

PUBLIC RECORD

Dates: 02/04/2024 - 22/04/2024; 29/07/2024-05/08/2024; 29/08/2024-03/09/2024;
19/12/2024-20/12/2024; 23/01/2025, 25/04/2025

Medical Practitioner's name: Dr Manoj NARAYAN

GMC reference number: 6046023

Primary medical qualification: MB BS 1989 Ranchi University

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Not Impaired

Summary of outcome

Warning

Tribunal:

Legally Qualified Chair	Ms Melissa Coutino
Lay Tribunal Member:	Ms Morgan Phillips
Medical Tribunal Member:	Mrs Deborah McInerny 02/04/2024-22/04/2024, 29/07/2024-05/08/2024, 29/08/2024-03/09/2024 Dr Suzanne Joels, 19/12/2024-20/12/2024, 23/01/2025, 25/04/2025

Tribunal Clerk:	Miss Maria Khan, Mr Andrew Ormsby - 25/04/2025 only
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Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Ms Corinne Bramwell, Counsel instructed by Hempsons LLP
GMC Representative:	Mr Ian Brooks, Counsel Mr Terence Rigby, Counsel, 03/09/2024 only

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 03/09/2024

Background

1. Dr Narayan qualified in 1993 from Ranch University, India. He undertook his UK qualifying exam in 2003 and commenced employment at South West Yorkshire Partnership NHS Foundation Trust ('the Trust') in 2003, initially on a clinical attachment. Dr Narayan completed his specialist training in Psychiatry of Learning Disability in 2014 and obtained a consultant position at the Trust in 2017. His role included being the Community Consultant for Learning Disability Services in Calderdale and he also acted as the responsible clinician for the inpatient Learning Disability Services in Wakefield. Dr Narayan was the only consultant in the Trust who covered both outpatients and inpatients and he was appointed as the Medical Clinical Lead for Learning Disability Services in January 2020.
2. At the time of the events Dr Narayan was practising as Consultant Psychiatrist and Medical Lead for Adult Learning Disability at the Trust, covering Barnsley, Wakefield, Huddersfield, and Calderdale. Dr Narayan was also the manager of three other psychiatrists who were based within the centre, and for all the psychiatrists at the other locations. Dr Narayan was additionally the Lead Psychiatrist in the XXX Centre which was an inpatient facility in Wakefield.
3. The allegation that has led to Dr Narayan's hearing can be summarised as, that between April 2020 and November 2020 whilst working at the Trust, it is alleged that Dr Narayan made sexually motivated comments to, and physical contact with, Ms A (XXX), with these actions constituting harassment on the grounds of gender and sexual orientation.
4. The facts involve Ms A starting to work with Dr Narayan. On XXX 2020, Ms A started working as XXX at the XXX ('the Centre'). XXX. Ms A's original role was meant to be XXX. Most of Ms A's work was based at the Centre but she also travelled to the XXX Centre in Wakefield. Ms A met Dr Narayan on XXX 2020 during her first week working at the Centre and had daily interactions with him at either location, in person or via phone and/or email.
5. It is alleged that from the outset Dr Narayan asked Ms A personal questions about her family. Initially, she was unsure if his comments and behaviour were appropriate because of their personal nature or if he was just being friendly. It started with pleasantries and general interests and Ms A tried to be polite in response to queries and engage with Dr Narayan.

However, she considered that Dr Narayan's questions became more intrusive, e.g. he asked her questions about her finances.

6. XXX

7. In June 2020, Ms A asked the XXX Manager if she could transfer to a part-time XXX role which had become available XXX. Ms A made it clear to the XXX Manager and Ms I that the reason for her request was because she did not want to work with Dr Narayan and preferred to work for a team. XXX.

8. XXX

9. In August 2020, during a one-to-one meeting with her line manager, Ms I, Ms A raised the issue of XXX. She also used the opportunity to raise her concerns about Dr Narayan's failure to maintain appropriate social distancing during the pandemic, which she indicated was making her feel uncomfortable. Ms I offered to speak with Dr Narayan but Ms A was worried that she would get into trouble with Dr Narayan. Ms I suggested that Ms A speak with Dr Narayan herself and ask that he maintain his distance.

10. On 9 October 2020, Dr Narayan and Ms A commenced communication via WhatsApp, using Ms A's personal phone number as she did not have WhatsApp on her work phone. When Dr Narayan began contacting her on WhatsApp, communications between Ms A and him did not always relate to work matters and covered other topics. The content of some of the messages late on the evening of 28 October involved conversations about sexual practices.

11. By 6 November 2020, it is alleged that Dr Narayan's behaviour towards Ms A had escalated to include physically and verbally intrusive behaviour. On 10 November 2020, Ms A complained to her line manager. She was asked to write a statement which she did. This was given to her Union representative and police. She wrote several statements for the Police and had several conversations with them.

12. In XXX 2021 Ms A was placed with a different team but she left the Trust on XXX 2021 for another job. On 21 July 2021, Ms A attended a Trust disciplinary hearing. In August 2021, Ms A raised a complaint about Dr Narayan with the GMC. By February 2022, Ms A was told that the police would not be taking any action.

The Outcome of Applications Made during the Facts Stage

13. On 2 April 2024 the Tribunal granted an application made by Ms Corinne Bramwell, Counsel, on behalf of Dr Narayan, pursuant to Rule 34(1) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that some redacted witness evidence provided by Ms H remain excluded. The Tribunal's full decision on the application is included at Annex A.

14. On 8 April 2024 the Tribunal granted Ms Bramwell's application made pursuant to Rule 34(1) of the Rules that further witness evidence provided by Ms H be excluded. Dr Narayan had no wish to challenge Ms H's remaining evidence, the GMC did not object to the application and, as a consequence, Ms H was not called to give oral evidence. The Tribunal's reasoning for its decision mirrored that provided in paragraphs 7 and 8 of Annex A.

15. On 12 April 2024 the Tribunal granted an application made pursuant under Rule 17(2)(g) by Ms Bramwell and found that there was no case to answer in respect of paragraph 2 as it relates to paragraphs 1(a)(xii) and 1(a)(xiii), paragraph 3 as it relates to paragraphs 1(a)(ix – xiii), 1(c)(vii – xiv), 1(d)(ix – xi) and 1(d)(xiii)(a) and (b) and paragraph 4 as it relates to 1(a)(xii) and 1(a)(xiii). The Tribunal's decision on this '*half-time*' application is at Annex B

16. On 15 April 2024 the Tribunal refused an application made by Mr Brook that the GMC case be reopened so that a document referred to by both parties in evidence could be adduced. The Tribunal's full decision on the application is included at Annex C.

17. On 15 April 2024 the Tribunal granted Ms Bramwell's application made pursuant to Rule 34(1) to adduce, as hearsay evidence, the witness statements and associated exhibits of two witnesses who, up to 22 February 2024, were scheduled to give oral evidence on behalf of the GMC. The Tribunal's full decision is included at Annex D.

The Allegation and Dr Narayan's Response

18. The Allegation made against Dr Narayan is as follows:

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

1. Between April 2020 and November 2020, whilst working with Ms A for South West Yorkshire Partnership NHS Foundation Trust, you:
 - a. made physical contact with Ms A in that you:
 - i. struck Ms A on the back of her head;
To be determined
 - ii. kicked Ms A's foot and/or leg under the desk on one or more occasions;
To be determined
 - iii. grabbed and/or slapped Ms A's thigh on one or more occasions;
To be determined
 - iv. prodded at Ms A's stomach on one or more occasions;
To be determined

- v. grabbed at Ms A's ribs;
To be determined
 - vi. grabbed Ms A's upper arm, which caused a bruise to develop;
To be determined
 - vii. grabbed Ms A's arm hard in various places to try and cause bruising;
To be determined
 - viii. hit Ms A sharply between her shoulder blades with the side of your fist;
To be determined
 - ix. pulled and/or pinged Ms A's bra strap on one or more occasions;
To be determined
 - x. poked and/or prodded Ms A's left breast;
To be determined
 - xi. touched Ms A's nipple;
To be determined
 - xii. grabbed Ms A's cheek on one or more occasions whilst she was crying;
To be determined
 - xiii. touched Ms A's foot with your finger;
To be determined
- b. criticised Ms A professionally by saying that she was:
- i. an idiot;
To be determined
 - ii. stupid;
To be determined
 - iii. useless,
To be determined
- or words to that effect;

c. asked Ms A:

- i. whether there were a lot of lesbians in the town set out in Schedule 1;
To be determined
- ii. how lesbians have babies;
To be determined
- iii. how Ms A could be a lesbian when she had had sex with men;
To be determined
- iv. what made her and others 'gay';
To be determined
- v. questions about lesbian sex;
Admitted and found proved
- vi. about 'scissoring' repeatedly;
To be determined
- vii. how sex toys could penetrate the anus;
To be determined
- viii. to bring a sex toy into work on one or more occasions;
To be determined
- ix. to give you a 'practical demonstration' on how to use sex toys;
To be determined
- x. to show you her XXX;
To be determined
- xi. if she had tried anal sex;
To be determined
- xii. how many penises and 'boobs' Ms A had seen in her life;
To be determined
- xiii. if it was a 'sexual thing' when she was wearing net socks;
To be determined

- xiv. to try on a blue button down shirt and two waistcoats at home
and take photos and send them to you,
To be determined

or words to that effect;

- d. said to Ms A:
- i. that you would be protected and that no-one would believe her if she made a complaint against you;
To be determined
 - ii. 'I know more than you';
To be determined
 - iii. that certain colleagues did not like Ms A and that you had heard them talking behind her back;
To be determined
 - iv. that she should not trust certain colleagues;
To be determined
 - v. that if she enjoyed penetrative sex then that meant she was not a lesbian;
To be determined
 - vi. that she was XXX;
To be determined
 - vii. that therapy was 'bullshit' and asked Ms A how she had 'fucked [her] life up';
To be determined
 - viii. that she should not discuss the content of her conversations with you with anyone, including her partner;
To be determined
 - ix. that she had 'nice sized boobs';
To be determined

**Record of Determinations –
Medical Practitioners Tribunal**

- x. that if you found out that Ms A had called her partner, after she told you about an argument, you would ‘strip her naked’;
To be determined
- xi. that you should feel comfortable seeing each other naked and that sex should not matter to a relationship;
To be determined
- xii. it was ‘funny that you are XXX because XXX’ then told Ms A you were referring to ‘vagina’; **To be determined**
- xiii. in reference to a colleague:
- a) ‘if we were in India, I would have just raped her’;
To be determined
- b) ‘she needs dick’,
To be determined
- or words to that effect;
- e. called Ms A ‘lezzie’ on one or more occasions, or words to that effect.
To be determined
2. Your actions as set out at paragraphs 1a ~~ix-xiii~~ ix-xi, 1c i-xiv, 1d v, ix-xiii were sexually motivated.
Deleted following a successful application under Rule 17(2)(g)
To be determined
3. Your actions as set out at paragraphs ~~1a ix-xiii, 1c i-xiv j-vi, 1d v, ix-xiii xii~~, 1e constituted harassment related to sexual orientation as defined in Section 26(1) of the Equality Act 2010, in that you engaged in unwanted conduct related to sexual orientation which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms A.
Deleted following a successful application under Rule 17(2)(g)
To be determined
4. Your actions as set out at paragraphs 1a ~~ix-xiii~~ ix-xi, 1c i-xiv, 1d v, ix-xiii constituted sexual harassment as defined in Section 26(2) of the Equality Act 2010, in that you engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of Ms A, or creating an

intimidating, hostile, degrading, humiliating or offensive environment for Ms A.

Deleted following a successful application under Rule 17(2)(g)
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**

The Admitted Facts

19. At the outset of these proceedings, through his counsel, Ms Bramwell, Dr Narayan made an admission to sub- paragraph 1(c)(v) of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced this sub-paragraph of the Allegation as admitted and found proved.

Witness Evidence

20. The Tribunal received evidence on behalf of the GMC from the following witnesses:

- Ms A, XXX at the Trust at the time of the events, via video link. Ms A also provided a witness statement dated 13 February 2023;
- Ms B, XXX, Ms A's partner, via video link. Ms B also provided a witness statement dated 28 September 2023;
- Dr D, Specialty Doctor in Learning Disabilities at the Trust, via video link. Dr D also provided a witness statement dated 28 September 2023.

21. The Tribunal also received evidence on behalf of the GMC in the form of witness statements from the following witness who did not give oral evidence:

- Ms H, Allied Health Professionals Lead & Specialist Occupational Therapist at the Trust. Ms H provided a witness statement dated 26 October 2023.

22. Dr Narayan provided his own witness statement, dated 23 February 2024, and also gave oral evidence at the hearing.

23. The Tribunal also received evidence on behalf of Dr Narayan in the form of witness statements from the following witnesses who did not give oral evidence:

- Ms E, Senior Health Care Support Worker at the Trust at the time of the events. Ms E provided a witness statement dated 16 October 2023;
- Ms F, Lead Nurse at the Trust within Learning Disabilities, at the time of the events. Ms F provided a witness statement dated 22 September 2023.

Documentary Evidence

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

- Two statements prepared by Ms A; one written following the one-to-one meeting with her line manager and XXX Manager on 10 November 2020, and the 36-page statement provided for the Trust interview;
- Email from Ms A to PC G regarding a statement, dated 12 November 2020;
- Email from Ms A to PC G enclosing the transcript of WhatsApp conversation with Dr Narayan, dated 12 November 2020;
- Email from Ms A to PC G regarding additional incidents, dated 13 November 2020;
- Email from the Trust to Ms A enclosing a letter regarding the Trust investigation meeting, dated 9 December 2020;
- Three Trust interviews with Ms A, dated 15 December 2020, 29 December 2020 and 19 March 2021;
- Police statement/account of Ms A, dated 12 November 2020;
- Police witness statement of Person B, dated 31 December 2020;
- Redacted Trust interview of Ms H dated 25 January 2021;
- Trust interview of Ms E, dated 25 January 2021;
- Trust interview of Ms F, dated 24 February 2021;
- Trust interview of Dr D, dated 5 March 2021;
- Freedom to Speak Up document;
- WhatsApp messages between Ms A and Ms B;
- Text messages between Ms A and Dr Narayan;
- Transcript of WhatsApp messages between Ms A and Dr Narayan with accompanying photographs;
- GMC online complaint form, completed by Ms A;
- Email from Ms A to GMC, dated 29 August 2021;
- Chronology of events prepared by Ms A;
- Floor Plans of the HC in W and HB Community Health Centre;
- Notes from Ms A's one-to-one monthly meetings with Ms I, for May, June, August and November of 2020.

Summary of Witness Evidence

Ms A

25. Ms A's evidence was that she found working with Dr Narayan difficult. She found him to be overly familiar and tactile. She was particularly concerned that he did not respect social distancing during Covid, and during an investigation by the Trust into allegations of inappropriate touching, when asked about him touching her foot, indicated that she was more concerned at how close he was sitting to her and this proximity. She provided some background details, such as XXX, and Dr Narayan's interest in her being able to manage her finances.

26. Ms A was taken through specific instances alleged and provided details. During cross-examination, she twice refused to answer questions and left the hearing but was persuaded to return. She acknowledged that Dr Narayan had called her clever on occasions, XXX, but said that he also questioned her intelligence, and that she often did not know where she stood with him. She said it was preferable when he was in a good mood and she tried to keep on his good side, rather than face his ire when he was displeased with her. She complained to colleagues about him touching her (which Dr D confirmed, indicating he knew about a touch to her leg) and separately queried whether what he did and said was suggestive of sexual interest (which Ms H confirmed in hearsay evidence).

27. Ms A told the Tribunal in her oral evidence that by the end of October 2020 she had become increasingly concerned that his interest in her was sexual, given the events that had occurred, and complained when she could take his behaviour no more. She acknowledged that there had been a cumulative effect where some touching had been inappropriate but not immediately felt sexual. She said that she had participated in the sexual WhatsApp conversation, which followed an earlier conversation, because she felt he would be angry if she did not. She said that she did not consider him to be a friend.

Ms B

28. Ms B indicated that Ms A was worried about starting work at the Trust. She was concerned that as a result of the pandemic her job offer might be withdrawn. Ms B said that Ms A had complained about Dr Narayan hitting her on the head. Ms B was outraged. Ms A had said that while it may have been intended as a joke it still hurt. Ms B said she had not read the WhatsApp messages between Ms A and the doctor but had been told about some inappropriate behaviour in the summer, and at the end of the time when Ms A worked with Dr Narayan when she helped to piece the complaint documentation together. She said that her role had been one of typist. She said that she was not good with dates and if there were discrepancies, Ms A's evidence should be preferred.

Dr D

29. Dr D indicated that he knew Dr Narayan as a colleague along with Ms A. He said that Ms A had come to talk to him about Dr Narayan. Among other things, she disclosed that he had touched her leg. Dr D, who was particularly interested in talking to trauma victims, was not overly concerned about this report. He acknowledged that Dr Narayan was tactile but that nothing about his conversation with Ms A had been a red flag.

Ms H

30. Ms H did not give oral evidence. Her evidence was admitted as hearsay. She indicated in a written statement dated October 2023 that Ms A had twice shared with her concerns about Dr Narayan, during the spring/summer of 2020 although could not be precise about the dates. Her best estimate about the conversations were that they occurred around May/June and July/August. Ms H said that Ms A had said to her that she was “unsure” of Dr

Narayan and her concerns were both about inappropriate touching and being asked about her sex life. Ms H also said that she had concerns about Dr Narayan's behaviour herself.

Dr Narayan

31. Dr Narayan's evidence suggested that he admired Ms A's XXX skills and recommended her to his colleagues. He praised her XXX abilities. He acknowledged that he had bought her gifts but indicated that he did this for other staff routinely also, (which they confirmed). He said that he asked his work colleagues questions about same-sex relationships (which they confirmed) because he felt this knowledge was relevant to gay patients he had in HB, some of whom had learning-difficulties and might struggle to communicate relevant nuances.

32. Dr Narayan said he considered that Ms A and he had a friendly relationship. He referenced her sharing personal information with him, such as when Ms A had experienced difficulties with her partner Ms B. Dr Narayan disputed that any inappropriate touching had occurred. He acknowledged that because of his role, junior staff did not always treat him as one of them but said that he tried to get on with everyone. He said that he had overheard part of a conversation about sex between Ms A and other staff in a communal room, but did not recall a separate conversation about sex between the two of them.

33. He did admit that he had engaged in an inappropriate WhatsApp conversation with Ms A. He said it was late at night and that he had been drinking and intimated that he was relaxed. He said that he regretted this conversation but felt that he was on very good terms with Ms A. Within the WhatsApp messaging is reference to him checking whether he has offended her or can say anything to her, Ms A appears to reassure him that the latter position is correct.

Ms E

34. As a Senior Health Care Support Worker at the Trust at the time of events, Ms E had written a statement which set out her hearsay evidence about working with Dr Narayan. She said that he was respectful of staff. She had neither witnessed him swearing at staff nor herself experienced any offensive behaviour. However, she did have knowledge that Ms H had raised concerns about Dr Narayan not observing social distancing guidelines and touching her.

Ms F

35. As a Lead Nurse at the Trust, Ms F was able to describe her experience of Dr Narayan as a colleague in a witness statement. Her hearsay evidence largely mirrored that of Ms E. However, in addition to mentioning that Dr Narayan had a good relationship with staff, she described him as tactile and friendly and recalled once witnessing him prodding a colleague in the side in jest. Ms F also said in her evidence that Dr Narayan had respected social distancing during the Pandemic.

Submissions

On behalf of the GMC

36. Submissions on behalf of the GMC drew the Tribunal's attention to the evidence of Ms A, and the documentary evidence of the WhatsApp messages. Mr Brook indicated that Dr Narayan had not been able to provide an explanation for why Ms A had made the complaints that she has. He invited the Tribunal to find as proved the allegations where there was evidence that could satisfy it.

On behalf of Dr Narayan

37. Ms Bramwell pointed out that there were inconsistencies in some of the evidence before the Tribunal in respect of multiple allegations. She reminded the Tribunal that innocent explanations for some touching were available, and cited the evidence of those who described the doctor as tactile but respectful. She pointed out that hearsay evidence had not been tested by cross examination, and that the doctor was a person of good character.

The Tribunal's Approach

38. In reaching its decision on facts, the Tribunal followed the approach outlined by the Legally Qualified Chair and bore in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Narayan does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred.

39. The Tribunal adopted the approach set out in the case of Basson v GMC [2018] EWHC 505 (Admin) in relation to sexual motivation, noting that "*sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship*", albeit the GMC has not made it clear which limb is relied upon in this case. It also acknowledged that depending on the matters found proved, it would consider whether these amounted to harassment by virtue of gender and/or sexual orientation. It would approach each matter separately.

40. The Tribunal gave less weight to hearsay evidence that had not been tested by cross-examination. It bore in mind that Dr Narayan was a man of good character and that this is relevant in two ways: firstly, the doctor having given evidence and had this subject to cross-examination, as with any person of good character, it supports his credibility. Secondly, the fact that he is of good character may mean that he is less likely than otherwise might be the case to commit these allegations against him. It would have regard to these matters in Dr Narayan's favour.

The Tribunal's Analysis of the Evidence and Findings

41. 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 - Between April 2020 and November 2020, whilst working with Ms A for South West Yorkshire Partnership NHS Foundation Trust, you:

- a. made physical contact with Ms A in that you:

Paragraph 1(a)(i) - struck Ms A on the back of her head

42. The Tribunal heard oral evidence from Ms A that Dr Narayan had hit her on her head. Dr Narayan denied striking Ms A. Other staff at the Trust spoke of Dr Narayan's tactile nature and described it as being accepted by many as being part of his character, with a colleague, Dr D, indicating that he was "*I would say more tactile for the average male ... It's not the sort of thing that would make me think 'you have got to stop'.*"

43. The Tribunal had regard to Ms A's contemporaneous Whatsapp messaging with Ms B, telling Ms B that Dr Narayan had hit her on the back of her head and that she was surprised by this. Ms B was outraged in response and Ms A explained in a Whatsapp message that it was "*maybe a tap – but it hurt*". Ms B acknowledged in providing oral evidence it may only have been a "*tap*" and that it was perhaps done "*in jest*"; Ms A did not ascribe any malice to the gesture when giving oral evidence but described it as "*just like a parent hits their child*".

