingers into Patient A’s vagina;
   
   Determined and found not proved
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e. inappropriately asked questions about Patient A’s sex life whilst your
   fingers were inserted into her vagina;

   Determined and found not proved

f. failed to offer a chaperone prior to the examinations referred to in
   paragraphs 4b and 4d;

   Determined and found not proved

g. failed to explain why the examination referred to in paragraph 4b was
   necessary;

   Determined and found not proved

h. failed to fully explain why your actions referred to in paragraph 4d
   were necessary.

   Determined and found not proved

5. Your actions as described at paragraphs 1-4 were sexually motivated.

   Determined and found not proved

6. Your actions as described at paragraphs 1b, 2b, 3b and 4b were not clinically
   indicated.

   Determined and found not proved

7. Given your role as a Consultant Cardiologist, there was no indication for you
   to undertake the actions as described at paragraph 4d.

   Determined and found not proved

112. As the Facts have not been found proved it therefore follows that Dr Basu’s
      fitness to practise is not impaired. The Tribunal does not invite submissions on
      Impairment.

XXX

114. This concludes the case.

Confirmed
Date 29 November 2019   Mr Angus Macpherson, Chair