44. The Tribunal considered that the word '*strike*' is commonly used to describe someone being hit violently. It did not think this had occurred based on Ms A's own evidence. However, it did accept that Ms A had reported being "*hit on the head*" and this being a "*tap*" to her partner Ms B, and that even as a jovial gesture, it was inappropriate behaviour for the workplace and had been done with sufficient force to "hurt".

45. Accordingly, the Tribunal found this particular of the Allegation proved

Paragraph 1(a)(ii) - kicked Ms A's foot and/or leg under the desk on one or more occasions

46. Ms A gave evidence that Dr Narayan had often looked over her shoulder when she was XXX, which Dr Narayan has not denied. The Tribunal heard conflicting evidence as to whether there was sufficient room for Dr Narayan to sit close enough to Ms A to be able to kick her given the size and configuration of their desks, and the layout of their offices. Ms A also gave evidence that Dr Narayan had kicked her under the desk in the Multidisciplinary Team Room when sitting at the large table. However, more significant is that Ms A gave no impression that Dr Narayan meant to hurt her and said when his foot made contact with hers, she was not sure if he was being playful. The Tribunal considered that Ms A was clear and consistent in her accounts of Dr Narayan "*tapping*" his foot against hers XXX. She did not suggest that it caused her any harm but appeared to give it as an example of physical contact between the two of them.

47. The Tribunal considered that the ordinary meaning of the word '*kick*' involves striking or propelling forcibly with the foot. The Tribunal, based on Ms A's own evidence, considered that there is evidence that Dr Narayan's foot and her foot could come into contact, but not with any degree of force that would be usually associated with the word '*kick*'.

48. Accordingly, the Tribunal found that this particular of the Allegation was not proved.

Paragraph 1(a)(iii) - grabbed and/or slapped Ms A's thigh on one or more occasions

49. The Tribunal considered the evidence of both Ms A and Dr Narayan. Dr Narayan denied this particular of the Allegation. Ms A described Dr Narayan as having "*slapped the back of my thigh*" on one occasion. However, in cross examination, she accepted that a grab suggested grasping while a slap was a hit and therefore different. She said neither should have occurred because both were inappropriate. She went on to say both could have occurred, and indicated that this may have happened more than once but was not sure of the number of times. However, she acknowledged that Dr Narayan was simply "*trying to get my attention*," on at least one occasion and that she may have confused different instances.

50. The Tribunal took into account Dr D's evidence that Dr Narayan was a very tactile person and that Ms A had told him that Dr Narayan had touched her leg. Dr D's evidence was that some touching is more acceptable than others. He did not consider what Ms A said to him to have raised a safeguarding concern that he needed to act upon. This was because he has worked with people who have suffered trauma and allowed Ms A the space to elaborate upon what had happened. He recalled that Ms A had said that the contact was made with the "*back of Dr Narayan's hand*" and that she had herself made it sound like a cuff rather than anything designed to cause pain.

51. The Tribunal did not think the grab or slap were the same, given that the former involves grasping or seizing something suddenly and/or roughly, whereas the latter involves hitting or striking with the palm of the hand/another flat object. The Tribunal were of the view that there is evidence that Ms A reported that Dr Narayan's hand had come into contact with her leg. The contact was not described as painful or forceful but rather an instance where Dr Narayan was trying to catch Ms A's attention, by Ms A's own admission.

52. The Tribunal considered that while Ms A did raise the fact that the back of Dr Narayan's hand had made contact with her leg, she herself acknowledged that this occurred when he was trying to get her attention on at least one occasion rather than being a traditional grab or slap that had any force behind it. Further, there was a lack of detail about any particular touching. Dr D explained to the Tribunal why he had asked Ms A about whether Dr Narayan had touched her leg. He said he had done so because he considered there was a '*sliding scale*' of touch, elaborating that some touching would never be acceptable between colleagues (e.g. touching breasts).

53. The import of Dr D's questioning was to assess the appropriateness, or otherwise, of any touching, recognising as he did that Dr Narayan was a tactile person. Ms A's mention of a touch on the leg to Dr D closer in time to events did not reference any force. Ms A's messaging to Dr D of her leg being touched was not consistent with the use of any force. It did not raise any significant concerns with Dr D, a medic with an interest in talking to trauma victims.

54. Accordingly, the Tribunal found this particular of the Allegation not proved.

Paragraph 1(a)(iv) - prodded at Ms A's stomach on one or more occasions

55. The Tribunal noted that Ms A had said that Dr Narayan had “*prodded at my belly*”, asking her “*what's this?*” and had said separately that he would, “*tease and poke at me*”. Dr Narayan denied this. The Tribunal considered that it was possible that these two instances can be distinguished. In relation to suggesting that she was XXX, Ms A said that this had been said in front of one colleague and been discussed with another; nobody provided evidence to corroborate this. Further, there were inconsistencies about whether this occurred on 22 October or 30 October from Ms A herself.

56. In relation to Ms A indicating that Dr Narayan would “*tease and poke*” at her and whether this would amount to “*prodded*”, the Tribunal noted that Ms A used the word ‘*tease*’ on multiple occasions and acknowledged that Dr Narayan may have intended many of his interactions with her as jokes. The Tribunal noted that Dr Narayan did not recall any specific event where he had done this.

57. The Tribunal, faced with conflicts in what Ms A and Dr Narayan recalled, took into account that Dr Narayan and Ms A worked in close proximity, and that other staff had described Dr Narayan as tactile. Another witness, Ms F, when asked in the Trust interview whether she had observed any physical contact between Dr Narayan and other staff members, responded, “*There is one occasion which springs to mind. We were stood in the corridor and I was talking to another colleague and we were talking about somebody and this was a jovial conversation and catch up and I know that he prodded her in her side, it was like...my feeling at the time was an affectionate thing at the time, but no comment was made afterwards.*”

58. The Tribunal considered that if Dr Narayan could have prodded another member of staff in the side, he could as easily have prodded Ms A in the stomach. However, the Tribunal considered that Dr Narayan prodding another member of staff in the side could be distinguished from prodding Ms A in the stomach. The former is described as Dr Narayan’s way of being affectionate rather than malicious, but prodding someone in their stomach would be an unkind thing to do in circumstances where Ms A considered that XXX. The Tribunal weighed both Dr Narayan’s and Ms A’s evidence which were at odds with each other. It did not prefer one version to another and without any corroborating evidence of the type Ms A described gave the benefit of the doubt to the doctor.

59. Bearing in mind the civil standard and burden of proof, the Tribunal found this particular of the Allegation not proved.

Paragraph 1(a)(v) - grabbed at Ms A's ribs

60. The Tribunal had evidence that Ms A wrote about this in her statement within a month of this allegedly happening (w/c 19 October 2020)). The mention of another staff member being prodded in “*her side*” on one occasion by Dr Narayan was made by Ms F. This occurred when several members of staff were together and talking in a corridor; she described it as an “*affectionate thing*” without any comment being made from either Dr Narayan or that other staff member: “*It's the kind of thing that is so insignificant that she*

might not even recollect it. Outside of that no I can't recall any other occasions." Dr Narayan denied that he had grabbed Ms A.

61. The Tribunal once again considered the usual meaning of '*grabbed*' as '*grasping or seizing something suddenly and/or roughly*'. The Tribunal noted that Ms A, in giving oral evidence, described the gesture she intended and demonstrated an '*open-hand motion*' with fingers and thumb coming together in a pincer movement. No particular force was either demonstrated or described.

62. The Tribunal had evidence that Dr Narayan had been described as '*tactile*'. Ms F indicated that he had touched her, albeit she had described all these touches as "*positive*". Her evidence had been that she had observed Dr Narayan touch another member of staff on one occasion and characterised this as "*affectionate*" without any comments being made by the person touched. The Tribunal had evidence that there had been some contact observed between Dr Narayan's hand and another staff member's side. Armed with this evidence, the Tribunal considered that on the basis that in this case '*grab*' may be more akin to a squeeze than any rough grasp/seizing, it was more likely than not that this particular of the Allegation occurred.

63. Accordingly, the Tribunal found this particular of the Allegation to be proved.

Paragraph 1(a)(vi) - grabbed Ms A's upper arm, which caused a bruise to develop

64. The Tribunal took account of Ms A's evidence which set out that Dr Narayan had grabbed her in such a way so as to cause a bruise, but added: "*I admit I bruise easily*". The Tribunal was mindful that Ms A had not shown anyone the bruise, or told anyone about an incident in which a bruise was caused, even though she had shared other matters with her partner, Ms B, and colleagues. Dr Narayan denied grabbing Ms A's upper arm, which caused a bruise to develop.

65. The Tribunal acknowledged that Ms A had not indicated that she was alarmed at Dr Narayan's behaviour, even though it was unwanted, and that, because she indicated that she bruises easily, no grabbing was said to have been done particularly forcefully. There was no evidence produced to support Ms A indicating that she bruises easily, neither was there any photographic evidence of any bruising. Ms A did not mention this in October when she indicated this had occurred. She raised the matter in November 2020.

66. The Tribunal noted that the evidence before it to support this particular of the Allegation relied upon Ms A's evidence alone and was not corroborated.

67. The Tribunal was of the view that this matter was not proved, given the burden and standard of proof required for such a finding.

Paragraph 1(a)(vii) - grabbed arm hard in various places to try and cause bruising

68. The Tribunal heard Ms A's evidence that she had told Dr Narayan that he had caused a bruise because she bruises easily, and that he had laughed and started grabbing her harder to see if she would bruise. While Ms A has characterised this as unwelcome (on her part) playfulness (on his part), Dr Narayan denied that this occurred.

69. The Tribunal considered that Dr Narayan has been described as tactile by more than one of his colleagues but there was no evidence other than Ms A's that he tried to cause her harm. The Tribunal was mindful of Ms H's evidence that Ms A had spoken to her about Dr Narayan's unwanted touching in May/June 2020 and July/August 2020. However, the Tribunal reduced the weight it would otherwise have given to such evidence on the basis that it was not subject to any cross-examination.

70. Ms A had mentioned Dr Narayan's playfulness. Other colleagues had spoken about witnessing an affectionate gesture between Dr Narayan and another member of staff. The Tribunal considered that deliberately trying to cause a bruise can be distinguished from affectionate gestures. The Tribunal noted that there were no photographs of bruises on Ms A before it, nor any indication that the Ms A had shown her bruise(s) to anyone else, nor mentioned this to those closest to her.

71. The Tribunal considered whether this particular of the Allegation could demonstrate mischievousness on the part of Dr Narayan rather than malice, given how he had been described by Ms A and others. However, it noted the doctor's denial and took his good character into account. There was no evidence to support this allegation save Ms A's evidence.

72. Given the burden and standard of proof, the Tribunal was of the view that Dr Narayan should be given the benefit of the doubt and found this particular of the Allegation not proved.

Paragraph 1(a)(viii) - hit Ms A sharply between her shoulder blades with the side of your fist

73. The Tribunal heard evidence from Ms A that she was asked to come in on her day off, and that she was typing an email, when Dr Narayan was saying "*sit up straight, stop slouching*"; she indicated that it was in this context that he hit her sharply between her shoulder blades with the side of his fist. Dr Narayan has denied this ever occurred. It was pointed out to the Tribunal by the Defence that there is a glass window in the door of the office they were both in and they would have been visible to others walking past.

74. The Tribunal, having heard about Dr Narayan's tactile nature, considered that it was not beyond realms of possibility that he would make contact with Ms A's back in circumstances where he was trying to improve her posture. However, there was no evidence to support Ms A's contention that he hit her sharply with the side of his fist. The Tribunal considered its earlier finding that Dr Narayan had hit Ms A on the head but distinguished that particular of the Allegation from this, given that there was no evidence of bruising nor messaging to her partner, Ms B, in respect to being hit with the side of Dr Narayan's fist on her back.

75. The Tribunal was faced with conflicting accounts from Ms A and Dr Narayan but without supporting material considered that the burden and standard of proof had not been discharged in respect of this particular.

76. Accordingly, the Tribunal found this particular of the Allegation not proved.

Paragraph 1(a)(ix) - pulled and/or pinged Ms A's bra strap on one or more occasions

77. In oral evidence Ms A told the Tribunal that Dr Narayan had talked about her bra in a WhatsApp message and that he had pinged her bra-strap in November. She was clear about this date. Ms B, giving evidence, was equally clear that Ms A had told her about this on one occasion during the summer. When asked about the inconsistency between actual dates, Ms B said [they were] not good with dates and better with timelines.

78. Ms A suggested that Dr Narayan pinged her bra strap on three consecutive days when they were in the office. No witnesses observed this, and Ms A made no complaint to colleagues about this. Ms B indicated that Ms A told [them] about this in the summer but Ms A is clear that this only occurred in November that year. Dr Narayan denies this occurred at all.

79. The Tribunal was faced with two conflicting accounts. Any suggestion that this could be accidental was undermined by Ms A who indicated that this was not a possibility, and its repetition over three consecutive days reduces this likelihood. It considered that while Dr Narayan is described as tactile, he is a person of good character who denies doing this. While people of good character can still tell untruths, the absence of evidence to support an action that goes beyond merely being tactile meant that the Tribunal did not find this particular proved, given the burden and standard of proof.

80. Accordingly, the Tribunal did not find this particular proved.

Paragraph 1(a)(x) and (xi) - poked and/or prodded Ms A's left breast; touched Ms A's nipple

81. The Tribunal considered both these particulars of the Allegation together, noting that it was possible to touch a breast without touching a nipple, but it is not possible to touch a nipple without touching a breast, given that the nipple forms part of this biological structure.

82. Ms A's evidence in her statements as provided to the Trust, GMC and police was repeated with some variation. While she indicated that she could not believe Dr Narayan would be so brazen as to touch her in a public place, (they were standing in a corridor), she also indicated that she was not sure whether he had touched her arm or her breast. Ms A was cross-examined about this as to whether it was simply the case that she was not sure which part of her anatomy that Dr Narayan had been aiming for, and whether the touching was accidental or not. However, she repeated that she was not sure which part of her

anatomy that Dr Narayan had touched, saying that he had repeatedly touched her on her arm previously, but that her "*breasts were not very sensitive*", and that it was only because XXX that she knew he had touched her there.

83. The Tribunal did not consider that Ms A's indication that, "*it took me a few moments to realise that he had done it not to my arm but to my breast,*" to be credible. This is because it should be obvious if a person's breast has been touched or not notwithstanding the sensitivity of her breasts, (for which no corroborating evidence was supplied). While the question as to whether an action is deliberate or accidental might well be one that someone asks themselves, it seemed more likely than not that Ms A would not know that her breast had been touched. XXX.

84. The Tribunal did not have sufficient evidence before it to find that Dr Narayan either poked or prodded Ms A breast, or touched her nipple.

85. Accordingly, the Tribunal found particulars 1(a)(x) and (xi) of the Allegation not proved.

Paragraph 1(a)(xii) - grabbed Ms A's cheek on one or more occasions whilst she was crying

86. Ms A showed the Tribunal the exact movement that Dr Narayan had used in touching her face. She used her thumb and forefinger to mime a gesture of reassurance. Her evidence was that it was to reassure her initially when she was crying, and she was reassured after talking to him, having been upset following an argument with her partner Ms B.

87. The Tribunal noted that both Dr Narayan and Ms A described the same situation whereby she had been upset post an argument with her partner and was in tears. Dr Narayan indicated that she should go home if she was so upset, and Ms A agreed that Dr Narayan had provided reassurance when he first spoke to her.

88. The Tribunal had once again to consider that the allegation is that Dr Narayan "*grabbed*" Ms A, which has the normal meaning of grasping or seizing something suddenly and/or roughly. Neither the hand gesture used by Ms A to demonstrate what occurred, nor the context of provided reassurance fits with this.

89. Whilst the Tribunal did accept that Dr Narayan was more likely than not to have used his thumb and forefinger to touch Ms A's cheek when she was crying, Ms A's own evidence suggested that a) this was done to provide a gesture of reassurance and b) this touching was neither sudden nor rough.

90. Accordingly, given the burden and standard of proof, this particular of the Allegation was not found proved.

Paragraph 1(a)(xiii) - touched Ms A's foot with your finger

91. This particular of the Allegation did not specify for what purpose or how many times this was said to have occurred. Dr Narayan did not recall any such episode other than once enquiring after Ms A's foot when it was grazed, which she attributed to a shaving injury.

92. Ms A also recalled the incident where Dr Narayan had asked her about her graze and wearing flesh-coloured socks. She indicated that his touch "*wasn't prolonged contact, I just ignored it*".

93. With both Dr Narayan and Ms A recalling the incident of the graze that he noticed, the Tribunal considered that it was more likely than not that Dr Narayan touched Ms A's foot with his finger.

94. Accordingly, the Tribunal found this particular of the Allegation to be proved.

Paragraph 1(b)(i)-(iii) - criticised Ms A professionally by saying that she was: an idiot; stupid; useless, or words to that effect

Paragraph 1(b)(i) - idiot

95. Ms A acknowledged that Dr Narayan was impressed with her ability, and recommended her skills to his colleagues. Ms A's statement suggested that Dr Narayan had used derogatory language and had introduced her to other people as an "*idiot*". However, in her oral evidence, Ms A explained that it was not she who was being described as an idiot when Dr Narayan introduced her to other members of staff; it was other members of staff who Dr Narayan described as "*idiots*" but this had privately been indicated to Ms A. Ms A said that Dr Narayan used the word '*idiot*' sometimes playfully but, on occasion, this was '*close to the bone*' e.g. when she had done something wrong and she could not tell whether he was joking or not.

96. The Tribunal did identify an instance within the WhatsApp messages in which Dr Narayan had used the word, '*idiot*' to Ms A. This was clearly said in jest as part of a light-hearted conversation when Ms A suggested that she might be better using diagrams for Dr Narayan if he did not understand explanations in words:

[28/10/2020, 23:36:12] Manoj: *I was not able to figure out Still not clear to me*
[28/10/2020, 23:38:07] Ms A: *Okay I'm gonna have to find a better way to explain*
[28/10/2020, 23:38:14] Ms A: *maybe find some diagrams haha*
[28/10/2020, 23:38:24] Manoj: *Idiot*
[28/10/2020, 23:39:37] Manoj: *I am a doctor my diagrams are better than you*
[28/10/2020, 23:39:53] Ms A: *hahah*

97. However, in this context, Dr Narayan did not use the word to criticize Ms A professionally. There was evidence that he had recommended to one of his colleagues Ms A's assistance and there was no evidence to support Ms A's contention that he had used this word to criticize her professionally. Ms F indicated that Dr Narayan had "*always been incredibly respectful with the staff team.*"

98. Given the burden and standard of proof the Tribunal did not find this particular of the Allegation proved.

Paragraph 1(b)(ii) - stupid

99. Ms A had said that Dr Narayan sometimes praised her and called her "*clever*" but sometimes called her stupid. She was taken to a part of a WhatsApp message where there was documentary evidence that he thought quite the reverse of her. She acknowledged that he had indicated where she thought she was "*smart*" because of an insight she had shared, but said that there was another occasion on which he had called her "*stupid*".

100. There was no evidence from colleagues that Dr Narayan used the word '*stupid*' to criticise Ms A professionally, nor that Ms A had complained about this to her manager or colleagues, when there was evidence that she had complained about Dr Narayan doing other things she did not like. The WhatsApp messages, far from supporting that Dr Narayan thought Ms A stupid, were evidence that he was impressed with her. While Ms A gave oral evidence that Dr Narayan had been unkind about some staff in sharing his views about them, Ms F provided evidence that he was respectful to staff.

101. Given the burden and standard of proof, the Tribunal did not find this particular of the Allegation proved.

Paragraph 1(b)(iii) - useless

102. The WhatsApp messages indicate that Dr Narayan relied on Ms A's opinion and insights. He spoke to her about work and his management style and sought her opinion. Ms A's evidence that he called her "*useless*" to criticise her professionally, is not supported by any other evidence.

103. Mindful of the burden and standard of proof the Tribunal did not find this particular of the Allegation proved.

Paragraph 1(c)(i) - asked Ms A whether there were a lot of lesbians in the town set out in Schedule 1

104. The Tribunal noted that Ms A had indicated that Dr Narayan had asked her this. His evidence is that he knew the town that he served was the "*lesbian capital of Europe as reflected in its tourist trade*", and would have had no reason to ask Ms A this.

105. The Tribunal considered whether Dr Narayan might have asked this question for no reason other than to make conversation about Ms A being a lesbian, but that there is no evidence other than Ms A's to support this. There is no evidence that the doctor either did not know about the culture of the town he served, or evidence to support Ms A's contention that he asked her this question.

106. Given the burden and standard of proof, the Tribunal did not find this particular proved.

Paragraph 1(c)(ii) - asked Ms A how lesbians have babies

107. The Tribunal was faced with the evidence that Ms A indicated that Dr Narayan had asked her this question and Dr Narayan disputing this. The Tribunal asked itself what evidence there was that Dr Narayan asked Ms A this question to support the likelihood of this occurring. In considering whether Dr Narayan had asked this question, the Tribunal took into consideration that Ms E had indicated that the doctor was curious about same sex relationships, given that many of his patients presented as having such.

108. The Tribunal considered that such knowledge should be within that held by a doctor, but noted that Dr Narayan's colleagues had indicated that matters involving same-sex relationships were discussed between colleagues at the Trust to better educate all staff where information was not within their personal knowledge. The Tribunal took into account that Dr Narayan did not recall such a question being asked, but noted that the WhatsApp questions did include questions about same-sex relationships, and that he knew Ms A was a lesbian XXX.

109. While the Tribunal considered that the evidence of the WhatsApp messages reflecting his curiosity may support his inquisitiveness here, there was insufficient evidence to make the likelihood of this question being asked more probable than not.

110. Based on the burden and standard of proof, the Tribunal found this particular of the Allegation not proved.

Paragraph 1(c)(iii) - asked Ms A how can she be lesbian when she has sex with men

111. While this is alleged by Ms A it was unsupported by any independent evidence and denied by the doctor. The Tribunal took into account that there was evidence that Dr Narayan did ask personal questions as reflected in the WhatsApp documents. The Tribunal also took account of Ms H's hearsay evidence that Ms A had "*mentioned that he had been asking inappropriate questions about her sex life*". The Tribunal was not able to cross-examine Ms H about this evidence or the nature of her relationship with Ms A. The Tribunal considered this hearsay evidence which supports Ms A's allegation as set against evidence from his colleagues that Dr Narayan was respectful to staff within the team. The Tribunal distinguished the doctor's curiosity about same-sex relationships which both he and his colleagues acknowledged, from a question that most people would consider to be offensive.

Multiple staff had said Dr Narayan was respectful and the Tribunal considered it unlikely that he would have asked such a question.

112. Based on the burden and standard of proof, the Tribunal found this particular of the Allegation not proved.

Paragraph 1(c)(iv) - asked Ms A what made her and others 'gay'

113. The Tribunal considered that while this was evidence that Ms A had provided, it was unsupported by any contemporaneous evidence. It noted that Dr Narayan did not accept that he said this and, unlike questions about same-sex relationships where he could bow to Ms A's experience, it is unlikely that he would have asked her this question as a doctor, when a full response would cover potentially biological and psychological elements, along with political and social context.

114. On this basis, the Tribunal found this particular of the Allegation not proved.

Paragraph 1(c)(v) - asked Ms A questions about lesbian sex

115. This particular is admitted. The WhatsApp messages between Ms A and Dr Narayan on 28 October 2020 reveal questions from the doctor and answers from Ms A about lesbian sex. The questions and answers are matter of fact.

116. This particular of the Allegation is admitted and found proved.

Paragraph 1(c)(vi) - asked Ms A about 'scissoring' repeatedly

117. Dr Narayan said that he did not recall an earlier conversation about '*scissoring*' save for one that had occurred in the Agile Room with other members of staff but he did not understand, so he asked Ms A again via WhatsApp. In his oral evidence Dr Narayan said he had not asked Ms A about '*scissoring*' more than once. Within the WhatsApp conversation of 28 October there is the entry: "*Tell me more.*" Ms A replied that she had explained once before and he did not contradict her in the messaging at the time.

118. Dr Narayan asked for a specific point of clarification about '*scissoring*' which Ms A supplied, explaining that '*scissoring*' is a sexual position, and is to be distinguished from '*tribbing*' where both partners' vaginas are stimulated simultaneously. Dr Narayan asked how this is possible save for when assuming the '*scissoring*' position, and Ms A explained that stimulation does not have to occur vagina to vagina but that other body parts may be used.

119. The Tribunal considered that the reference to "*more*" in "*tell me more*" must allude to an earlier conversation. Further, it was unlikely that Ms A would have introduced this topic of conversation without the doctor asking about it.

120. On the basis that "*repeatedly*" means more than one conversation, albeit that one is via WhatsApp, the Tribunal found this particular of the Allegation proved.

Paragraph 1(c)(vii)-(ix) - asked Ms A: how sex toys could penetrate the anus; to bring a sex toy into work on one or more occasions; to give you a ‘practical demonstration’ on how to use sex toys

121. Ms A’s evidence was that Dr Narayan had asked her how sex toys could penetrate the anus, to bring a sex toy into work on one or more occasions, and had asked her to give him a “*practical demonstration*” on how to use sex toys. Dr Narayan refuted all these particulars of the Allegation. There was no independent evidence to confirm or undermine this.

122. The Tribunal considered whether this fitted into a pattern of asking personal questions given the evidence of the WhatsApp messages, but noted that these demands were of a different nature and isolated to one brief occasion on 28 October 2020. The Tribunal did not consider that simply because some sexual conversations took place, given his interest in same-sex relationships, that it was likely his interest would extend to this degree.

123. Ms H’s hearsay evidence did mention that Ms A had said to her that Dr Narayan had asked her about her sex life and Ms A queried the appropriateness of this. However, there was no mention of sex toys in Ms H’s hearsay evidence. Further, there is no other evidence from any other person concerning sex toys that supports Ms A’s allegations.

Paragraph 1(c)(vii) - asked Ms A how sex toys could penetrate the anus

124. There was no specific complaint made within the Trust, nor was this mentioned to Ms A’s partner Ms B, or anyone else. While the Tribunal considered the hearsay evidence of Ms H, no mention of sex toys was made within it. Sex toys are not specific to same sex relationships. Given the doctor’s medical qualifications it appears unlikely that he would not know how sex toys penetrate the anus.

125. In weighing whether it preferred the evidence of Ms A or Dr Narayan, the Tribunal was not persuaded that it was more likely than not that Dr Narayan would have asked such a question. It took account of his denial as a man of good character and the absence of any corroborating evidence.

126. Given the burden and standard of proof, the Tribunal found this particular of the Allegation not proved.

Paragraph 1(c)(viii) - asked Ms A to bring a sex toy into work on one or more occasions

127. There was no complaint made within the Trust, nor was this mentioned to Ms B or anyone else, even though it is alleged to have occurred more than once. The Tribunal took into account that Ms A had made less serious complaints about the doctor to his colleagues, such as not social-distancing during Covid, touching her leg, being asked to do private work. While Ms A said these were not taken seriously, it does not follow that she would not have complained about a more serious incident.

128. In weighing whether it preferred the evidence of Ms A or Dr Narayan, the Tribunal was not persuaded that it was more likely than not that Dr Narayan would have asked Ms A

to bring a sex toy into work on one or more occasions. It reminded itself that while Ms H's hearsay evidence made mention of Ms A's sex life, that it made no mention of sex toys. The Tribunal also took account of his denial as a man of good character and the absence of any corroborating evidence.

129. Given the burden and standard of proof, the Tribunal found this particular of the Allegation not proved.

Paragraph 1(c)(ix) - asked Ms A to give you a 'practical demonstration' on how to use sex toys

130. There was no complaint made within the Trust, nor was this mentioned to Ms B or anyone else even though it is alleged to have occurred more than once.

131. The Tribunal was mindful that this particular of the Allegation was of the same nature as the two particulars immediately preceding it. Nonetheless, it considered this particular separately. The Tribunal was of the view that the same evidence, and lack of evidence, featured here, and that Ms A's allegation was unsupported by any contemporaneous documentary evidence and denied by Dr Narayan.

132. Given the burden and standard of proof, the Tribunal found this particular of the Allegation not proved.

Paragraph 1(c)(x) - asked Ms A to show you her XXX

133. Ms A indicated that the doctor had asked her to show him her XXX. Dr Narayan indicated that he had no idea that Ms A had XXX. Ms A suggested that this occurred on more than one occasion on 3 November and 6 November 2020, whereas Dr Narayan indicated that he remembered that time well because of an office move in which other people had to assist him. There is no corroboration of Ms A's evidence. She did not communicate it to anyone immediately, including her partner with whom she shared other matters, (e.g. being hit on the head).

134. Given the burden and standard of proof the Tribunal did not find this particular of the Allegation proved.

Paragraph 1(c)(xi) - asked Ms A if she had tried anal sex

135. Ms A said Dr Narayan asked if she had tried anal sex and Dr Narayan has said that this did not happen. The Tribunal had regard to the hearsay evidence of Ms H but noted that it contained no mention of anal sex. The Tribunal did bear in mind that the WhatsApp messages reveal on one occasion a conversation of a sexual nature between the two, and appear to allude to at least one other. In the late October WhatsApp conversation, there is evidence that Dr Narayan asked Ms A about her sex life and whether she preferred stimulation of "boobs or v". The Tribunal considered whether the fact that Dr Narayan asking about other sexual stimulation made it more likely than not that he had also asked about anal sex. The Tribunal formed the view that asking some questions of Ms A, who identified as a lesbian, about her sex life, need not mean that he also asked about anal sex. There was no

documentary evidence that he asked her if she had tried anal sex and the Tribunal took into account Dr Narayan's denials were made as a man of good character.

136. Given the burden and standard of proof, the Tribunal did not find this particular of the Allegation proved.

Paragraph 1(c)(xii) - asked Ms A how many penises and 'boobs' Ms A had seen in her life

137. Ms A said Dr Narayan asked her how many penises and '*boobs*' that she had seen in her life. Dr Narayan denied that he ever asked such a question.

138. The Tribunal considered how likely it was for Dr Narayan to have asked Ms A this question. While there was evidence of one set of communications of a sexual nature, and an allusion to another conversation, these were few and vastly outnumbered by non-sexual communications. The Tribunal took this into account when considering what other questions about sex were likely to be asked. There was no corroboration of Ms A's assertion either via a conversation with her partner, or colleagues, or the Trust, that she had been asked this specific question, or words to that effect. The Tribunal did take note of Ms H's hearsay evidence but identified no mention of this question. While Ms H's evidence does reference Ms A's sex life, this detail was not provided.

139. The Tribunal, having to consider one person's word against another's and given the burden and standard of proof, did not find this particular of the Allegation proved.

Paragraph 1(c)(xiii) - asked Ms A if it was a 'sexual thing' when she was wearing net socks

140. Ms A was taken to the 5 November 2020 by Defence counsel as this was the date when she said that Dr Narayan had asked her if it was a "*sexual thing*" when she was wearing net socks. It was Dr Narayan's evidence that on this date he had a very heavy workload, and was about to move offices. Dr Narayan indicated that he was preoccupied with unexpected work where a person needed urgent care and to be admitted, and his office move, rather than having the time to ask such questions. Ms A disputed that Dr Narayan had neither the time nor the opportunity to ask her this question.

141. It was suggested by GMC Counsel that Dr Narayan might have a foot fetish given that he had touched Ms A's foot before. The Tribunal noted that on another occasion on which Dr Narayan had touched Ms A's foot, this was to do with a shaving graze, which both Ms A and Dr Narayan remembered.

142. This was another occasion on which the Tribunal was faced with a direct contradiction between Ms A and the doctor.

143. Given that there was no text from Ms A whereby this was shared with her partner Person B, nor shared with any colleague who can corroborate this, the Tribunal found that, given the burden and standard of proof, this particular of the Allegation was not proved.

Paragraph 1(c)(xiv) - asked Ms A to try on a blue button down shirt and two waistcoats at home and take photos and send them to you

144. Ms A's written statements included the allegation that Dr Narayan had given her some clothes and wanted her to try these on at home and photograph herself wearing them. In her oral evidence, Ms A recalled that she had felt anxious that there was going to be some fallout from not trying on the clothes and sending photographs to Dr Narayan but accepted that this was "*in her head*". Dr Narayan accepted that he gave Ms A a waistcoat and shirt, saying he would often bring gifts for staff from India, but he did not ask Ms A to try the clothes on and send pictures.

145. Ms A originally challenged the proposition that Dr Narayan had given clothes to other members of staff, suggesting that she was being singled out. However, she changed her position in cross-examination conceding that Dr Narayan may have given other members of staff clothes that he brought back from holiday in India, but did not know that anybody else had been asked to try them on.

146. To support her account that Dr Narayan had wanted to see what Ms A looked like in the clothes he had given her, Ms A indicated that she was worried that Dr Narayan was going to ask her "*to strip*" to try on the clothes in the office, although she had taken them home the night before. She was asked by Defence Counsel why it was that if she was so worried about being asked to strip and try on the clothes that she accepted a lift from him in his car the same day, and simply replied he had insisted.

147. Both Ms A and Dr Narayan agreed that he gave her clothes. The Tribunal was not persuaded by Ms A's evidence that Dr Narayan had wanted photos of her wearing the items he had given her and there is no evidence to corroborate Ms A's account that a photo was requested of her after she had tried on the items.

148. Given the burden and standard of proof, the Tribunal did not find this particular of the Allegation proved.

Paragraph 1(d)(i) - said to Ms A that you would be protected and that no-one would believe her if she made a complaint against you

149. The Tribunal considered the evidence there was to support the allegation that Ms A had said that Dr Narayan would be protected and that nobody would believe her if she made a complaint against him. There were two positions: Ms A did complain about the doctor, in respect of social distancing during the Covid pandemic and being asked to do private work in Trust time. She also asked to be moved, and reported that Dr Narayan touched her leg. However, her rationale for not complaining about the more serious "*stuff*" straight away was that he said no one would believe her and she indicates in a WhatsApp message with Ms B that she does fear that no one would believe her when she was tapped on the head, and Ms B suggested she complain because [they were] outraged on her behalf.

150. The Tribunal noted that Ms A also said that the doctor was not threatening and took comfort from him saying that she should be comfortable with him, because "*we are friends*".

She confirmed that she was made happy by such statements. Ms A also set out that she was frightened of complaining and upsetting Dr Narayan because of how he may react. Ms A also set out her fear that she would not be believed, given Dr Narayan's senior position and this was evidenced in her WhatsApp conversation with Ms B in July 2020.

151. Dr Narayan denied this particular of the Allegation. He acknowledged that his position was senior to Ms A. However, accepting lifts from the doctor, the tone and jocular nature of the very many WhatsApp messages and the many conversations instigated by Ms A, belied that suggestion that the doctor was someone who she felt afraid of and threatened by.

152. In Ms A's WhatsApp to Ms B on 29 July 2020, she indicated that she did not want to complain because, in effect, she was worried that she would not be believed ("noones [sic] on my side"). Ms A indicated this within the context of making multiple complaints about Dr Narayan which were not taken seriously. However, this did not prevent Ms A making further complaints about Dr Narayan.

153. The Tribunal considered that neither evidence of an early WhatsApp reflecting the fear that she would not be believed, nor evidence which shows some earlier complaints were not taken seriously, leads to proving that Dr Narayan told Ms A he would be protected if she complained.

154. Accordingly, the Tribunal found this particular of the Allegation not proved.

Paragraph 1(d)(ii) - said to Ms A 'I know more than you'

155. The Tribunal had heard from Dr Narayan's professional colleagues that he could come across as arrogant. It identified instances within the WhatsApp records where he had mentioned that he was "better" than Ms A, although this appears to have been done with some jocularity. It was equally evident that he humbled himself before Ms A and asked for her help.

156. Dr Narayan asked Ms A for information about things he did not know about and when she provided insight he had not considered, he complimented her and called her clever eg getting people to talk about children in order to get them 'onside':

[28/10/2020, 23:18:15] Manoj: Yep

[28/10/2020, 23:19:08] Ms A: people can be taken aback by straight talking. British people often don't say what they mean. it can be frustrating [28/10/2020, 23:19:45]

Manoj: You are 100% correct. I need to learn

[28/10/2020, 23:22:02] Ms A: I can help you with that. maybe some more phrases

[28/10/2020, 23:22:30] Manoj: Yes please

[28/10/2020, 23:23:00] Manoj: I always like to learn

[28/10/2020, 23:23:36] Ms A: for example: "it's not quite what I had in mind" usually means: "what the fuck is this".

[28/10/2020, 23:23:41] Ms A: that sort of thing

[28/10/2020, 23:24:19] Manoj: Oh dear I will have to learn

[28/10/2020, 23:26:57] Ms A: [hyperlink to a book]

[28/10/2020, 23:27:18] Manoj: Buy this for me

157. However, there were instances where Dr Narayan used words to suggest his superiority, and the Tribunal identified two of these. Both instances were said as a joke: “*I am a doctor, my diagrams are better than you [sic]*” within the WhatsApp messages and in the conversation about ‘scissoring’, when as a joke he indicates that he has used scissors more times than Ms A in his surgical rotation:

[28/10/2020, 23:36:12] Manoj: I was not able to figure out Still not clear to me
[28/10/2020, 23:38:07] Ms A: Okay I'm gonna have to find a better way to explain
[28/10/2020, 23:38:14] Ms A: maybe find some diagrams haha
[28/10/2020, 23:38:24] Manoj: Idiot
[28/10/2020, 23:39:37] Manoj: I am a doctor my diagrams are better than you
[28/10/2020, 23:39:53] Ms A: hahah
[28/10/2020, 23:40:32] Manoj: I will check on internet
[28/10/2020, 23:40:46] Ms A: be careful what you type in to Google!
[28/10/2020, 23:40:54] Manoj: Why
[28/10/2020, 23:41:56] Manoj: I have used scissors better than you during my surgery rotation
[28/10/2020, 23:42:28] Ms A: haha okay well then you're the expert
[28/10/2020, 23:42:58] Manoj: Not in this one

158. The Tribunal considered the wording of the allegation and in terms of how the allegation has been framed (‘or words to that effect’) found that Dr Narayan had, as a matter of fact, used language which suggested that he knew more than Ms A. The Tribunal did take into account that within this conversation when Ms A indicated that he is the expert, Dr Narayan responded that this was not so. While it was clear that Dr Narayan spoke in jest and looked to Ms A for information, it did not change the fact that he used words to the effect of those alleged.

159. Accordingly, the Tribunal found this particular of the Allegation proved.

Paragraph 1(d)(iii) - said to Ms A that certain colleagues did not like Ms A and that you had heard them talking behind her back

160. The Tribunal considered what evidence supported that Ms A had been told by the doctor that she was not liked by her colleagues and that they were talking about her. Ms A was taken to the evidence provided by her line manager in cross-examination about resolving the bad feeling between Ms A and her colleagues. XXX.

161. Ms A accepted that her line manager had conversations with her about improving relations with colleagues but distinguished this from the doctor’s approach, suggesting that his efforts were not designed to improve the situation.

162. The Tribunal had no evidence to support Ms A's suggestion either from another person or by way of an independent document that Dr Narayan sought to make the situation between Ms A and her colleagues worse.

163. Given the burden and standard of proof, the Tribunal did not find this particular proved.

Paragraph 1(d)(iv) - said to Ms A that she should not trust certain colleagues

164. Ms A's line manager had indicated that she was aware of bad feeling between Ms A and her colleagues. There was no independent documentary evidence, nor any colleague or friend who supports the contention that it was the doctor who said that Ms A should not trust certain colleagues.

165. Given the burden and standard of proof, the Tribunal did not find this particular of the Allegation proved.

Paragraph 1(d)(v) - said to Ms A that that if she enjoyed penetrative sex then that meant she was not a lesbian

166. The Tribunal considered what evidence there was to support the allegation that Dr Narayan had told Ms A that if she enjoyed penetrative sex then that meant she was not a lesbian. Ms E's statement indicated that Dr Narayan was interested in same sex relationships and had a certain amount of arrogance. These two statements were unrelated to each other.

167. The Tribunal had evidence of a WhatsApp conversation about lesbian sex which alluded to a previous conversation. Accordingly, the Tribunal considered how credible it was that the doctor had asked Ms A further questions about lesbian sex. The Tribunal noted that in asking his questions to Ms A, he admitted ignorance and indeed Ms A characterised Dr Narayan as appearing "*naïve and ignorant*" about lesbian sex and open to learning from her. That was the reason that she answered his questions, recommended a book to him that she was reading, and lent it to him.

168. The Tribunal noted that this allegation was framed not as a question but an assertion. This did not fit with the way that Ms A characterised the doctor's approach to learning about lesbian sex. Further, Ms A made no complaint at the time and provided no corroboration that Dr Narayan said this as opposed to having an interest in same-sex relationships and wanting to learn more about them to better treat his patients, as indicated by witness Ms E.

169. The Tribunal took into account that Dr Narayan, as a man of good character, denied having said this, and there is evidence of his willingness to learn from Ms A and hear her views, countering the suggestion of arrogance he might hold because of his professional role and grade. Having weighed the evidence in support of Dr Narayan having said this and against him, the Tribunal found on the balance of probabilities that it was less likely that Dr Narayan had said this.

170. Given the burden and standard of proof, the Tribunal did not find this particular of the Allegation proved.

Paragraph 1(d)(vi) - said to Ms A that she was XXX

171. In Ms A's witness statement, her evidence in relation to this particular of the allegation was that "*on 22 October - he told me that I was XXX in front of a colleague [Tribunal emphasis] and that XXX*". Within the same statement she indicated in relation to this same incident that "*It was Friday 30 October ...*". Notwithstanding this inconsistency regarding dates, there was no evidence from the colleague in front of whom Dr Narayan spoke.

172. Further, while Ms A gave evidence that after XXX she dressed differently XXX, and said Dr Narayan was being unkind about her appearance, other staff, as reflected in the statement of Ms E, indicated that the doctor was always respectful to the team.

173. The Tribunal did find that there was evidence that Dr Narayan made some derogatory comments about colleagues in WhatsApp messages, along with Ms A. Accordingly, it is within the realms of possibility that derogatory remarks were made to her, as there was evidence of him saying slightly unkind things about others. However, the Tribunal, in balancing the material to support and undermine this particular, concluded that there was no evidence of Dr Narayan seeking to be unkind to people directly from any of the staff he had worked with at the Trust for 10 years, other than Ms A's evidence. Even the '*prods*' witnessed by others were characterised as "*affectionate*".

174. Accordingly, given the burden and standard of proof, the Tribunal did not find this particular of the Allegation proved.

Paragraph 1(d)(vii) - said to Ms A that therapy was 'bullshit' and asked Ms A how she had 'fucked [her] life up'

175. In direct contradiction to Ms A's evidence that Dr Narayan had asked Ms A how she had "*fucked her life up*" and said that therapy was bullshit, Dr Narayan denied this. The Tribunal took into account that Dr Narayan has specialised in the Psychiatry of Learning Disability since 2014 and was a consultant operating in this field. It heard that, he listened and spoke carefully to his patients and was interested in them, both from Dr Narayan and his colleagues.

176. The Tribunal considered the inherent unlikelihood that a person in Dr Narayan's clinical position would express such a derogatory view of therapy. It noted that Dr Narayan had said in oral evidence that he does not really swear and only uses words like '*idiot*'. In her witness statement, Ms F's evidence was that she had heard Dr Narayan swear but she went on to say, "*I can confirm that he did not swear at anyone directly.*"

177. In his evidence, Dr Narayan indicated that he had been led to believe that Ms A had XXX and had a difficult background, but there was no documentary or oral evidence to support that he thought Ms A had made a mess of her life, other than Ms A's assertion. He explained that he was happy to make suggestions about how she could improve her finances,

and she seemed to agree that when she considered her outgoings in line with his suggestions, that she could make savings in one of her WhatsApp messages to him.

178. The Tribunal considered the likelihood of Dr Narayan swearing at Ms A and indicating that the particulars alleged had been said. Notwithstanding the evidence of Ms F, whose evidence supported Dr Narayan swearing, if not at staff directly, there was a lack of any documentary evidence to support Dr Narayan expressing these views. The lack of corroborating evidence as to Dr Narayan's views rather than how they were expressed, combined with Dr Narayan's denial, was persuasive for the Tribunal.

179. Accordingly, given the burden and standard of proof, the Tribunal did not find this particular of the Allegation proved.

Paragraph 1(d)(viii) - said to Ms A that she should not discuss the content of her conversations with you with anyone, including her partner

180. There was no independent evidence to support this allegation. Ms A indicated that Dr Narayan had said that she should not discuss the content of her conversations with him with anyone, including her partner; Dr Narayan denied saying this. While many of their conversations were via WhatsApp and Ms A chose not to share these with her partner Person B, Ms B made it clear that this was Ms A's choice and that [they] respected Ms A's privacy.

181. The Tribunal did not find that Ms A's choice not to share her WhatsApp conversations with Dr Narayan with Ms B was evidence that the doctor had said that she should not discuss the contents of their discussions. This is because while Ms A has subsequently shared the contents of their discussions with many other people, she had still decided not to share the contents of the messages with Person B.

182. Given the burden and standard of proof the Tribunal did not find this particular of the Allegation proved.

Paragraph 1(d)(ix) - said to Ms A that she had 'nice sized boobs'

183. Ms A's evidence is that Dr Narayan said to her that she had "*nice sized boobs*"; there was no evidence that either supported Ms A's assertion nor undermined it.

184. The Tribunal had evidence that Dr Narayan's vocabulary included the word '*boobs*' as demonstrated by the WhatsApp messages. Further, the messages show that Dr Narayan had said to Ms A, "*Your black dress was nice*", and asked her whether she had a favourite colour when it came to wearing a bra and whether she preferred pink or black. While this evidence indicates that Dr Narayan made personal remarks, even if this was by way of compliments, the complaints that Ms A made to colleagues and her partner in respect of Dr Narayan did not include this detail.

185. The Tribunal was of the view that there is a spectrum of personal remarks. Commenting on someone's appearance, even by way of complimenting their dress, is at one end of the spectrum. Talking about someone's bra choices is more personal and fewer

people would do so. The Tribunal considered whether, given his earlier remarks, Dr Narayan would have gone on to say, “*You have nice sized boobs*”. However, saying that someone has “*nice sized boobs*” is a step up from talking about their clothing. There was no documentary evidence that Dr Narayan spoke about Ms A’s body. He denied that he said this and, as a man of good character, the Tribunal considered that this supported his credibility.

186. Given the burden and standard of proof, the Tribunal did not find this particular of the Allegation proved.

Paragraph 1(d)(x) - said to Ms A that if you found out that Ms A had called her partner, after she told you about an argument, you would ‘strip her naked’

187. Ms A explained that she had fallen out with Ms B and was upset in the office. This was an occasion on which she was in tears and the doctor asked her what was wrong and provided her with advice which was to maintain her dignity, and not contact Person B.

188. Dr Narayan indicated that he recalled the incident and had indicated to Ms A that she should go home. He had offered words of comfort and Ms A herself acknowledged that she had initially been comforted by him. That picture did not fit with this particular of the Allegation. Ms A suggested that she was tearful both because of her argument with her partner and her fear of Dr Narayan. Ms B confirmed that an argument had occurred in mid-late October.

189. Dr Narayan denied that he said words to the effect alleged in this particular. There was no independent evidence that supported Ms A’s contention. Given the burden and standard of proof, the Tribunal did not find this particular of the Allegation proved.

Paragraph 1(d)(xi) - said to Ms A that you should feel comfortable seeing each other naked and that sex should not matter to a relationship

190. While this particular reflected Ms A’s evidence it was not situated in any context. There was no evidence that supported this contention of Ms A’s, such as Ms A sharing that this was said with her partner, colleagues or senior staff at the Trust at the time, even when she complained about other matters. Neither Ms A, nor Dr Narayan indicated that they met outside of work, save for when he gave her lifts home from work. The Tribunal was unable to imagine a situation in which this conversation would arise.

191. Dr Narayan denied that he ever said such a thing. While he regarded Ms A as a friend and said as much to her in WhatsApp messages, there was no evidence that he sought to have a relationship with Ms A in which they would see each other naked. He knew that she was a lesbian and acknowledged that he should read more lesbian issues, accepting a book that she gave him on loan. There is WhatsApp evidence of him asking for photos of things to buy for the office, but not of photos of Ms A.

192. Without any additional information to support this, and given the burden and standard of proof, the Tribunal did not find this particular of the Allegation proved.

Paragraph 1(d)(xii) - said to Ms A that it was ‘funny that you are XXX because XXX’ then told Ms A you were referring to ‘vagina’

193. Ms A indicated that Dr Narayan had said to her that it was, “*funny that you are XXX because XXX*” - then told Ms A that he was referring to a “*vagina*”. There was no context for this conversation provided. There was no record or corroboration of Ms A immediately telling her partner, colleague or raising with the Trust that he had said this at the time.

194. There was evidence from witness Ms F that Dr Narayan was respectful of her and the Trust staff, and staff who had known Dr Narayan longer than Ms A did not indicate that he said anything of a similar nature. Dr Narayan denied having said this.

195. Given the burden and standard of proof, the Tribunal did not find this particular of the Allegation proved.

Paragraph 1(d)(xiii) - said to Ms A in reference to a colleague: ‘if we were in India, I would have just raped her’; ‘she needs dick’, or words to that effect

196. Ms A provided a context in which another colleague was spoken about slightly unkindly. This was reflected within WhatsApp messages also. While the WhatsApp messages were not flattering about the colleague, they did not extend to violent indications, nor words to the effect that their colleague needed a sexual relationship with a man.

197. Dr Narayan denied making either of the statements. Faced with conflicting and unsupported statements, the Tribunal had to choose between them. It did not consider that it could prefer the evidence of one over another.

Paragraph 1(d)(xiii)(a) - ‘if we were in India, I would have just raped her’

198. Given the burden and standard of proof, the Tribunal did not find this sub-particular of the Allegation proved.

Paragraph 1(d)(xiii)(b) - ‘she needs dick’

199. No similar statement appears in any of the WhatsApp documentary records.

200. Given the burden and standard of proof, the Tribunal did not find this sub-particular of the Allegation proved.

Paragraph 1(e) - called Ms A ‘lezzie’ on one or more occasions, or words to that effect

201. While Ms A alleges this, there was no evidence that Dr Narayan had this word in his vocabulary. He disputed that this was the case.

202. There was no record that Ms A complained about this to her partner, colleagues or the Trust even though this was alleged to have occurred on potentially more than one occasion. The Tribunal noted that this particular of the Allegation is drafted to include ‘words

to that effect' but Ms A did not elaborate on any derogatory term that Dr Narayan had allegedly used.

203. There was contemporaneous documentation which reflected the language that Dr Narayan does use and there was no reference to "*lezzie*" or similar. The Tribunal bore in mind that Ms F had indicated that Dr Narayan was respectful to Trust staff.

204. Given the burden and standard of proof, the Tribunal did not find this particular of the Allegation proved.

Paragraph 2 - Your actions as set out at paragraphs ... were sexually motivated

205. When determining Paragraph 2 in relation to the particulars found proved i.e. Paragraphs 1c(v) and 1c(vi) the Tribunal first considered the definition of '*sexual motivation*'. It noted that following the approach set out in the case of *Basson v GMC* [2018] EWHC 505 (Admin) that sexual motivation can either mean that conduct was done in pursuit of sexual gratification or in pursuit of a future sexual relationship. It further noted that the GMC had not been specific about whether one meaning alone applied and therefore considered both.

206. The Tribunal accepted Dr Narayan's evidence and Ms A's that he knew Ms A was a lesbian and indeed asked her questions about this. The Tribunal found there to be non-sexual reasons for the physical contact between Ms A and the doctor.

207. The Tribunal had close regard to the fact that Ms A had mentioned in her evidence that she was afraid of a sexual assault from Dr Narayan in more generalised terms rather than in respect to any specific particular of the Allegation, but the Tribunal did not find this consistent with the documentary evidence provided in the form of WhatsApp messages between the two which read as relaxed, friendly, and reflecting a relationship that was on very good terms between two people. The messages were copious, sometimes instigated by Ms A on non-working days, and included non-work topics on occasion. While the Tribunal was conscious of the one-dimensional nature of text messaging in which tone may have to be read into the words actually used, it nonetheless found the volume and nature of the WhatsApp messages, where multiple subjects were covered, to reveal a close but platonic relationship, that went beyond the usual consultant and personal assistant dynamic.

208. The Tribunal has therefore focused on whether Dr Narayan has acted in the way he did for his own sexual gratification. It noted that this appears to be the tenor of the GMC case in its reference to foot-fetishes.

Paragraph 2 in relation to Paragraph 1c(v) - asking about lesbian sex

209. The Tribunal took into account Dr Narayan's evidence that his purpose was to educate himself about LGBT issues when asking Ms A questions about lesbian sex. The Tribunal considered whether some of Dr Narayan's questions were not general ones and demonstrated an interest in Ms A specifically. It also considered whether Dr Narayan even needed to ask about '*tribbing*' and whether he had done because he had a sexual interest in Ms A.

210. The Tribunal had regard to Dr Narayan's evidence that he had drunk some whiskey on the night of 28 October 2020 and that he was an occasional drinker; Dr Narayan said that he was not drunk, but the Tribunal considered that the alcohol may have led him to feel more disinhibited than usual. It took into consideration that the main bulk of messaging on that day started at 21:59 and ended at 00:05 on the morning of 29 October 2020. Texts related to lesbian sex were as follows:

[28/10/2020, 23:41:56] Manoj: I have used scissors better than you during my surgery rotation
[28/10/2020, 23:42:28] Ms A: haha okay well then you're the expert
[28/10/2020, 23:42:58] Manoj: Not in this one
[28/10/2020, 23:43:25] Ms A: it's also called tribbing. you could try looking that up
[28/10/2020, 23:43:37] Manoj: Explain me 161 file:///gmc-uk.org/fileservices/Site3HS/HomeDirs/zcoyne/Desktop/_chat.txt[20/03/2024 20:46]
[28/10/2020, 23:45:00] Manoj: It is so good to that you can talk anything just like my other friends
[28/10/2020, 23:46:03] Manoj: Friendship is where you don't think what you say especially with my close friend
[28/10/2020, 23:46:17] Ms A: yeah I reckon so
[28/10/2020, 23:46:42] Manoj: You have not explained me
[28/10/2020, 23:47:14] Ms A: I think technically... rubbing two vaginas is tribbing whereas scissoring is just a position?
[28/10/2020, 23:47:40] Ms A: I don't actually know the specific terminology, I don't think I've ever explained it to someone else
[28/10/2020, 23:49:08] Manoj: How can you rub two vagina Unless you have scissors position That is what i was saying to you
[28/10/2020, 23:49:38] Ms A: because you done necessary have to run them together - just at the same time
[28/10/2020, 23:49:50] Ms A: on bits of each others body
[28/10/2020, 23:50:51] Manoj: That can be done by hand
[28/10/2020, 23:51:36] Manoj: More control
[28/10/2020, 23:51:57] Ms A: attached: 00000269-PHOTO-2020-10-28-23-51-57.jpg
[28/10/2020, 23:52:32] Ms A: yeah, like I was saying, it's not the easiest thing to do.
[28/10/2020, 23:52:54] Manoj: Oh dear It is like a text book explanation [28/10/2020, 23:53:30] Manoj: If not easy then are you doing exercise?
[28/10/2020, 23:54:07] Ms A: yes it's too physically demanding
[28/10/2020, 23:54:35] Manoj: Is then worth doing
[28/10/2020, 23:55:17] Manoj: Does that gives a good orgasm
[28/10/2020, 23:57:06] Ms A: yes, but not really worth the effort. wouldn't do it all the time. but it's not like you just do one thing
[28/10/2020, 23:57:51] Manoj: Then what you do most of the time?
[28/10/2020, 23:58:19] Ms A: all of the other things?
[28/10/2020, 23:58:40] Manoj: Like Needs more explanation madam
[28/10/2020, 23:59:13] Ms A: I've told you
[28/10/2020, 23:59:36] Manoj: My memory is not good Getting old

[28/10/2020, 23:59:41] Ms A: HAHAHAHAH
[28/10/2020, 23:59:42] Ms A: ok
[29/10/2020, 00:00:07] Manoj: Need some prompt
[29/10/2020, 00:00:12] Ms A: oral
[29/10/2020, 00:00:22] Manoj: Next
[29/10/2020, 00:00:41] Manoj: Is it boobs or v
[29/10/2020, 00:00:57] Ms A:
[XXX]
[29/10/2020, 00:01:01] Ms A: here you go!
[29/10/2020, 00:01:12] Ms A: both
[29/10/2020, 00:01:47] Manoj: What is your preference
[29/10/2020, 00:02:42] Ms A: anything where I don't have to do much. when I can just lie there
[29/10/2020, 00:02:59] Ms A: anyway I'm going to bed it's past my bedtime!!

211. The Tribunal took into account Dr Narayan's messages about being close friends and that this was not disputed by Ms A within the WhatsApp messages:

[28/10/2020, 23:45:00] Manoj: It is so good to that you can talk anything just like my other friends
[28/10/2020, 23:46:03] Manoj: Friendship is where you don't think what you say especially with my close friend
[28/10/2020, 23:46:17] Ms A: yeah I reckon so

212. In subsequent evidence in making her complaint and in oral evidence to the Tribunal Ms A provided a reason for why she had not disputed this and this was her fear of Dr Narayan. The Tribunal noted that the remainder of the body of text messaging that evening and, indeed, the rest of the WhatsApp messages presented before it as evidence, showed no other instances of such questions. It concluded that these questions which were asked on 28 October late at night when Dr Narayan had been drinking, and was more disinhibited about approaching the subject of lesbian sex. It came to this view because the doctor checked with Ms A whether he had crossed a line in a further series of text messaging and that she had assured him that this was not the case:

[28/10/2020, 23:07:33] Ms A: Most people want to be listened to. It was always easy for me make friends with other mums because you just ask a question about their kids, people love talking about themselves.
[28/10/2020, 23:08:18] Manoj: You are really smart
Do you treat me in the same manner
[28/10/2020, 23:08:49] Ms A: no, you are always asking ME questions
[28/10/2020, 23:09:32] Manoj: But they are personal
Do you feel uncomfortable
[28/10/2020, 23:09:40] Ms A: I do listen to you because I am interested
[28/10/2020, 23:10:01] Ms A: no, o[sic] would tell you if I did
[28/10/2020, 23:10:45] Manoj: Good

I treat you like a friend

[28/10/2020, 23:11:09] Ms A: thanks

[28/10/2020, 23:11:14] Ms A: I appreciate that

[28/10/2020, 23:12:30] Manoj: I feel comfortable in talking to you

[28/10/2020, 23:12:36] Ms A: that's good

[28/10/2020, 23:12:57] Manoj: But get sometimes worried

[28/10/2020, 23:13:55] Ms A: I know, but it is okay

[28/10/2020, 23:14:00] Ms A: no need to worry

[28/10/2020, 23:14:10] Manoj: Thx

213. The Tribunal had regard to the nature of Dr Narayan's work, and his relevant curiosity in matters relating to the LGBT community. It also had regard to Dr Narayan's evidence that some of his patients had special needs and it was good to have as much knowledge about circumstances that were relevant to him. Further, it considered the evidence from colleagues that his curiosity about asking questions about same-sex behaviour was not unusual within the Trust amongst staff and that there were no concerns about the types of questions asked by Dr Narayan.

214. The Tribunal concluded that based on Dr Narayan's understanding that there was a good dynamic between Ms A and him, and that he knew she was a lesbian, he took the opportunity to ask her questions about same-sex relationships. Ms A provided the information requested. The Tribunal did consider whether the questions about lesbian sex went further than those of a more general nature and were asked for sexual gratification or to pursue a sexual relationship. The Tribunal noted that Dr Narayan did ask Ms A about her personal experience, e.g. enquiring whether the '*scissoring*' position was worth the effort and what she herself had a preference for. It took into account the level of detail requested, and noted that the questions were matter of factly both asked and responded to. Accordingly, the Tribunal concluded that while the questions were of a sexual nature in addressing sexual activity, that this was based upon Dr Narayan's naivety, ignorance and curiosity rather than for any sexual gratification or in pursuance of a sexual relationship.

215. The Tribunal found Paragraph 2 in relation to Paragraph 1c(v) not proved.

Paragraph 2 in relation to Paragraph 1c(vi) - asked questions about scissoring repeatedly

216. The Tribunal took into account Dr Narayan's oral evidence that he had already looked up '*scissoring*' on Google but had not understood this, prompting him to ask Ms A directly via WhatsApp. Given that Ms A indicated that she had already explained and that he had not believed her, it appeared that a previous conversation had taken place as set out above. The Tribunal noted that Ms A and Dr Narayan's evidence about any earlier conversation were not aligned, because Dr Narayan only recalled Ms A talking about scissoring in the Agile Room where Ms A suggested that Dr Narayan had asked her about '*scissoring*' in a conversation when they were on their own, albeit she gave no particulars about the detail of what was covered, or when this was. Nonetheless, the Tribunal considered whether following up on '*scissoring*' as a topic of conversation on more than occasion, and given the disparity in their grades at

work, meant that this was evidence that Dr Narayan had a personal interest in a junior staff member's sex life that could be viewed as sexually motivated.

217. The Tribunal had regard to the parts of the messages that refer to being good friends and how Dr Narayan felt he could discuss anything with Ms A, and that Ms A comforted him on this point agreeing with him. The Tribunal did take into account that Ms A had initially replied "No!" when Dr Narayan asked her to tell him more about 'scissoring'. Despite this protestation, Ms A had continued to engage freely in the conversation in an apparently relaxed manner. She did not say at any point that it made her feel uncomfortable. She did not cut the conversation short earlier, which the lateness of the hour XXX would have justified.

218. The Tribunal had regard to Ms A's explanation in cross-examination that she answered questions from Dr Narayan on the basis that she wanted to maintain a good relationship in which he considered her his friend and they could work together well without fear of reprisals, but considered that it was possible to maintain a good-working relationship without providing the level of detail that she did. It noted that while she provided the doctor with links to objective information on the internet that she had also provided him with a book that described all aspects of lesbian relationships in an easy to understand format because it might be better at answering the types of questions he had and the level of detail he wanted, describing the book as informative without being titillating. It was this type of knowledge that she thought Dr Narayan had wanted. In her oral evidence, Ms A said that one of her motives in lending Dr Narayan this book was to provide no further reason for Dr Narayan to ask any more questions of her.

219. The Tribunal had regard to the evidence of Dr Narayan's documented interest in same-sex relationships from a clinical perspective. It was of the view that Dr Narayan genuinely had not understood 'scissoring' even after searching online. The Tribunal had evidence, as demonstrated by the WhatsApp conversation on 28 October 2020, that Dr Narayan asked Ms A questions that could be deemed inappropriate and sexually motivated if taken out of context. In the absence of evidence that confirmed that these questions were not asked from a place of anywhere other than curiosity, the Tribunal, given the burden and standard of proof, gave Dr Narayan the benefit of the doubt. It concluded that Dr Narayan's questions were intended to fill in gaps in his knowledge and asked out of curiosity.

220. Accordingly, the Tribunal found Paragraph 2 in relation to Paragraph 1c(vi) not proved.

Paragraph 3 - Your actions as set out at paragraphs ... constituted harassment related to sexual orientation as defined in Section 26(1) of the Equality Act 2010...

Paragraph 3 in relation to Paragraphs 1c(v) and 1c(vi) - asked questions about lesbian sex, asked questions about 'scissoring' repeatedly

221. Ms A gave evidence that although she had participated in a WhatsApp conversation concerning lesbian sex and had answered questions about 'scissoring' on two occasions, that she had "*wanted it to stop*". Ms A indicated in her oral evidence, when questioned by Mr Brook, that her friendly engagement with Dr Narayan was to keep him '*on side*'. XXX. While

she was content to answer questions from other people, Ms A did not want to answer questions from Dr Narayan and this was why she lent him a book.

222. The Tribunal took into account that Dr Narayan instigated the topic of lesbian sex and ‘scissoring’, *in the WhatsApp messaging of 28 October, and that* Ms A had initially responded “No!” *as set out above* but that Dr Narayan continued the conversation. The Tribunal also had regard to the fact that Dr Narayan was asking Ms A these questions because she is a lesbian.

223. The Tribunal set this against the evidence that Ms A, despite initially responding “No!”, appeared to readily continue the WhatsApp conversation also. Dr Narayan has denied any sexual motivation in relation to Ms A, and his interest in same-sex relationships was well-known to some colleagues and regarded by them as part of his desire to better educate himself about his patients. Dr Narayan echoed this.

224. The Tribunal considered that the doctor may well have viewed Ms A as a readily available resource if he had any questions relating to his curiosity in same-sex relationships, but in terms of this conduct being unwanted and/or violating Ms A’s dignity, the Tribunal struggled to find that the WhatsApp messages or any other evidence supported this. While the WhatsApp messages could be interpreted in a way that suggested sexual motivation, there was also an alternative lens through which they could be viewed. The Tribunal considered that although Ms A said “no” to revisiting the topic of ‘scissoring’, then when asked “Why?” she carried on engaging.

225. It could be seen from the messages that neither before nor after this short burst of messaging about ‘scissoring’ and lesbian sex were these matters discussed in any other WhatsApp messaging. The Tribunal found that a conversation about ‘scissoring’ between Dr Narayan and Ms A had taken place before the WhatsApp conversation on the basis that Dr Narayan had said, “Tell me more”. The Tribunal noted that Ms A agreed when Dr Narayan texted that he could ask her anything, when she could have said no and that she wished to not continue, and provided reassurance when he asked whether he had crossed any line. While the Tribunal noted Ms A’s explanations for why she provided answers to Dr Narayan’s questions it did not accept that there were no alternative strategies for her to employ in deflecting any potential anger if the circumstances were that she was genuinely intimidated and uncomfortable about providing information. The Tribunal also had regard to the quality of the WhatsApp conversations and looked, not just at what was said, but the way in which it was conveyed. It noted that the language and style was informal and relaxed, rather than a stilted conversation that was unnatural.

226. The Tribunal considered both whether the conduct in relation to asking Ms A questions about lesbian sex and ‘scissoring’ was unwanted and whether Dr Narayan did have a prurient interest in Ms A. However, the Tribunal concluded Ms A had at no point made it clear as to whether any conduct was unwanted. Despite initially saying ‘no’, she carried on and gave Dr Narayan the impression that they were friends and he could speak to her about anything.

227. Dr Narayan's interest in lesbian-sex, and in particular scissoring came from a place of ignorance, as his questioning reveals. He queried how two vaginas can be stimulated simultaneously unless partners were in the scissoring position, because he had not appreciated until Ms A explained that '*tribbing*' referred to mutual stimulation, and that while scissoring allowed vagina to vagina contact, alternative mutual stimulation of two vaginas could occur using other body parts such as the hand. Ms A conceded that the term '*scissoring*' was sometimes also called '*tribbing*', but in fact the stimulation, and positioning are separate and that the technical terms are not always used correctly. She acknowledged that she had not had to explain this to anyone before.

228. The Tribunal considered whether Dr Narayan's conduct constituted harassment on the grounds of Ms A's sexual orientation or not. Without any independent evidence other than the WhatsApp messages and the conflicting and inconclusive evidence of Ms A and Dr Narayan, the Tribunal concluded that the GMC had not discharged its burden of proof in relation to either the questions about scissoring or other lesbian sex.

229. Accordingly, the Tribunal found Paragraph 3 in relation to Paragraph 1c(v) and 1c(vi) not proved.

Paragraph 4 - Your actions as set out at paragraphs ... constituted sexual harassment as defined in Section 26(2) of the Equality Act 2010... (harassment relating to gender)

Paragraph 4 in relation to Paragraphs 1c(v) and 1c(vi)

230. Again, the Tribunal considered whether Dr Narayan would have asked Ms A about lesbian sex had she not been a woman. It considered that this was unlikely. This is because he was trying to learn from her experiences of lesbian sex.

231. The Tribunal took into account Ms A's explanations of the WhatsApp messaging relating to lesbian sex and '*scissoring*' and her evidence relating to the impact it had on her. The Tribunal considered whether, by continuing to ask questions on these topics despite Ms A first saying "*no*", if Dr Narayan had demonstrated a lack of respect for Ms A's boundaries and violated her dignity.

232. The Tribunal then looked at Ms A's communication style in the WhatsApp messages. It noted the friendly and casual style of communication and that although initially saying "*no*" to discussions relating to lesbian sex, Dr Narayan simply asked, "*Why*", and did not press matters further. Instead, Ms A, who could at that point have said that it was inappropriate to do so, chose to continue the conversation even offering to "*maybe find some diagrams haha*". Ms A then went on to talk about '*tribbing*' and did not appear to be humiliated or intimidated but rather provided matter of fact explanations as best she could. Dr Narayan's follow-up conversation, which was frank on WhatsApp, in terms of whether athletic positions are worth the trouble were similarly answered frankly by Ms A.

233. The WhatsApp messages made clear that Dr Narayan was in the habit of asking Ms A personal questions:

[28/10/2020, 23:08:18] Manoj: You are really smart Do you treat me in the same manner

[28/10/2020, 23:08:49] Ms A: no, you are always asking ME questions

[28/10/2020, 23:09:32] Manoj: But they are personal Do you feel uncomfortable

[28/10/2020, 23:09:40] Ms A: I do listen to you because I am interested

[28/10/2020, 23:10:01] Ms A: no, o [sic] would tell you if I did

[28/10/2020, 23:10:45] Manoj: Good I treat you like a friend

234. This dialogue appears to evidence that Ms A provided Dr Narayan with reassurance when he was checking if he had crossed a line. The two continued talking on WhatsApp for the better part of one hour and it was during this time the WhatsApp conversation about ‘scissoring’ occurred. On the basis of her casual style of communication, the Tribunal rejected the rationale that Ms A only engaged in the conversation in the way that she did because she was intimidated by Dr Narayan and/or afraid of losing her job.

235. The Tribunal took into account that the reassurance provided by Ms A to Dr Narayan took place before the WhatsApp conversation about scissoring, although as part of the same string of messages. While this cannot mean that she reassured him about the subsequent messages, the Tribunal did think this evidence was relevant in setting out the respective attitudes of both to personal conversations. The Tribunal had regard to the fact that, despite several opportunities to shut these questions down, or to simply fail to respond, she did not take these.

236. The Tribunal also considered its finding that there had been more than one conversation about ‘scissoring’. In the WhatsApp messages it is made clear that there had been such a conversation prior to 28 October 2020. The Tribunal was of the view that the documentary evidence provided by the WhatsApp records supported the position that these were conversations between two people who were both happy to be engaging in relation to the topics being discussed. The Tribunal took into account the reasons that Ms A had provided for discussing these matters with Dr Narayan, despite being unhappy to do so: i) she thought she would not be believed if she complained to the Trust; ii) she thought there would be consequences if she did not engage.

237. Firstly, the Tribunal considered whether it was credible that Ms A would not be believed if she complained about Dr Narayan asking her questions about lesbian sex and ‘scissoring’ in WhatsApp communications late at night. The Tribunal did not find this credible, given the WhatsApp record that was available to her as evidence to show the Trust.

238. Secondly, the Tribunal considered the likelihood of there being negative consequences for Ms A if she did not engage with Dr Narayan via WhatsApp. Ms A, in her oral evidence, indicated that she was scared of losing her job. Further, that Dr Narayan could ‘punish’ her if she did not respond. She gave the example of her not responding promptly to a previous WhatsApp message concerning work, where she felt that Dr Narayan had retaliated by not informing her that a work meeting had been cancelled, even in circumstances where she was only coming in to work on a day she was not due to be working.

239. The Tribunal took into account that while it was credible that not complying with the doctor's requests at work may have had repercussions for Ms A, it found it was less likely that this could be the case if she did not wish to not engage in a text conversation just before midnight, insofar as the Trust was concerned. The Tribunal noted that Ms A's rationale for there being consequences for not being friendly with Dr Narayan were introduced for the first time in her oral evidence and not set out in her statements. The Tribunal was not persuaded that the example Ms A provided about a work matter necessarily translated to conversations about lesbian sex after-hours. Further, given the evidence that WhatsApp electronic records provide, the Tribunal considered that Ms A's position would be supported if she chose not to engage, and complain instead.

240. The Tribunal concluded the questions about lesbian sex and '*scissoring*' did not meet the threshold for constituting sexual harassment as defined in Section 26(2) of the Equality Act 2010.

241. Accordingly, the Tribunal found Paragraph 4 in relation to Paragraphs 1c(v) and 1c(vi) not proved.

242. In summary, the Tribunal did not find the facts found proved to be sexually motivated or to be harassment on the basis of sexual orientation or gender. This concluded the Facts stage of the hearing.

The Tribunal's Overall Determination on the Facts

243. The Tribunal has determined the facts as follows:

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

1. Between April 2020 and November 2020, whilst working with Ms A for South West Yorkshire Partnership NHS Foundation Trust, you:
 - a. made physical contact with Ms A in that you:
 - i. struck Ms A on the back of her head;
Determined and found proved
 - ii. kicked Ms A's foot and/or leg under the desk on one or more occasions;
Not proved
 - iii. grabbed and/or slapped Ms A's thigh on one or more occasions;
Not proved

**Record of Determinations –
Medical Practitioners Tribunal**

- iv. prodded at Ms A's stomach on one or more occasions;
Not proved
 - v. grabbed at Ms A's ribs;
Determined and found proved
 - vi. grabbed Ms A's upper arm, which caused a bruise to develop;
Not proved
 - vii. grabbed Ms A's arm hard in various places to try and cause bruising;
Not proved
 - viii. hit Ms A sharply between her shoulder blades with the side of your fist;
Not proved
 - ix. pulled and/or pinged Ms A's bra strap on one or more occasions;
Not proved
 - x. poked and/or prodded Ms A's left breast;
Not proved
 - xi. touched Ms A's nipple;
Not proved
 - xii. grabbed Ms A's cheek on one or more occasions whilst she was crying;
Not proved
 - xiii. touched Ms A's foot with your finger;
Determined and found proved
- b. criticised Ms A professionally by saying that she was:
- i. an idiot;
Not proved
 - ii. stupid;
Not proved

- iii. useless,
Not proved
- or words to that effect;
- c. asked Ms A:
- i. whether there were a lot of lesbians in the town set out in Schedule 1;
Not proved
 - ii. how lesbians have babies;
Not proved
 - iii. how Ms A could be a lesbian when she had had sex with men;
Not proved
 - iv. what made her and others 'gay';
Not proved
 - v. questions about lesbian sex;
Admitted and found proved
 - vi. about 'scissoring' repeatedly;
Determined and found proved
 - vii. how sex toys could penetrate the anus;
Not proved
 - viii. to bring a sex toy into work on one or more occasions;
Not proved
 - ix. to give you a 'practical demonstration' on how to use sex toys;
Not proved
 - x. to show you her XXX;
Not proved
 - xi. if she had tried anal sex;
Not proved
 - xii. how many penises and 'boobs' Ms A had seen in her life;
Not proved

- xiii. if it was a ‘sexual thing’ when she was wearing net socks;
Not proved
- xiv. to try on a blue button down shirt and two waistcoats at home and take photos and send them to you,
Not proved
- or words to that effect;
- d. said to Ms A:
- i. that you would be protected and that no-one would believe her if she made a complaint against you;
Not proved
 - ii. ‘I know more than you’;
Determined and found proved
 - iii. that certain colleagues did not like Ms A and that you had heard them talking behind her back;
Not proved
 - iv. that she should not trust certain colleagues;
Not proved
 - v. that if she enjoyed penetrative sex then that meant she was not a lesbian;
Not proved
 - vi. that she was XXX;
Not proved
 - vii. that therapy was ‘bullshit’ and asked Ms A how she had ‘fucked [her] life up’;
Not proved
 - viii. that she should not discuss the content of her conversations with you with anyone, including her partner;
Not proved
 - ix. that she had ‘nice sized boobs’;
Not proved

- x. that if you found out that Ms A had called her partner, after she told you about an argument, you would ‘strip her naked’;
Not proved
- xi. that you should feel comfortable seeing each other naked and that sex should not matter to a relationship;
Not proved
- xii. it was ‘funny that you are XXX because XXX’ then told Ms A you were referring to ‘vagina’; **Not proved**
- xiii. in reference to a colleague:
- a) ‘if we were in India, I would have just raped her’;
Not proved
- b) ‘she needs dick’,
Not proved
- or words to that effect;
- e. called Ms A ‘lezzie’ on one or more occasions, or words to that effect.
Not proved
2. Your actions as set out at paragraphs 1a ix-xiii, 1c i-xiv, 1d v, ix-xiii were sexually motivated.
Deleted following a successful application under Rule 17(2)(g)
1a ix-xi, 1c i-iv, 1c vii-xiv, 1d v and 1d ix-xiii fall away
Not proved in relation to 1c v and 1c vi
3. Your actions as set out at paragraphs 1a ix-xiii, 1c i-xiv, 1d v, ix-xiii, 1e constituted harassment related to sexual orientation as defined in Section 26(1) of the Equality Act 2010, in that you engaged in unwanted conduct related to sexual orientation which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms A.
Deleted following a successful application under Rule 17(2)(g)
1c i-iv, 1d v, 1d xii and 1e fall away
Not proved in relation to 1c v and 1c vi
4. Your actions as set out at paragraphs 1a ix-xiii, 1c i-xiv, 1d v, ix-xiii constituted sexual harassment as defined in Section 26(2) of the Equality Act 2010, in that

you engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of Ms A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms A.

Deleted following a successful application under Rule 17(2)(g)

1a ix-xi, 1c i-iv, 1c vii-xiv, 1d v and 1d ix-xiii fall away

Not proved in relation to 1c v and 1c vi

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

Determination on Impairment - 23/01/2025

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

The Evidence

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

3. The Tribunal received evidence of CPD undertaken by Dr Narayan. This included certificates of completion for, '*Professional Boundaries Level 2*', awarded in December 2020, and '*Maintaining Professional Boundaries*', taken 6-8 September 2021. Dr Narayan provided his reflections on multiple aspects of these courses, as well as reflections on 18 counselling sessions he attended from 3 February 2021 to 30 September 2021.

4. The Tribunal was also provided with Dr Narayan's reflective statement on impairment, dated November 2024, as well as seven testimonials from professional colleagues, including those at the same or senior grades to him, and from people who had worked with him for many years in the same, or similar, role as Ms A. The testimonials were dated March, April and December 2024.

5. Dr Narayan gave oral evidence at this stage of the hearing. He was asked about his reflective statements, some of which had been made in advance of the Tribunal hearing back in 2021. These had been completed at intervals post each of the 18 sessions of counselling he had had.

6. Dr Narayan explained that he had been reflecting on what he had said and done for the last four years, which was when he ceased his private practice, although he had continued to work. He said that his new approach was to be conscious that any touch in a professional setting may be misinterpreted. He said that he had initially focused on why he

was tactile and touched other people, but his reflective statements do cover how those on the receiving end of his touch could feel.

7. Dr Narayan explained that his touching of Ms A was not done with any ulterior motive. He said that he accepted the Tribunal's findings of fact that he had touched her foot, head, and ribs. His evidence appeared to be that he had not recollected every innocuous touch he had made as a tactile person, but his new principle of not touching other people he worked with, was one he had embraced with his personal motto: "*no more than a handshake*".

Submissions

8. Both Counsel for the GMC and Dr Narayan provided written submissions regarding misconduct and impairment in advance of the hearing. These were summarised and supplemented with further oral submissions.

9. On behalf of the GMC, Mr Brook outlined the staged approach to misconduct and impairment and reminded the Tribunal of the overarching objective of the GMC as set out in section 1(1A) and 1(1B) of the Medical Act 1983 (as amended). He submitted that each of the doctor's behaviours as reflected in the facts found proved amounted to misconduct (save for Particular 1.d.ii – said to her that he knew more than her), given that it has no place in the professional world. Further, the need to protect the public and to uphold proper professional standards and to uphold public confidence would require a finding of impairment.

10. Mr Brook reminded the Tribunal of the meaning of '*serious misconduct*'. He referred the Tribunal to the cases of *Roylance v. General Medical Council (No. 2)* [2000] 1 AC 311, *Calhaem v GMC* [2007] EWHC 2606 (Admin), *Mallon v GMC* [2007] Scots CS SIH_17, *Nandi v. General Medical Council* [2004] EWHC 2317 (Admin), *Remedy v GMC* [2010] EWHC 1245 (Admin), and *Aga v GMC* [2012] EWHC 782 (Admin). He submitted that the doctor's actions fall within these definitions of serious misconduct.

11. Mr Brook also referenced multiple cases in relation to impairment including: *Cohen v GMC* [2008] EWHC 581, *Cheatle v GMC* [2009] EWHC 645 (Admin), *Yeong v GMC* [2009] EWHC 1923 (Admin), *CHRE v HMC and Grant* [2011] EWHC 927 (Admin) and *Martin v GMC* [2011] EWHC 3204 (Admin).

12. Mr Brook stated that *Good medical practice* (2013 edition) ('GMP') is intended to ensure that medical practitioners understood the crucial importance of complying with the professional requirements of them. They reflect what is required in the modern medical world.

13. Mr Brook submitted that the doctor should have been aware of the conduct expected of him, and been mindful of professional boundaries that needed to be maintained between him and his colleagues. Further, Dr Narayan should have been conscious of the power differential that operated given his senior role as a consultant when dealing with junior staff, both in terms of what he said and did.

14. Mr Brook submitted that notwithstanding what has been found about the touching by the doctor being not sexually motivated, that it is not feasible that the ‘grab’ of the ribs was an affectionate gesture, but an invasion of Ms A’s personal space and inappropriate within the workplace. Mr Brook submitted that the doctor’s non-compliance with GMP was deliberate – arising in part from anachronistic views about what was appropriate in the workplace, and a failure to understand the importance of professional boundaries.

15. Mr Brook submitted that Dr Narayan deliberately behaved in the way that he wanted, putting Ms A in a position that she did not want. He could have chosen to use books, the internet or colleagues at the same professional grade as himself rather than treat Ms A as a repository of information about lesbian sex. Dr Narayan should have been conscious that notwithstanding that Ms A answered his questions, when he first asked her via text, he ignored that she initially said “No!” and failed to consider that messaging a junior member of staff late at night to ask questions of a sexual nature was inappropriate, irrespective of how good a friendship he might perceive the two of them to have.

16. Mr Brook submitted that Dr Narayan’s arrogance in considering his own position is demonstrated in placing his curiosity for information, even if this was for his practice as a medic, before Ms A’s position, and in asserting that he knew better than her or words to that effect on more than one occasion.

17. Mr Brook submitted that such conduct amounts to a serious departure from GMP and in particular paragraphs 36 and 37:

36 You must treat colleagues fairly and with respect.

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

18. Mr Brook also referenced paragraph 15 of GMC guidance, *Doctor’s Use of Social Media* (2013):

15 Good medical practice says that doctors must treat colleagues fairly and with respect. This covers all situations and all forms of interaction and communication. You must not bully, harass or make gratuitous, unsubstantiated or unsustainable comments about individuals online

19. Mr Brook referred the Tribunal to the guidance provided by Dame Janet Smith in the *Fifth Shipman Report*, as adopted by the High Court in *CHRE v NMC and Paula Grant [2011]* EWHC 297 Admin. He submitted that Dr Narayan has, in the past, brought the medical profession into disrepute.

20. Mr Brook reminded the Tribunal of the impact that Ms A had said this experience had had upon her. He stated that the Tribunal may therefore, when deciding the issue of fitness to practise, consider that Dr Narayan’s fitness to practise is currently impaired both on

personal grounds (given that Dr Narayan's insight is not fully developed), but also on public interest grounds. In particular the need to uphold proper professional standards.

21. On behalf of Dr Narayan, Ms Bramwell submitted that there was no longer any objective or rational basis for the Tribunal to find that the admitted, and/or historic behaviour (a) constituted actionable misconduct or that if it does (which is denied); (b) that it may cause any impairment to Dr Narayan's fitness to practise now or in the future.

22. Ms Bramwell referred the Tribunal to the testimonials and submitted they state that Dr Narayan was a good and honest doctor. One suggested that his behaviour has been "*misunderstood*" by Ms A. There were repeated references to Dr Narayan being respectful of staff and being willing to praise them. Ms Bramwell submitted that Dr Narayan's professional colleagues who know him well and have worked alongside him for some time, speak highly of him.

23. Ms Bramwell also referenced GMP but flagged paragraphs 65 and 68 in addition to 35 and 36:

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

68 You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.

24. There was inevitably overlap between the cases that Mr Brook and Ms Bramwell referenced, these being well-established common law which confirms the level of seriousness required for a finding of statutory misconduct, and the two step process in first making a determination of misconduct, and only if that is found, proceeding to consider impairment. Ms Bramwell also referenced the case of *Schodlok v GMC* [2015] EWCA Civ 769 which is authority for the approach that multiple incidents which are not individually considered to be misconduct, to be collectively considered misconduct normally.

25. Ms Bramwell covered both what Dr Narayan had said and done physically. In terms of what he had said, she reminded the Tribunal that Dr Narayan's "*arrogance*" was not the whole picture, and that the Tribunal had evidence that the doctor had "*humbled*" himself before Ms A. In asking questions about lesbian sex, she reminded the Tribunal that Ms A had given Dr Narayan the impression that they were friends and that he could ask her anything. Ms Bramwell submitted that Dr Narayan's questions about sexual matters were ill-advised and inappropriate but not deplorable, and referenced evidence that questions about same-sex behaviour were not unusual within the Trust amongst staff.

26. In terms of the physical contact between Dr Narayan and Ms A, she reminded the Tribunal that Ms A had acknowledged in evidence that the tap on her head "...*may have been intended as a joke*" and suggested that there was an important context to Ms A's concerns about being touched at work, given that this was during the outset of the coronavirus pandemic and Ms A was worried about this. Further, that there was evidence that Dr

Narayan was tactile with other people at work, given both his role and his personality, and that this was Ms A's first professional experience of working in the NHS. Each, Ms Bramwell submitted, was relevant and should not elevate Dr Narayan's conduct to serious professional misconduct.

27. Insofar as impairment is concerned, Ms Bramwell submitted that the Tribunal should take into account:

- a) that Dr Narayan had apologised and expressed genuine regret;
- b) that Dr Narayan had demonstrated commitment in his pursuit of corrective steps in undertaking courses and reflection;
- c) that Dr Narayan had engaged, made some admissions, and that the protracted regulatory process has itself been a salutary experience;
- d) that Dr Narayan's professional colleagues speak highly of him and multiple letters in support of him have been written.

The Relevant Legal Principles

28. The LQC provided legal advice to the Tribunal which the Tribunal accepted and used throughout its deliberations.

29. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof, and the decision in relation to misconduct and impairment, if misconduct is found, is a matter for the Tribunal's judgement alone.

30. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: First whether the facts as found proved amounted to the statutory ground of misconduct which was serious, and thereafter if there was serious misconduct, if that led to a finding of impairment.

31. The LQC referred the Tribunal to the case of *Roylance v GMC* [2000] 1AC 311 in which it is stated that: "*misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances*".

32. The LQC also referred the Tribunal to the cases of *R (Remedy UK Ltd) v GMC* [2010] EWHC 1245 (Admin) and *Cohen v GMC* [2008] EWHC 581 (Admin). Further, she set out, in regard to the case of *Schodlok*, the nuance that may apply in relation to amalgamating different particulars. She referenced that, in his obiter comments, Beatson LJ said: "*I recognise that a small number of allegations of misconduct that individually are held not to be serious misconduct should normally not be regarded collectively as serious misconduct. Where, however, there are a large number of findings of non-serious misconduct, particularly where they are of the same or similar misconduct, I consider the position is different. In such a case, it should in principle be open for a Fitness to Practise Panel to find that, cumulatively,*

they are to be regarded as serious misconduct capable of impairing a doctor's fitness to practise."

33. The LQC reminded the Tribunal that if misconduct is found, the Tribunal must determine whether Dr Narayan's fitness to practise is impaired today, taking into account his conduct at the time of the events and any relevant factors since then, such as whether the matters are remediable, have been remediated and whether there is any likelihood of repetition.

34. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the *Fifth Shipman Report*, as adopted by the High Court in *CHRE v NMC and Paula Grant [2011] EWHC 297 Admin*. In particular, the Tribunal considered whether its findings of fact showed that Dr Narayan's fitness to practise is impaired in the sense that he:

- 'a. *Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. Has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d. Has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

35. The Tribunal also took into account the guidance of Mrs Justice Cox set out in the *Grant* case, specifically paragraph 74 which states: "*In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant tribunal should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.*"

36. The Tribunal reminded itself of the statutory overarching objective to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of the profession.

The Tribunal's Determination on Impairment

Misconduct

37. The Tribunal first considered whether the facts admitted and found proved at the previous stage amounted to a serious departure from the standards of conduct reasonably

expected of Dr Narayan as a registered medical practitioner, to amount to misconduct. These were that Dr Narayan, between April 2020 and November 2020:

- Made physical contact with Ms A in that he:
 - Struck Ms A on the back of her head;
 - Grabbed at Ms A's ribs
 - Touched Ms A's foot with his finger.
- Said to Ms A 'I know more than you' or words to that effect.
- Asked Ms A:
 - Questions about lesbian sex
 - About scissoring repeatedly (two occasions).

Struck Ms A on the back of her head

38. The Tribunal considered its factual finding and bore in mind the evidence that Ms A had been struck, tapped, or hit. Ms A described this differently at different times but was clear that this occurred when she had done something wrong, albeit though that it may have been intended as '*playful*'.

39. This conduct is inappropriate and being tactile is no excuse. However, the Tribunal noted that Ms A's own approach to her partner's outrage was to downplay the event as not being meant with any ill intent; the Tribunal accepted Ms A's evidence which inferred that Dr Narayan had no intent to harm her.

40. The Tribunal considered that any touching of another member of staff as chastisement as inappropriate. Even as a playful gesture, it is an unwarranted touching of another person. The Tribunal considered this behaviour as misconduct. However, it did not consider that it was serious misconduct given that it appeared from what Ms A has said, that Dr Narayan did not intend to harm Ms A and was likely to have been acting in a light-hearted manner. Irrespective of his intentions, the Tribunal considered Dr Narayan's behaviour misguided, particularly during the early months of the pandemic when unnecessary touching between unrelated people was discouraged.

Grabbed at Ms A's ribs

41. The Tribunal had evidence before it that Dr Narayan had prodded someone else in their side. This had been observed and was interpreted as an affectionate gesture by the observer. As set out in the Tribunal's Facts determination, Ms F remarked that neither the recipient of the prod observed, nor Dr Narayan made any comments about this, and described it as '*insignificant*'. No complaint was raised about this.

42. There was no suggestion that Ms A invited this behaviour. The Tribunal considered this matter carefully given that it is now the subject of a complaint. It noted that other staff

did not interpret this gesture as being one that had any malice and regarded it as affectionate, and accordingly, while the Tribunal considered the action both unwarranted and unwise, it did not consider that it constituted serious misconduct.

Touched Ms A's foot with his finger

43. Ms A's evidence was that she did have a graze on her ankle. There was a conversation about Ms A having cut herself shaving. This was not found to be sexually motivated. It was nonetheless an invasion of her personal space, as any touching would be.

44. The Tribunal determined that Dr Narayan should not have touched Ms A's foot. Even an innocent reason for doing so, such as checking to see if she was hurt, does not lessen its intrusive nature.

45. The Tribunal found this uninvited and unwanted touching to be misconduct, but not serious misconduct.

Said to Ms A 'I know more than you', or words to that effect

46. Insofar as Dr Narayan did indicate on more than one occasion that he knew better than Ms A ('*I am a doctor my diagrams are better than you*' and '*I have used scissors better than you during my surgery rotation*') which the Tribunal set out in its determination on facts. While there was evidence that Dr Narayan had indicated by using words to the effect that he knew more than Ms A, the Tribunal was able to see the context of these words within a WhatsApp chat where they were clearly meant jovially, because the doctor was medically qualified and had experience of using scissors. He admitted that he did not know about 'scissoring' and looked to Ms A to educate him. There were multiple other instances where Dr Narayan bowed to Ms A's people-skills and XXX skills, which he indicated were superior to his own skills in this area.

47. The Tribunal was conscious of the General Medical Council's neutral stance in relation to this amounting to misconduct, and the Defence submissions that Dr Narayan had on more than one occasion "*humbled*" himself before Ms A, acknowledging her superior skills and insights regarding personal interaction and how to get the best out of people.

48. Given all these factors, the Tribunal did not consider that words to this effect amounted to misconduct that was serious.

Asked Ms A questions about lesbian sex

49. The Tribunal considered the evidence before it and its findings of fact in relation to both asking about lesbian sex and scissoring, acknowledging some overlap between the two but regarding them separately initially, and took the view that even if one particular of these two were found, whether additionally both taken together, given their overlap and similar nature, should amount to misconduct.

50. The questions about lesbian sex were ones that Ms A had complained about. She said that Dr Narayan asked questions about this topic that she suggested were intrusive. However, in her oral evidence, she did acknowledge that she was happy to provide matter-of-fact explanations about same-sex matters, and had provided a book with matter-of-fact explanations within it about lesbian sex for Dr Narayan to read. Both GMC and the Defence agreed that the location in which the Trust is situated had the potential to serve a significant lesbian and gay community and Dr Narayan said that he was keen to educate himself, given that he had patients with learning difficulties who might benefit from him having additional knowledge about their experiences. While Dr Narayan's questions have not been found to be sexually motivated, the Tribunal found it was not appropriate for these questions to be asked of work colleagues, particularly where there is a grade differential, and junior grades could struggle to push back.

51. There was evidence that Ms A did feel able to push back on occasion and tell Dr Narayan what he could not say to her when she felt that he had overstepped the mark in terms of being personal. For example, she told the Tribunal of an occasion when she had sneezed, if that meant she was on her period, and she was clear: "*You cannot say that!*". However, Ms A also said that she found his questions about lesbian-sex, and other personal matters, such as her family, and finances, intrusive. Dr Narayan may have felt comfortable speaking with Ms A, XXX, but he should have been conscious of his senior position and what is appropriate in the workplace. There were other resources that were available to him.

52. While there is evidence from Trust colleagues that conversations about same-sex relationships were not unusual between staff, Dr Narayan should have been aware that conversations about sex are not those that everyone feels comfortable about. There was evidence that Dr Narayan does say to Ms A that he can say anything to her and treat her as a friend which she does not contradict. However, he should have been conscious that her junior position meant that it might have been difficult for her to object.

53. The Tribunal considered that colleagues being asked about sexual practices was not behaviour that anybody should have forced upon them in the workplace. While Ms A may have been happy to answer questions that colleagues had about LGBTQ+ practices, and had frank and open conversations with others, it was within her rights not to do so with [Dr Narayan]. Dr Narayan's behaviour was unnecessary, and unprofessional. The evidence that other colleagues spoke frankly about same-sex relationships should not have led to Dr Narayan letting his guard down to what is appropriate in all the circumstances with a work colleague, no matter how well he believed them to get on.

54. The Tribunal considered this unacceptable behaviour which Dr Narayan had admitted, regretted and which he assured the Tribunal would not be repeated. The Tribunal took into account that there was evidence that Dr Narayan had asked Ms A about her sex life, for example whether she preferred stimulation of "*boobs or v*". Had Dr Narayan simply asked about lesbian sexual practises in the abstract, the Tribunal may have found that this was misconduct rather than serious misconduct. However, even though he checked whether he had overstepped a line, after asking her "*then[sic] what you do most of the time?*" – this took his enquiry out of academic knowledge, and invited confidences about her own sex-life. This

was personally intrusive. While Ms A did respond to his questions, she has also complained about Dr Narayan's conduct. The questions became intrusive and being very relaxed when asking them, while an explanation, is no excuse.

55. Dr Narayan should have taken more care of who he asked questions of and how these were phrased to avoid any offence being taken. While the Tribunal noted that the WhatsApp conversations appear to evidence through their nature, language and frequency a close relationship, e.g. with Ms A calling Dr Narayan outside of office hours, or when she was not working to chat about non-work items, he should have remembered that Ms A was a junior member of staff in this position and that it was unprofessional to place her in this position.

56. Accordingly the Tribunal found that Dr Narayan's intrusion into Ms A's personal sexual preferences amounted to serious misconduct.

Asked Ms A about scissoring repeatedly

57. The Tribunal found that there were two conversations about scissoring that took place, at least one of which took place via WhatsApp. The Tribunal has had the opportunity to consider the 'tone' of the WhatsApp conversation, notwithstanding that these appear in a document format rather than as a recording of words spoken, because the 'conversations' were by way of typed messages. When Dr Narayan first said, "*now tell me more about scissors*", Ms A replied "*No!*" – but thereafter went on to discuss the topic when he prompted "*why*". Dr Narayan explained what he does not understand and Ms A educates him, providing him with information.

58. While there was evidence from the WhatsApp chats of an intimacy that went beyond the usual work relationship in discussing tactics of engaging with people, and strategies for getting people onside, this did not mean that Ms A would want a conversation of this nature.

59. The WhatsApp conversation about scissoring was one in which Dr Narayan did check that he had not offended Ms A nor crossed a line, and received her assurance that this was not the case:

[28/10/2020, 23:08:49] Ms A: *no, you are always asking ME questions*
[28/10/2020, 23:09:32] Manoj: *But they are personal*
Do you feel uncomfortable
[28/10/2020, 23:09:40] Ms A: *I do listen to you because I am interested*
[28/10/2020, 23:10:01] Ms A: *no, o[sic] would tell you if I did*
[28/10/2020, 23:10:45] Manoj: *Good*
I treat you like a friend
[28/10/2020, 23:11:09] Ms A: *thanks*
[28/10/2020, 23:11:14] Ms A: *I appreciate that*
[28/10/2020, 23:12:30] Manoj: *I feel comfortable in talking to you*
[28/10/2020, 23:12:36] Ms A: *that's good*
[28/10/2020, 23:12:57] Manoj: *But get sometimes worried*
[28/10/2020, 23:13:55] Ms A: *I know, but it is okay*

[28/10/2020, 23:14:00] Ms A: no need to worry

[28/10/2020, 23:14:10] Manoj: Thx

This WhatsApp exchange demonstrates the assurance that Dr Narayan sought and was given but Dr Narayan failed to consider the power differential between them and the extent to which Ms A would feel comfortable in saying anything different, without the fear of consequences. While Dr Narayan was asking for specifics that he did not understand and Ms A acknowledged that she has never been asked or had to explain the mechanics involved before and that the language may be confusing, Dr Narayan should have been aware that there were other resources he could have used to seek this information.

60. The fact that Dr Narayan checked with Ms A that he had not crossed a line, is indicative of his realisation that he may have done so. He explained that he was relaxed when he messaged Ms A but clearly then had misgivings. It was not appropriate to put people that one works with into a position where they feel that they have to have conversations that they do not want, when it is not of direct relevance to their work. Dr Narayan should not have had this '*conversation*' with Ms A, irrespective of the friendly terms that he believed the two of them to be on. That his colleagues at the Trust frankly spoke about same-sex relationships explains why he may have felt disinhibited in part, but did not take into account that Ms A may not have wished to talk about her own personal experiences and sex life with him XXX.

61. Had Dr Narayan simply asked about scissoring on two occasions, the Tribunal may have found that this was misconduct rather than serious misconduct. However, even though he checked whether he had overstepped a line, asking her about whether scissoring "*gives a good orgasm*" took this beyond theoretical questions and sought information about her personal intimate life. As above, while Ms A responded, she has also complained about Dr Narayan's conduct. The evidence illustrates that the questions became intrusive, as demonstrated by asking about the orgasm they produce for her, and being very relaxed when asking them, while an explanation, is no excuse.

62. The Tribunal considered the fact found proved in relation to scissoring, because it covered questions about Ms A's personal life, to be serious misconduct.

63. The Tribunal had regard to GMP and considered that paragraphs 36, 37 and 65 were engaged in this case in relation to both facts found proved in relation to sexual matters, and that this breach constituted serious professional misconduct.

Impairment

64. Having determined that the facts found proved amounted to serious misconduct, the Tribunal went on to consider whether, as a result of this, Dr Narayan's fitness to practise is currently impaired by reason of his misconduct.

65. In considering impairment, The Tribunal considered Dr Narayan's insight into his actions. It noted his reflections on his behaviour, acknowledging the unacceptability of his conduct, his contrition and apology.

66. Dr Narayan's earlier reflections did cover that sending inappropriate messages was wrong but the Tribunal went onto consider the extent to which he acknowledged the depth of discomfort and upset this could cause the recipient and whether the impact of his senior position was understood. Within the updated remediation bundle provided to the Tribunal on 12 December 2024, the Tribunal noted Dr Narayan's reflections, dated December 2020, in relation to the online Professional Boundaries course, included such reflection, as illustrated by this extract:

"One has to be aware of the power dynamics in the workplace. Certain power is inherent in the role, and one has to be aware and mindful. A person with seniority has more responsibility and has to make sure that the other person is not uncomfortable and does not feel lacking power and vulnerable."

67. Dr Narayan's updated reflective statement, dated 2024, covered both touch and personal questions. He recorded that:

"Reflecting on my inappropriate comments, made me realise that it is good to avoid questions which could offend others, especially when it is about their orientation and feelings."

68. Dr Narayan was able to articulate the importance of boundaries and reflect his understanding of the position that Ms A could have been in:

"I have always to maintain professional boundaries, and it is not acceptable to ask personal questions or to make personal comments or remarks. If the boundary is crossed, the individual may feel uncomfortable and anxious. A relationship which is inappropriate makes the individual vulnerable, and it also breached the good medical Practice."

Accordingly, the Tribunal was of the view that the conduct was remediable and that Dr Narayan had taken steps to remedy it.

69. The Tribunal noted that Dr Narayan, in addition to doing two short Professional Boundaries courses, had also undertaken 18 sessions of counselling across many months, and provided written reflections after every single session. It also noted that Dr Narayan had said he is committed to continuing improving his conduct. He explained that he is looking to undertake even more courses on professional boundaries and does not consider this hearing the end of the matter.

70. Dr Narayan fully accepted that he had behaved in a way that he should not have done. He said that he, *"would always regret having the WhatsApp conversation with Ms A, wished that it had never have happened, and would never repeat anything like it"*. He expressed regret before the Tribunal, and in his reflection did acknowledge the position that a subordinate member of staff might experience, given the power differential between himself and them, in indicating that they were not comfortable, requiring additional care.

71. The Tribunal noted that Dr Narayan had admitted at the outset of this hearing his inappropriate conversation about lesbian sex with Ms A and his failure to act professionally in this respect. This demonstrated to the Tribunal that he had a clear understanding of the GMP requirements that he was subject to in 2020 in respect of the conversations that should not have taken place with a junior work colleague. The Tribunal accepted that his innocuous touching may not have been remembered as significant by him, which accords with its own finding of touching that was not sexually motivated.

72. The Tribunal considered that Dr Narayan had demonstrated insight as to the professional wrongdoing. Further, the Tribunal considered that Dr Narayan was genuine with regard to his recognition of some of his own professional shortcomings in 2020 in his dealings with Ms A. The Tribunal noted that Dr Narayan had undertaken further reflection following its findings of fact, and was committed to behaving differently in future.

73. Given the learning Dr Narayan had explored, as evidenced through his extensive reflection, and his oral evidence, the Tribunal concluded that Dr Narayan now recognised the obligations and requirements surrounding his conduct as a doctor. Accordingly, the Tribunal considered that Dr Narayan's misconduct was remediable and had been remediated by undertaking counselling, professional boundaries courses, and extensive reflection upon his conduct.

74. The Tribunal considered that Dr Narayan was unlikely to repeat his misconduct because he has insight and understands the potential impact of his wrongdoing on others. Further, that these proceedings have been a salutary lesson to him.

75. The Tribunal determined that limb (b) of the test for impairment as set out in *Grant* was engaged in this case;

'b. Has in the past brought and/or is liable in the future to bring the medical profession into disrepute; ...'

76. The Tribunal also bore in mind that Dr Narayan has continued to work within the medical profession, in his specialism since the matters complained of, with no repetition of his behaviour reported. References from his manager evidence his good behaviour, without any concerns that mirror the matters relating to Ms A in 2020. More than four years have elapsed since the events complained of and Dr Narayan's written reflections addressed the impact of his behaviour and why he will not repeat it.

77. The Tribunal did consider whether Dr Narayan's misconduct was so serious that it was necessary to make a finding of current impairment in order to uphold the statutory overarching objective.

78. The Tribunal accepted that there was no risk to patient safety. While it had before it evidence that Dr Narayan had treated colleagues congenially, it was his treatment of Ms A in overstepping the mark and asking her personal questions about her sex life that was

completely unacceptable. Dr Narayan had checked with Ms A about how frank he could be, on more than one occasion, sharing that it felt good to treat her like a good friend and not to have to worry about what one said. He also asked her if he needed to worry about the questions he asked her but did not consider her reassurances within the context of an unequal power dynamic, where she was junior to him in grade. He has since reflected on this at great length and come to realise that he was wrong to rely on such assurances. His behaviour over the four years since the events complained of evidences that no further concerns of this nature have been raised. Accordingly, the Tribunal accordingly did not consider that a finding of impairment was required to protect the public.

79. The Tribunal did take into account the culture within the team and the frankness with which people, including Ms A, spoke about same-sex relationships and sexual matters. Additionally, it considered the reassurances that Dr Narayan had been provided with by Ms A. However, as Dr Narayan now appreciates, he should never have communicated with Ms A as he did. He recognises the importance of a '*power differential*', and how not maintaining professional boundaries could impact staff, leading to them feeling anxious and vulnerable.

80. Dr Narayan has said that he is committed to behaving more professionally with all staff, irrespective of grade. The reference from his team manager at his current workplace (where he has worked since 2021), dated 9 December 2024, supports this, indicating that he has established and maintained '*trusting professional relationships*' across the workplace.

81. Dr Narayan fully acknowledged that he has not upheld proper professional standards and conduct for members of the profession in acting as he did. He has accepted that he took Ms A's communication at face value without acknowledging the impact of his privileged professional position with regards to her. This has been remediated as evidenced by his reflections.

82. Taking the above factors into account, the Tribunal considered that it was not necessary to make a finding of current impairment in order to promote and maintain public confidence in doctors, nor necessary to make a finding of impairment to maintain and uphold proper professional standards and conduct for the profession. This is because Dr Narayan had admitted the wholly unacceptable nature of his behaviour and taken steps to ensure that it is not repeated. He has acknowledged that it breaches GMP and is not how good doctors should behave. In addition to apologising and indicating he will never repeat his past behaviour, his promise to exercise a great deal more care in his dealing with all staff, has been evidenced over the last four years, plus.

83. The Tribunal was satisfied that this was an exceptional case where public confidence in the profession would be maintained by the public knowing that Dr Narayan had been through the disciplinary process, where a finding of serious misconduct had been made, and that neither patients nor colleagues were at risk in the future. Accordingly, it concluded that a finding of impairment was not needed to satisfy the wider public interest or to uphold public confidence in the profession.

84. Insofar as maintaining and upholding proper professional standards for members of the profession, the fact that his cultural background from not being trained in the UK, may have contributed to Dr Narayan's view that those who are open about their sexuality and sexual practices may not have the same boundaries as other people, was considered by the Tribunal. The maintenance of proper professional standards for doctors reflects cultural norms and Dr Narayan practices in the UK. Accordingly UK standards of conduct and behaviour apply. Openness by junior staff cannot be interpreted as an invitation to any '*no holds barred*' conversations. Dr Narayan's recognition of this fact and that his behaviour unequivocally breaches GMP makes clear this position. His own position is that he was not behaving in compliance with the standards required by GMP, and that there is no challenge to the profound unacceptability of such behaviour, means that a finding of impairment is not required.

85. Accordingly, the Tribunal has determined that Dr Narayan's fitness to practise is not currently impaired by reason of his misconduct.

Determination on Warning - 25/04/2025

1. As the Tribunal determined that Dr Narayan's fitness to practise was not impaired it considered whether in accordance with s35D(3) of the 1983 Act, a warning was required.

The Evidence

2. The Tribunal has taken into account all the evidence received during the facts and impairment stages of the hearing, both oral and documentary.

3. The Tribunal also received further evidence from Dr Narayan, namely:

- CPD certificates, various dates detailing up to date professional training and courses on Professional Boundaries; and
- A further Reflective Statement from Dr Narayan on the impairment determination, dated April 2025.

Submissions

Submissions on behalf of the GMC

4. Mr Brook submitted that, given Dr Narayan's serious misconduct, it was necessary to impose a warning upon the doctor's registration.

5. Mr Brook stated that Dr Narayan's behaviour had significantly departed from *Good Medical Practice* (2013) (GMP) and asserted that a warning was necessary to maintain public confidence in the profession and uphold proper standards and conduct.

6. Mr Brook submitted that warnings should be viewed as a serious response appropriate for concerns that fall just below the threshold for a finding of impairment and referenced the GMC's *Guidance on Warnings* (2024) (GoW).

7. Mr Brook submitted that this was a case where the doctor might consider himself to be very fortunate that a finding of current impairment was not made. He submitted that the doctor on one reading of the Tribunal's determination had come '*perilously close*' to this.

8. Mr Brook concluded by submitting that issuing a warning was a proportionate response notwithstanding the doctor's most recent reflection, and was necessary to uphold the overarching objective.

Submissions on behalf of Dr Narayan

9. Ms Bramwell provided written submissions which she supplemented with oral submissions. She submitted that imposing a warning on Dr Narayan's registration would be disproportionate.

10. Ms Bramwell submitted that Dr Narayan had provided a reflective piece which clearly indicated that these proceedings had had a profound effect on the doctor and said that he continues to keep his misconduct at the forefront of his mind both personally and professionally.

11. Ms Bramwell drew the Tribunal's attention to Dr Narayan's CPD which she stated had gone to underline Dr Narayan's ongoing commitment to ensuring that his misconduct is never repeated and had not been undertaken in order to '*tick boxes*' or to '*impress*' the Tribunal.

12. Ms Bramwell stated that these proceedings had been a salutary experience and had had a lasting effect on Dr Narayan. She stated that there was no doubt that the doctor deeply regrets and completely accepted that his behaviour in his conversations with Ms A had been unprofessional and inappropriate.

13. Ms Bramwell submitted that it was a matter for the Tribunal to consider whether the incidents in relation to Ms A had been an isolated incident. She stated that it was possible to

view the doctor's misconduct as an isolated incident because it related to one colleague, even though the serious misconduct may have consisted of more than one conversation over a period of time.

14. Ms Bramwell, like Mr Brook referenced the Tribunal's earlier determination at the Impairment stage. She submitted that Dr Narayan's conduct did not affect public confidence in the profession given the particular circumstances of this case and there had not been significant departure from GMP. She went on to assert that, if the Tribunal were against her on that matter, then the Tribunal has to apply the principle of proportionality and weigh the interests of the public against the practitioner. She referred to the seven criteria that the GoW set out, asking the Tribunal to consider the same, and emphasised that the doctor had shown insight, expressed genuine regret, had had previous good history, arguing that the incident was isolated and that there had been no repetition, and no indicators to the likelihood of concerns about repetition.

15. Further, Ms Bramwell submitted that, when one considers the Tribunal's findings on impairment, this is not a case that could properly be described as falling just below the threshold of impairment.

16. Ms Bramwell concluded by stating that given Dr Narayan's extensive efforts and genuine display of deep regret and remorse, issuing a warning was not proportionate to the circumstances of the case.

The Tribunal's Determination on Warning

17. The Tribunal was mindful that paragraph 61 of the *Sanctions Guidance (2024)* (SG) provides that:

'61 Where a tribunal finds a doctor's fitness to practise is not impaired, it cannot impose a sanction. However, it must consider, under rule 17(2)(n) whether to:

a take no action

b Issue a warning if the doctor's conduct, behaviour or performance has significantly departed from the guidance in Good medical practice.'

18. The Tribunal reminded itself of the overarching objective to protect the public, which includes pursuit of the following objectives to:

- a protect and promote the health, safety and wellbeing of the public
- b promote and maintain public confidence in the medical profession
- c promote and maintain proper professional standards and conduct for the members of the profession.

19. The Tribunal had regard to paragraph 13 of the Warnings Guidance which advises that:

'13. Although warnings do not restrict a doctor's practice, they should nonetheless be viewed as a serious response, appropriate for those concerns that fall just below the threshold for a finding of impaired fitness to practise.'

'14. Warnings should be viewed as a deterrent. They are intended to remind the doctor that their conduct or behaviour fell significantly below the standard expected and that a repetition is likely to result in a finding of impaired fitness to practise. Warnings may also have the effect of highlighting to the wider profession that certain conduct or behaviour is unacceptable.'

20. The Tribunal had regard to the test for issuing a warning as outlined in the Warnings Guidance which is that:

'16. A warning will be appropriate if there is evidence to suggest that the practitioner's behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or by a MPTS tribunal. A warning will therefore be appropriate in the following circumstances:

-there has been a significant departure from Good medical practice [...]

21. The Tribunal also had regard to the factors to consider at paragraph 20 of the Warnings Guidance:

'20. The decision makers should take account of the following factors to determine whether it is appropriate to issue a warning.

a. There has been a clear and specific breach of Good medical practice or our supplementary guidance.

b. The particular conduct, behaviour or performance approaches, but falls short of, the threshold for the realistic prospect test or in a case before a tribunal, that the doctor's fitness to practise has not been found to be impaired.

c. A warning will be appropriate when the concerns are sufficiently serious that, if there were a repetition, they would likely result in a finding of impaired fitness to practise. Warnings may be an appropriate response to any type of allegation (...); the decision makers will need to consider the degree to which the conduct, behaviour or performance could affect patient care, public confidence in the profession or the reputation of the profession. If the decision makers consider that a warning is appropriate, the warning should make clear the potential impact of the conduct, behaviour or performance in question, accordingly.

d. There is a need to record formally the particular concerns (because additional action may be required in the event of any repetition).'

22. The Tribunal also had regard to the factors considered as outlined at paragraph 32 of the GoW:

'32. If the decision makers are satisfied that the doctor's fitness to practise is not impaired or that the realistic prospect test is not met, they can take account of a range of factors to determine whether a warning is appropriate. These might include:

- a. the level of insight into the failings
- b. a genuine expression of regret/apology
- c. previous good history
- d. whether the incident was isolated or whether there has been any repetition
- e. any indicators as to the likelihood of the concerns being repeated
- f. any rehabilitative/corrective steps taken
- g. relevant and appropriate references and testimonials.'

22. The Tribunal considered the factors set out in paragraphs 32(a) to (g) and acknowledged that Dr Narayan had demonstrated regret and insight as confirmed within the Tribunal decision on Impairment.

23. The Tribunal reminded itself of its findings at the impairment stage, particularly the following:

'57. The Tribunal found that there were two conversations about scissoring that took place, at least one of which took place via WhatsApp. The Tribunal has had the opportunity to consider the '*tone*' of the WhatsApp conversation, notwithstanding that these appear in a document format rather than as a recording of words spoken, because the '*conversations*' were by way of typed messages. When Dr Narayan first said, "*now tell me more about scissors*", Ms A replied "*No!*" – but thereafter went on to discuss the topic when he prompted "*why*". Dr Narayan explained what he does not understand and Ms A educates him, providing him with information.'

24. The Tribunal noted that while the conduct it is considering is concerned only with interaction between Dr Narayan and Ms A, it noted that Dr Narayan had on more than one occasion, and over a period of time, repeatedly asked this junior colleague intrusive questions regarding her intimate life. Accordingly, the Tribunal bore in mind that Dr Narayan's intrusive questioning of a junior colleague had not been a single isolated incident and constituted behaviour that crossed a professional boundary more than once.

25. Notwithstanding Dr Narayan's regret, insight and lack of repetition after the index events such serious misconduct was clearly unacceptable. Dr Narayan had not had regard to the power differential between Ms A and himself or considered that her reassurances that he was not '*crossing the line*' may have occurred only because he was the more senior person in terms of his professional grade.

26. The Tribunal determined that there had been a significant departure from GMP (2013), in particular:

'36 *You must treat colleagues fairly and with respect.*

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

27. This is a case in which there was a clear and specific breach of GMP. Dr Narayan did not treat Ms A with the respect that was her due as a member of his team (Paragraph 36). Further he failed to consider the impact of his behaviour on a junior member of staff (Paragraph 37). There was more than one occurrence of this.

28. Were there to be a repetition of this behaviour it would likely result in a finding of impairment. This is because Dr Narayan has set out his comprehension of the potential impact on staff subjected to such behaviour.

29. In all the circumstances, the Tribunal concluded that Dr Narayan's departure from the standards expected of members of the profession, in this case, is *significant*. Dr Narayan placed a junior member of staff in a position whereby she was required to answer questions about her sex-life when this was of no direct relevance to her role at work. The Tribunal heard evidence from Ms A that she felt humiliated.

30. The Tribunal noted Dr Narayan's reflections on the Tribunal's impairment determination, dated April 2025, which it welcomed. However, it considered that these reflections largely repeated what the doctor had said before rather than adding any additional points of learning.

31. The Tribunal also considered the proportionality of issuing a warning and weighed the interests of the public with those of the practitioner. The Tribunal was satisfied that there was a need to mark the serious misconduct in this case with a warning to ensure that public confidence is maintained in the profession and the regulatory system. The Tribunal also considered that a warning was necessary to uphold proper professional standards and highlight to fellow doctors that following GMP must be at the forefront of every doctor's practice.

32. The Tribunal determined that the warning would act as a deterrent and a reminder to Dr Narayan, and the profession as a whole, that the conduct fell below the standard expected and that a repetition is likely to result in a finding of impaired fitness to practise. The Tribunal therefore determined that it was appropriate to issue a warning in this case.

33. The Tribunal determined that a warning should be given to Dr Narayan in the following terms:

'Dr Narayan:

1. The Facts as established following a Fitness to Practise Hearing between April 2024 and December 2024, was that the Tribunal found that between April and November 2020, you committed professional misconduct when you:
 - a. Asked Ms A:
 - i. questions about lesbian sex (admitted)
 - ii. about 'scissoring' repeatedly (admitted on two occasions).but, that your fitness to practise was not impaired.
2. The questions were asked to a junior member of staff who complained about you.

3. This conduct does not meet with the standards required of a doctor. It risks bringing the profession into disrepute and must not be repeated. The required standards are set out in Good Medical Practice at the following paragraphs:
 36. You must treat colleagues fairly and with respect;
 37. You must be aware of how your behaviour may influence others within and outside the team.
4. While the failing in itself is not so serious as to require any restriction on your registration, it is a significant departure from the required standards and accordingly necessary in response to issue this formal warning.
5. The Tribunal applied the principle of proportionality and found that you have good insight, made a genuine apology, have previous good character, have taken rehabilitative steps, provided appropriate references and testimonials about your current practice, and not repeated your behaviour since the complaint was made in late 2020. Nonetheless, the Tribunal considered that this was not an isolated incident, but spanned more than one occasion, and while the communications the Tribunal was concerned about were only between Ms A and you, it has seen evidence that the questions were not of a hypothetical nature, but asked Ms A to share her personal experience.

This warning will be published on the medical register in line with our publication and disclosure policy, which can be found at: www.gmc-uk.org/disclosure_policy'

34. That concludes this case.

ANNEX A – 02/04/2024

Application under Rule 34 for redactions in a witness statement to remain redacted

1. On day one of the hearing, 2 April 2024, before the hearing was formally opened, an application was made by Ms Corinne Bramwell, Counsel, on behalf of Dr Narayan, under Rule 34 of the Rules, that several redacted paragraphs in Ms H's witness statement should remain redacted.

2. The excluded paragraphs related to Ms H's personal experiences of inappropriate behaviour from Dr Narayan towards her and an alleged complaint made by Ms H. Ms Bramwell's application was made on the basis that the prejudicial effect outweighed any probative value.

3. Ms Bramwell submitted a skeleton argument that matters alluding to previous complaints about Dr Narayan should be excluded. This was done on two bases, in summary:

- a) that the GMC has not established any basis upon which the admission of this evidence is either relevant or fair;
- b) in the alternative, that the evidence ought to be excluded on the basis that its prejudicial impact far outweighs any probative value on the basis that:
 - (i) the alleged bad character is disputed;
 - (ii) it is not the subject of any charge in the case before the Tribunal,
 - (iii) it is unproven;
 - (iv) the allegation is six years old;
 - (v) there was no formal complaint made;
 - (vi) the evidence of the nature of the allegation is vague and lacks particularity;
 - (vii) the allegation has not been investigated by the GMC;
 - (viii) Dr Narayan has had no proper opportunity to challenge the allegation,
 - (ix) proper exploration of the allegation would necessitate significant satellite litigation;
 - (x) the allegation cannot assist the Tribunal in determining the veracity of the charges before them.

4. Mr Ian Brook, Counsel, on behalf of the GMC responded to these arguments and his arguments in summary were that:

- a) the evidence of Ms H can establish a propensity to commit acts of the kind, as presently alleged, and he invited the Tribunal to consider whether that propensity might make it more likely that Dr Narayan behaved as alleged by Ms A. In this way Mr

Brook suggested that the Tribunal might be assisted in determining whether the matters complained of by Ms A, occurred;

- b) as an alternative basis of admissibility, the material is capable of rebutting Dr Narayan's assertions of being respectful to others, and, as the GMC is aware of that aspect of his case, now, they might be refused leave to call Ms H's evidence, in rebuttal, if and when Dr Narayan were to testify, because of the *ex improviso* principle;
- c) in addition, the points raised by the Defence were responded to:
 - (i) Dr Narayan is aware of the previous allegation and has been able to respond to it;
 - (ii) it matters not that it has not been proven as the Tribunal would need to consider its veracity;
 - (iii) it matters not that the previous allegation is six years old as more importantly it was only two years before the incidents which form the current case;
 - (iv) the nature of the previous allegation suggests a particular modus operandi by Dr Narayan which has similar features to the current case;
 - (v) there would be no need for significant satellite litigation, albeit the truth of whether or not the previous complaint was well made would need to be determined;
 - (vi) it was accepted that further to the case of *McLennan v GMC* [2020] CSIH 12, paragraphs 78-80, that reference to "propensity" is not relevant to proof of the particular charges to be determined now.

The Relevant Legal Principles

5. The Tribunal was referred to Rule 34(1) of the Rules, which states:

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

The Tribunal's Decision

6. In terms of what is relevant, the approach that the Tribunal took was to consider whether the material has a bearing upon or is otherwise connected with the matter in hand. Accordingly, the Tribunal first questioned whether the alleged complaint was relevant. In terms of what is considered fair, the Tribunal considered this to mean what is reasonable and just; this involves weighing how this material is probative as set against its potentially prejudicial effect.

7. In terms of relevance, the Tribunal considered that the two alleged situations did both share some similarity in Dr Narayan overstepping the mark in terms of familiarity between professional colleagues. However, the degree of similarity appeared limited, given that there

was a different power differential in the two situations. In Dr Narayan's interactions with Ms H, who was Allied Health Professionals Lead & Specialist Occupational Therapist, he was dealing with a clinical professional compared to his dealing with Ms A, XXX. Further, there was a different level of seriousness in the matters alleged, with the issues raised by Ms H being of both lesser seriousness, and also being easily resolved by a conversation with Dr Narayan in which she asked him to be more careful of what he said and did. Accordingly, the only relevance would be a degree of similarity.

8. In terms of fairness, the Tribunal was mindful that there was no independent documentation of an issue between Ms H and Dr Narayan having taken place historically. While it now understood that Ms H wanted to "*support*" Ms A in sharing what had allegedly occurred between her and Dr Narayan, the Tribunal was of the view that the previous allegations lacked detail and were different in degree to the current case. Further, it was agreed between parties that Ms H's reflection provided now would not be determinative of proving the current Allegation. Accordingly, the Tribunal found that the prejudicial effect outweighed the probative value in admitting this evidence.

9. The Tribunal considered that there was both evidence of fact and opinion provided by Ms H. Ms H was not providing expert opinion but commenting on the degree of similarity between what had allegedly occurred to Ms A and her. This was not admissible. The Tribunal decided that it was not fair to Dr Narayan for the evidence of Ms H to be admitted now, as it would require determination of facts that have not been charged, and that these should be particularised.

10. Insofar as the evidence of Ms H concerns a previous complaint being used to rebut what Dr Narayan may or may not say in his oral evidence, the Tribunal was of the view that admitting evidence on this basis was not required. It considered that the GMC may be refused leave to call Ms H's evidence in rebuttal, if and when Dr Narayan testifies that he treats "*everyone*" with respect, because of the *ex improviso* principle, whereby the prosecution may only call further evidence when the need for it arises in circumstances which could not have been foreseen. This is because what Dr Narayan may or may not say has yet to be determined, but additionally, the issues that Ms H raised which were amicably resolved after some surprise being expressed by Dr Narayan, could be said to be indicative of a respectful way of resolving issues between colleagues rather than rebutting a generalised background claim of treating others with respect.

11. Taking all the above into account, the Tribunal determined that the redacted evidence remain excluded.

ANNEX B – 12/04/2024

Application under Rule 17(2)(g)

1. At the close of the case on behalf of the GMC, Ms Bramwell, on behalf of Dr Narayan made an application pursuant to Rule 17(2)(g) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), which states:

'the practitioner may make submissions as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed no further as a result, and the Medical Practitioners Tribunal shall consider any such submissions and announce its decision as to whether they should be upheld'.

Submissions

2. The Tribunal received written and oral submissions from both parties. One submission of no case to answer in respect of paragraph 1(d)(iv) was initially included in the original written skeleton argument shared by Ms Bramwell but was subsequently withdrawn as she agreed not to pursue it following the GMC written response to her skeleton.

3. On behalf of Dr Narayan, Ms Bramwell submitted that the GMC had presented insufficient evidence in respect of paragraph 2 as it relates to paragraphs 1(a)(xii) and 1(a)(xiii), paragraph 3 as it relates to paragraphs 1(a)(ix – xiii), 1(c)(vii – xiv), 1(d)(ix – xi) and 1(d)(xiii)(a) and (b) and paragraph 4 as it relates to 1(a)(xii) and 1(a)(xiii).

4. In respect of paragraph 2 as it relates to paragraphs 1(a)(xii) and 1(a)(xiii), Ms Bramwell submitted that the GMC's case was not that all of the physical contact alleged was sexually motivated. She submitted that when assessing sexual motivation the Tribunal is entitled to make a general assessment and must make a general assessment because there is no direct evidence at this stage of sexual motivation. Ms Bramwell stated that in respect of touching Ms A's feet, there are a number of occasions where this is alleged to have occurred. The evidence suggests that this was done in the context of the discussion about a cut on Ms A's leg (which she said was from shaving) being apparent, which Dr Narayan was concerned about, and wearing skin tone colour tights under black trousers which she submitted does not show a sexual motivation. She submitted that there was an unrealistic attribution based on a suggestion of sexual contact contextualised with the touching of feet. She submitted that this was inconsistent with the test set out in *Galbraith* (as set out below). She submitted that the evidence on this matter was inconsistent with other evidence that the touching of the foot was sexual in nature and the GMC is seeking to invite the Tribunal to pick out those parts of the evidence which support that the action was sexual in nature. Further, Ms Bramwell submitted that Ms A's evidence in relation to Dr Narayan allegedly touching her cheek was that it was done in the context of her being tearful as the result of an argument with her partner. She submitted that Ms A had not suggested that the action was sexual.

5. Ms Bramwell submitted that, in relation to paragraph 3 as it relates to paragraphs 1(a)(ix – xiii), 1(c)(vii – xiv), 1(d)(ix – xi) and 1(d)(xiii)(a) and (b), that none of the evidence presented in this case demonstrates motivation related to Ms A's sexual orientation in respect of these paragraphs of the Allegation. She submitted that the evidence may well point to a sexual motivation, or matters of a sexual nature, however, there was no evidence to support a finding that these paragraphs are related to sexual orientation, a protected

characteristic. In relation to 1(d)(x), Ms Bramwell stated that although this directly referenced Ms A's partner, it would be disingenuous to suggest that this therefore was related to her sexual orientation.

6. Finally, in respect to paragraph 4 as it relates to 1(a)(xii) and 1(a)(xiii), Ms Bramwell submitted that while some of the actions alleged, such as pinching of the bra strap, and/or touching the breast may be sexual in and of themselves, it does not follow that grabbing the cheek or touching the foot can be considered, on the evidence, of a sexual nature. Ms Bramwell stated that Ms A did not suggest in her evidence that contact with her cheek or foot was sexual, nor is it accepted that the actions by their nature are sexual.

7. On behalf of the GMC, Mr Brook adopted a position of neutrality in respect to paragraph 2 in relation to 1(a)(xii), paragraph 3 in relation to 1(a)(ix – xiii), 1(c)(vii – xiv), 1(d)(ix – xi) and 1(d)(xiii)(a) and (b), and paragraph 4 as it relates to 1(a)(xii).

8. In respect of paragraphs 2 and 4 as it relates to 1(a)(xiii), Mr Brook submitted that Dr Narayan is alleged to have asked Ms A if her net socks were a '*sexual thing*' and Ms A's evidence on this matter was that he often '*stared at her feet*' and that he had '*stroked*' her foot with his finger. Mr Brook stated '*stroking*' is an unusual thing to do, and that stroking has a sexual connotation. Further, he stated that staring at and touching a person's feet and shoes, may be suggestive of a '*foot fetish*'. He submitted that if the evidence is taken at its highest, then it can be safely inferred that this action was sexually motivated and could therefore constitute sexual harassment.

9. Mr Brook also submitted that while the GMC were neutral in respect of the application in relation to paragraph 3, he highlighted that 1(d)(x) directly referenced Ms A's partner, and the evidence in this respect was stronger than others under consideration.

The Tribunal's Approach

10. The Tribunal carefully considered the written and oral submissions of both Counsel. In reaching its decision, it had full regard to all the evidence presented to date, both oral and documentary.

11. The Tribunal reminded itself that at this stage of the proceedings it was not considering whether it would or would not find each paragraph in question proved but whether sufficient evidence had been adduced for there to be a case for Dr Narayan to answer. In considering whether or not sufficient evidence has been adduced to find some or all of the facts proved, the test to be applied by the Tribunal is as set out in *R v Galbraith* [1981] 2 All ER 1060 which states:

'How then should the judge approach a submission of 'no case'?

(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.

(2) *The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence.*

(a) *Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.*

(b) *Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness' reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.'*

12. The Tribunal also had regard to the case of *R (Tutin) v GMC* [2009] EWHC 553 (Admin) which confirms that the case of *Galbraith* applies to civil proceedings.

13. The Tribunal took into account the principles underpinning the cases of the *General Medical Council v Dr RH* [2020] EWHC 2518 (Admin), *Basson v GMC* [2018] EWHC 505 (Admin) and *GMC v Jagjivan* [2017] along with the legal framework provided by the Equality Act (2010).

Tribunal's Decision

14. The Tribunal kept foremost in its mind that, at this stage, it was required to determine the sufficiency of the evidence taken at its highest and not to make any findings of fact. It then went on to consider each paragraph of the Allegation and the evidence it has been provided with so far.

Paragraph 2

In relation to paragraph 1(a)(xii)

15. The Tribunal considered the alleged action and had regard to the demonstration that Ms A gave to the Tribunal during her oral evidence. The Tribunal noted that Ms A had used her thumb and forefinger to indicate on her cheek how Dr Narayan had allegedly touched her, as invited to by Mr Brook on behalf of the GMC. It also had regard to Ms A's oral evidence, that Dr Narayan had initially provided 'reassurance' in the moment, although the Tribunal noted that Ms A had given contradictory evidence about the degree of upset she was being caused by an argument with her partner and whether she was using this as an excuse as to why she was tearful when asked by Dr Narayan what was wrong and why she was crying.

16. The Tribunal, while considering that this alleged behaviour does not exist in isolation of other alleged sexually motivated behaviour, could not find specific and uncontroversial

evidence that touching Ms A's cheek in the manner alleged was a sexually motivated action. In Ms A's oral evidence, she indicated that in this specific interaction after discussing her argument with her partner she described him as having provided reassurance initially when she was crying, however it was not clear whether this was about what Dr Narayan had said or what he had done. Further, it noted the GMC's position of neutrality in respect of the 17(2)(g) application in respect of this paragraph of the Allegation.

17. On that basis, the Tribunal found that there is no case to answer in respect of paragraph 2 as it relates to paragraph 1(a)(xii), given the insufficient evidence of sexual motivation.

In relation to paragraph 1(a)(xiii)

18. The Tribunal next considered whether touching Ms A's foot with a finger, if it occurred as alleged, was a sexually motivated action. The Tribunal noted that Dr Narayan is alleged to have '*stroked*' Ms A's foot with the back of his finger on a number of occasions such as when discussing a graze (which Ms A said had been caused by a shaving cut), or an occasion when discussing the wearing of flesh toned tights.

19. While there does appear to be a number of paragraphs of the Allegation in which Dr Narayan is alleged to have directed an inappropriate attention to Ms A's feet, there was insufficient evidence presented to demonstrate that the touching of her feet in the manner alleged was sexually motivated behaviour. The Tribunal was of the view that the word *stroked* is an unusual one, that while referencing very gentle pressure, if repeated or without another motive could amount to a caress. However, Ms A has provided context for the touching in terms of Dr Narayan asking her what had happened to her foot post a shaving accident, and being concerned that she was not wearing socks. The only other references to Ms A's foot being touched was with Dr Narayan's foot when alerting Ms A to mistakes that she was making.

20. On that basis, the Tribunal found that there is no case to answer in respect of paragraph 2 as it relates to paragraph 1(a)(xiii).

Paragraph 3

In relation to paragraph 1(a)(ix)

21. The Tribunal first considered the evidence before it around the alleged pulling and/or pinging of Ms A's bra strap. It considered Ms A's evidence that Dr Narayan had carried out this behaviour in early November 2020, following his learning of her sexual orientation. The Tribunal also had regard to the evidence of Ms B who stated that Ms A had told [them] that this behaviour had occurred in Summer 2020. The Tribunal noted that this was contradictory. However, Ms A was clear in her written and oral evidence that this behaviour had happened a number of times after Dr Narayan had learned of her sexual orientation. The Tribunal took into account that Ms B was clear that [their] neurodiversity meant that [they] could not be

precise about dates, but further that [they] could be clear about the timeline and particularly remembered the summer of 2020.

22. The Tribunal, having regard to the timeline of these events, considered whether there was any evidence that the behaviour alleged occurred because of Ms A's sexual orientation. It noted that the evidence presented shows that the alleged behaviour escalated in the weeks after Dr Narayan became aware of Ms A's sexual orientation, but there is no evidence that Dr Narayan conducted the alleged behaviour because of her sexual orientation.

23. On the basis that there was no evidence that this behaviour is linked to Ms A's sexual orientation in that it occurred both before and after Dr Narayan became aware of it, the Tribunal found that there is no case to answer in respect of paragraph 3 in relation to paragraph 1(a)(ix).

In relation to paragraph 1(a)(x)

24. The Tribunal had regard to the timeline of alleged events and noted that the poking or prodding of Ms A's left breast is alleged to have occurred in early November 2020. The Tribunal noted that while this behaviour, if found proven, would clearly be unacceptable, there is no evidence that this behaviour was linked in any meaningful way to Ms A's sexual orientation. On that basis, the Tribunal found that there is no case to answer in respect of paragraph 3 as it relates to paragraph 1(a)(x).

In relation to paragraph 1(a)(xi)

25. The Tribunal noted that the evidence surrounding the alleged touching of Ms A's nipple indicated that this occurred in the same incident as the poking or prodding of the left breast. Ms A, in oral evidence, stated that she thought that the touching of her nipple was accidental at one point and deliberate at another within a very short space of time. The Tribunal considered the evidence, and the timing of this alleged incident. However, it could find no link that the action alleged had occurred due to Ms A's sexual orientation. On that basis, the Tribunal found that there is no case to answer in respect of paragraph 3 as it relates to paragraph 1(a)(xi).

In relation to paragraph 1(a)(xii)

26. The Tribunal took into account the evidence surrounding the alleged touching of Ms A's cheek. Ms A, in oral evidence, stated that in the incident when she was crying Dr Narayan had provided reassurance initially. The Tribunal considered the evidence, and the timing of this alleged incident, however, it could find no evidence that the action alleged had occurred due to Ms A's sexual orientation. On that basis, the Tribunal found that there is no case to answer in respect of paragraph 3 as it relates to paragraph 1(a)(xii).

In relation to paragraph 1(a)(xiii)

27. The Tribunal considered that the evidence surrounding the alleged touching of Ms A's feet, indicated that this happened on a number of occasions and may have predated when Dr Narayan learned of Ms A's sexual orientation. The Tribunal considered this evidence, and the timing of this alleged conduct, however, it could find no evidence that the action alleged had occurred due to Ms A's sexual orientation. On that basis, and taking into account the GMC's neutral position the Tribunal found that there is no case to answer in respect of paragraph 3 as it relates to paragraph 1(a)(xiii).

In relation to paragraph 1(c)(vii)

28. The Tribunal was of the view that asking a work colleague about how sex toys could penetrate the anus, in the manner alleged, would be considered unacceptable conduct. However, it could find no evidence to support a finding that the alleged behaviour occurred because of Ms A's sexual orientation and noted the GMC's submission that this was something that any person regardless of their sexual orientation could engage in. On that basis, and taking into account the GMC's neutral position the Tribunal found that there is no case to answer in respect of paragraph 3 as it relates to paragraph 1(c)(vii).

In relation to paragraph 1(c)(viii)

29. The Tribunal considered that asking a work colleague to bring a sex toy to work, in the manner alleged, would be inappropriate behaviour in any event. However, it could find no evidence to support a finding that the behaviour alleged occurred because of Ms A's sexual orientation. On that basis, and taking into account the GMC's neutral position, the Tribunal found that there is no case to answer in respect of paragraph 3 as it relates to paragraph 1(c)(viii).

In relation to paragraph 1(c)(ix)

30. The Tribunal formed the view that asking a work colleague for a '*practical demonstration*' on how to use a sex toy, in the manner alleged, would be considered inappropriate and unacceptable conduct in any context. However, it could find no evidence to support a finding that the alleged behaviour occurred because of Ms A's sexual orientation. On that basis, and taking into account the GMC's neutral position the Tribunal found that there is no case to answer in respect of paragraph 3 as it relates to paragraph 1(c)(ix).

In relation to paragraph 1(c)(x)

31. The Tribunal considered that asking a work colleague to show their XXX, in the manner alleged, would be considered unacceptable conduct. However, it could find no evidence to support a finding that the alleged behaviour was linked to Ms A's sexual orientation. On that basis, and taking into account the GMC's neutral position, the Tribunal found that there is no case to answer in respect of paragraph 3 as it relates to paragraph 1(c)(x).

In relation to paragraph 1(c)(xi)

32. The Tribunal considered that asking a work colleague if they had tried anal sex, in the manner alleged, would be unacceptable. However, it could find no evidence to support a finding that the alleged behaviour occurred as a result of Dr Narayan's knowledge of Ms A's sexual orientation. On that basis, and taking into account the GMC's neutral position, the Tribunal found that there is no case to answer in respect of paragraph 3 as it relates to paragraph 1(c)(xi).

In relation to paragraph 1(c)(xii)

33. The Tribunal was of the view that asking a work colleague about how many penises and '*boobs*' they had seen, in the manner alleged, would be considered unacceptable conduct. However, it could find no evidence to support a finding that the alleged behaviour occurred because of Ms A's sexual orientation. On that basis, and taking into account the GMC's neutral position, the Tribunal found that there is no case to answer in respect of paragraph 3 as it relates to paragraph 1(c)(xii).

In relation to paragraph 1(c)(xiii)

34. The Tribunal considered that asking a work colleague if the choice to wear net socks was a '*sexual thing*', in the manner alleged, would be considered unacceptable conduct. However, it could find no evidence to support a finding that the alleged behaviour occurred because of Ms A's sexual orientation. On that basis, and taking into account the GMC's neutral position, the Tribunal found that there is no case to answer in respect of paragraph 3 as it relates to paragraph 1(c)(xiii).

In relation to paragraph 1(c)(xiv)

35. The Tribunal considered the timeline of alleged events and noted that this request is alleged to have occurred after Dr Narayan became aware of Ms A's sexual orientation. It also noted that there is evidence that Dr Narayan had also brought in clothing items for other members of staff, but there was no evidence to indicate that he had made requests for photographs from others, or indeed that he had not.

36. The Tribunal considered that, if Dr Narayan had behaved in the way alleged and requested Ms A take photos of herself in the clothing items, then that would be considered unacceptable conduct in the workplace. However, there is no evidence to suggest that behaving in the manner alleged was because of Ms A's sexual orientation. On that basis, and taking into account the GMC's neutral position, the Tribunal found that there is no case to answer in respect of paragraph 3 as it relates to paragraph 1(c)(xiv).

In relation to paragraph 1(d)(ix)

37. The Tribunal considered that saying to a work colleague that she had '*nice sized boobs*', in the manner alleged, would be considered inappropriate conduct. However, it could

find no evidence to support a finding that the alleged behaviour occurred because of Ms A's sexual orientation. On that basis, and taking into account the GMC's neutral position, the Tribunal found that there is no case to answer in respect of paragraph 3 as it relates to paragraph 1(d)(ix).

In relation to paragraph 1(d)(x)

38. The Tribunal considered that threatening to strip a colleague naked in the manner alleged, if found proven, would be considered unacceptable conduct in any context. However, it could find no evidence to support a finding that the alleged behaviour occurred because of Ms A's sexual orientation. The Tribunal noted that although this comment was alleged to have made in direct reference to Ms A's partner, it was not a comment that could only be made to or considered offensive by, people of the same sexual orientation. On that basis, and taking into account the GMC's neutral position, the Tribunal found that there is no case to answer in respect of paragraph 3 as it relates to paragraph 1(d)(x).

In relation to paragraph 1(d)(xi)

39. The Tribunal noted the context of the alleged statement, and considered the link between the alleged interest in Ms A's sex life and Dr Narayan's knowledge of Ms A's sexual orientation but noted that this paragraph of the Allegation was not behaviour that was specifically targeted at her sexual orientation.

40. The Tribunal considered that while this behaviour, if found proven, would be considered inappropriate, it could find no evidence to support a finding that the behaviour alleged occurred as a response to Ms A's sexual orientation. On that basis, the Tribunal found that there is no case to answer in respect of paragraph 3 as it relates to paragraph 1(d)(xi).

In relation to paragraph 1(d)(xiii)(a) and (b)

41. The Tribunal considered that making comments about raping a female colleague, if found proven, would be considered highly inappropriate in any context. However, it could find no evidence to support a finding that the behaviour alleged occurred as a response to Ms A's sexual orientation. On that basis, and taking into account the GMC's neutral position, the Tribunal found that there is no case to answer in respect of paragraph 3 as it relates to paragraph 1(d)(xiii)(a) and (b).

Paragraph 4

In relation to paragraph 1(a)(xii)

42. The Tribunal took into consideration that it has already found no case to answer in respect of sexual motivation in relation to this paragraph of the Allegation. This touching was not explicitly sexual given the body part involved. Without the sexual motivations, the Tribunal therefore could not find that there was sufficient evidence to support a finding of

sexual harassment in relation to this paragraph. On that basis, the Tribunal found that there is no case to answer in respect of paragraph 4 as it relates to paragraph 1(a)(xii).

In relation to paragraph 1(a)(xiii)

43. The Tribunal took into consideration that it has already found no case to answer in respect of sexual motivation in relation to this paragraph of the Allegation. This touching was not explicitly sexual given the body part involved. In the absence of a consideration of sexual motivation, the Tribunal could not find that there was evidence to support a finding of sexual harassment in relation to this paragraph. On that basis, the Tribunal found that there is no case to answer in respect of paragraph 4 as it relates to paragraph 1(a)(xiii).

ANNEX C – 03/09/2024

Application to reopen GMC case

1. On day ten of the hearing (which had been listed for 15 days), 15 April 2024, Mr Ian Brook, Counsel, indicated that he was instructed to make a submission on behalf of the GMC, that the GMC case be reopened so that fresh evidence could be placed before the Tribunal once both the GMC and Dr Narayan had closed their respective cases. Closing submissions had not yet been received and the decision on facts had not been formally handed down or announced.

2. The Tribunal considered that the spreadsheet referred to by both GMC and Dr Narayan, if introduced at this stage, was likely to involve the recalling of multiple witnesses. Neither the GMC nor Dr Narayan disagreed with this assessment.

3. The Tribunal accepted that the position of fresh evidence being called post the closing of both the GMC and Dr Narayan's case on facts is possible, (as per *TZ v General Medical Council* [2015] EWHC 1001 Admin). It was a matter for the Tribunal's discretion.

4. The Tribunal had regard to the respective positions of the GMC that not including the spreadsheet of Ms A's finances at an earlier stage was an oversight and that not including it now would prejudice the GMC. The position on behalf of Dr Narayan was that should this document be included at this stage, it would require the recalling of both Ms A and Dr Narayan, causing further delay than that which had already occurred in this case. Accordingly, this would be unfair to Dr Narayan. Mr Brook, on behalf of the GMC, invited the Tribunal to consider his submission in advance of more lengthy submissions that might be made on behalf of Dr Narayan given the need to make best use of time in this case.

5. The Tribunal considered that it had heard oral evidence from Ms A, Ms B (Ms A's partner) and Dr Narayan about finances, and had seen a WhatsApp message in which Ms A indicated that Dr Narayan "*was right about the money*". Two explanations were provided for this. Ms A suggested that Dr Narayan had offered to invest £300 per month of her money, and she was referencing this notwithstanding that she had given him no money to invest for

her. Whereas Dr Narayan had said this referred to the fact that he had suggested that she cancel subscriptions that were unnecessary. Both agreed that Dr Narayan had been given Ms A's budget spreadsheet and had made many suggestions concerning budgeting, and were cross-examined on this point.

6. The issue of finances had been raised by Dr Narayan as a possible potential motive for Ms A making untrue allegations because, he said, she wanted additional privately paid work that he was giving to someone else. The Tribunal had already heard from Ms A and Ms B that the post that Ms A was in paid her more than any of her previous positions. Ms B did allude to additional money coming in handy for Ms A and indicated that was why Ms A was keen to do private work for Dr Narayan.

7. Rule 17 of the Rules governed the procedure to be followed by the Tribunal, which sets out the following stages to be carried out sequentially:

- Stage 1 - hearing evidence on facts and misconduct (Rules (f) to (h));
- Stage 2 - consideration and announcement of findings of fact (Rule (i));
- Stage 3 - evidence and submissions on whether fitness to practice is impaired by misconduct (Rule (j));
- Stage 4 - consideration and announcement on impairment with reasons being given (Rule (k));
- Stage 5 - evidence, submissions and determination on sanction (Rules (l) and (m)).

8. The Tribunal was of the view that it did have discretion to re-open the case given the context of the relevant Rules and the Tribunal requirement to carry out a sequential process. However, it considered the value in doing so given the delay that would be occasioned. Further availability of Ms A and Ms B had not been canvassed.

9. The Tribunal considered the following factors in deciding whether to exercise its discretion:

- (i) what was the relevance of new evidence?
- (ii) why had it not been called before?
- (iii) what significance did it have?
- (iv) what effects would its admission have on the conduct of the hearing,

and in particular on:

- (a) the need to recall witnesses;
- (b) the length of the hearing
- (c) taking all matters into account, would justice be done if it were not received and heard?

10. The Tribunal did not consider that the new evidence was relevant to any of the Allegations charged given that none referenced the finances of Ms A with financial advice given to her by Dr Narayan. While Ms A's spreadsheet would indicate incoming and outgoing

expenses, the position of her finances had already been canvassed with Ms B providing an account that made sense of both Ms A and Dr Narayan's differing positions, i.e. that additional money was desirable notwithstanding that Ms A's salary was greater than her previous job had paid.

11. The Tribunal did not consider that the spreadsheet being provided would aid or cast doubt on the reliability of information of critical importance. Both parties agreed that Dr Narayan had seen the spreadsheet and provided financial advice, although the type of advice provided was disputed. This did not feature as part of any Allegation.

12. The Tribunal accepted that the inclusion of the spreadsheet was an oversight of the GMC rather than information coming to light at a late stage and indeed was a document that Dr Narayan agreed that he had seen in 2020 and again as part of Rule 7 correspondence. However, its significance was limited. It could show exactly what entries that Ms A had listed within the table but this was unlikely to change the position as set out by Person B.

13. The Tribunal noted that there were notes added to the spreadsheet which had not been covered in examination in chief or cross examination and that considering this document was likely to have required the recalling of Ms A and Ms B along with Dr Narayan and that both GMC and Defence were likely to have questions for them. Further, it took into account that Ms A had required multiple additional breaks in giving her evidence which had contributed to the witness timetable not being adhered to. It considered that a substantial amount of additional time would be required to deal with this matter which was unlikely to be particularly relevant to the allegations made in respect of Dr Narayan. Further, it put into question whether the facts stage of the hearing would conclude during the current listing, with adjournment, and the consequences of such a delay on a just outcome.

14. The Tribunal concluded that not admitting the additional evidence and recalling multiple witnesses did not cause a real risk of injustice. It was mindful that the overarching responsibility of the Tribunal is to protect the public but did not consider that this duty was impacted by its decision not to allow the annotated spreadsheet to be admitted into evidence. The Tribunal did consider whether the additional evidence could have a bearing on the credibility of either Dr Narayan or the complainant. It did not consider that this discrete matter of finances was one upon which the case rested, notwithstanding the potential motive flagged by Dr Narayan.

15. The Tribunal's approach was likely to have resulted in a different outcome if the additional material was simply a matter that it could have regard to without the recalling of witnesses. It recognised its discretion to admit evidence at a late stage if it was just to do so. However, the inevitable delay in a case that had already encountered multiple delays that were not due to the fault of any one party alone was a deciding factor when combined with the fact that it was not part of any allegation. For the reasons set out above, the application to admit additional evidence was not permitted.

ANNEX D – 03/09/2024

Application to admit hearsay evidence

1. On day 10 of the hearing, 15 April 2024, Ms Corinne Bramwell, Counsel, on behalf of Dr Narayan, made an application pursuant to Rule 34(1) of the Rules to adduce, as hearsay evidence, the witness statements and associated exhibits of two witnesses who, up to 22 February 2024, were scheduled to give oral evidence on behalf of the GMC.
2. When the GMC's revised position was communicated, Dr Narayan's solicitors sought to obtain the witnesses' contact details to secure their attendance. One witness, Ms E, confirmed her willingness to attend the hearing. However, she subsequently advised Dr Narayan's solicitors that due to work commitments she could no longer attend but was happy for her evidence to be used. The other witness, Ms F, expressed general anxiety at the prospect of giving evidence and stated that given the passage of time she could not add anything to her witness statement or exhibit and stressed that she felt she needed to prioritise her current professional responsibilities. She indicated she had no availability on Thursday (11 April 2024) due to immovable work commitments and a funeral and, she had sole childcare responsibilities on Friday (12 April 2024). It was agreed that Ms F would communicate her availability by lunchtime the next day (Tuesday 11 April 2024). She did so via email – "*I have decided that I wish to withdraw from the process and therefore won't be available to discuss my statement with the panel.*"

Submissions

3. Ms Bramwell referred the Tribunal to the relevant case law that was applicable in this case. This included sections 1 and 4 of the Civil Evidence Act; *Ogbonna v NMC* [2010] EWCA Civ 1216 which emphasises the central requirement in the consideration of admissibility of hearsay is, fairness to both sides and that such assessment is case specific. *Thorncroft v NMC* [2014] EWHC 1565 (Admin) sets out that all cases are fact-sensitive, and summarises the principles as follows:

- admission should not be regarded as a routine matter,
- fairness is key,
- weight is significant but not determinative,
- a good and cogent reason for the non-attendance is an important factor but its absence does not result in automatic exclusion,
- if the evidence is sole or decisive its admission requires careful assessment, weighing up the competing factors including the potential consequences of admitting the evidence,
- the evidence must be demonstrably reliable, or alternatively, there is some means of testing its reliability.

4. Ms Bramwell submitted that in fairness to Dr Narayan, both witnesses' evidence ought to be admitted on the basis that:

- (i) their evidence is relevant,

- (ii) neither witness's evidence is sole or decisive to the issues in this case,
- (iii) their evidence is important to the overall evidence which the tribunal should consider,
- (iv) it is not reasonably practicable for Dr Narayan to secure either witness's attendance,
- (v) their evidence was originally obtained to be relied on by the GMC,
- (vi) there is no evidence that either witness has any motive to conceal or misrepresent matters,
- (vii) subject to a proper consideration of its weight, their evidence has value in assisting the tribunal to determine the charges before them,
- (viii) there has been no redaction to their evidence,
- (ix) there is no prejudice to the GMC in the evidence being admitted,
- (x) exclusion would be prejudicial and unfair to Dr Narayan.

5. Mr Ian Brook, Counsel, on behalf of the GMC, submitted that while the GMC remained neutral on the application it was not entirely in agreement with the point that there was no prejudice to the GMC at all. The GMC would have had questions for each of the witnesses had they been able/willing to attend. However, the GMC did not take any issue with it sufficient for it to be deemed an opposition to the application.

The Tribunal's Decision

6. The Tribunal considered that both statements were relevant and it would be unfair to Dr Narayan for them to not be admitted. However, the weight to be applied to them would be reduced as the evidence could not be challenged and the extent to which that weight would be reduced would become apparent during the Tribunal's deliberations when determining the facts.

7. Accordingly, the Tribunal determined to allow the evidence of both witnesses.

ANNEX E – 03/09/2024

Consideration of adjournment

1. The Tribunal has handed down its determination on Facts. Due to the unavailability of both Counsel in this case and the limited time available for this listing, the Tribunal raised the question of adjourning the hearing part heard at this stage.

2. The Tribunal had regard to the current circumstances in this case and had regard to its powers under Rule 29(2) of the Rules:

'Where a hearing of which notice has been served on the practitioner in accordance with these Rules has commenced, the Committee or Tribunal considering the matter may, at any stage in their proceedings, whether of their own motion or upon the application of a party to the proceedings, adjourn the hearing until such time and date as they think fit.'

3. The Tribunal determined that a) given the non-availability of Counsel in the case, and b) insufficient time to conclude stage two of the hearing during this listing, that an adjournment was inevitable. Mr Rigby, Counsel for the GMC, and Mr Dubb, on behalf of Dr Narayan supported this decision. Neither lawyer had been instructed to proceed to stage two of the hearing nor were they in a position to do so.

4. Accordingly, the Tribunal determined to adjourn the hearing part-heard.

5. While the Tribunal noted that 19 and 20 December 2024 have been listed for the continuation of this case, it is likely that a third day would be needed to complete stage two. Pending resolution of when further dates can be found, both Counsel will keep the December 2024 dates in their respective diaries. Enquiries will be made to resolve the position soonest.