

PUBLIC RECORD**Dates:** 20/10/2025 - 05/11/2025**Doctor:** Dr Mark JOHNSON**GMC reference number:** 4428345**Primary medical qualification:** BM 1997 University of Southampton

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

Summary of outcome

Suspension, 12 months.
Review hearing directed
Immediate order imposed

Tribunal:

Legally Qualified Chair	Mrs Tehniat Watson
Lay Tribunal Member:	Mr Darren Shenton
Registrant Tribunal Member:	Dr Ann Wolton

Tribunal Clerk:	Emma Saunders 20/10/2025 Jemine Pemu 21/10/2025- 24/10/2025 Ciara Fogarty 27/10/2025-05/11/2025
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Attendance and Representation:

Doctor:	Present, represented
Doctor's Representative:	Mr Michael Rawlinson, Counsel, instructed by the MDU
GMC Representative:	Ms Chloe Fordham, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 31/12/2025

1. This determination was handed down in public. However, the Tribunal exercised its powers under Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 (the Rules), to sit in private when the matters under consideration were confidential.

Background

2. Dr Johnson graduated in 1997 from the University of Southampton and was appointed to his first Consultant post at West Suffolk Hospital in 2013. He was employed in this post at the time of the events. Dr Johnson worked at West Suffolk Hospital for 10 years. He left following disciplinary proceedings in 2023, which arose from events that allegedly took place during the Work Christmas Party in 2022. In October 2023, Dr Johnson took up a locum post as a Consultant at Royal Sussex County Hospital. He was later offered a substantive Consultant post which he commenced in June 2024.

3. The Allegation that has led to Dr Johnson's hearing can be summarised as, between 6 November 2018 and 15 November 2019, on one or more occasion, Dr Johnson sent inappropriate messages to a junior colleague Ms A that included inappropriate comments about other colleagues, some of which were derogatory and/or sexually demeaning.

4. It is also alleged that, whilst at the Work Christmas Party on XXX 2022, Dr Johnson engaged in various acts and conversations with Ms A and Ms C. It is alleged that this conduct was sexually motivated and constituted sexual harassment as defined in Section 26 (2) of the

Equality Act 2010 in that Dr Johnson engaged in unwanted conduct of a sexual nature which had the purpose or effect of violating the dignity of Ms A and/or Ms C, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms A and/or Ms C. It is further alleged that Dr Johnson's conduct was an abuse of his more senior position.

The Outcome of Applications Made during the Facts Stage

5. At the outset of the hearing, the Tribunal granted an application made by Ms Fordham, counsel on behalf of the GMC, pursuant to Rule 35(4) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules') for the anonymisation of Ms A and Ms C throughout the hearing. The Tribunal's full decision on the application is included at Annex A.

6. On day 4 of the hearing, 23 October 2025, following the conclusion of the GMC case, Mr Rawlinson, Counsel, on behalf of Dr Johnson, made an application pursuant to Rule 17(2)(g) of the Rules. The Tribunal partially granted the application. The Tribunal's full decision on the application is included at Annex B.

The Allegation and the Doctor's Response

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

1. Between 6 November 2018 and 15 November 2019, on one or more occasion, you sent inappropriate messages to a junior colleague Ms A as set out in Schedule 1, that included inappropriate comments about other colleagues, some of which were:

a. derogatory;

Admitted and found proved

b. sexually demeaning.

Admitted and found proved

Work's Christmas Party on XXX 2022

Ms A

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2. On XXX 2022, you attended a Christmas party, organised by your employer at the time.

Admitted and found proved

3. During a conversation with Ms A near the dinner table, you moved your hand up and down Ms A's spine:

- a. as far up as the middle of her back;

Admitted and found proved

- b. as far down as her coccyx.

To be determined

4. Whilst Ms A was vaping outside the venue you:

- a. stood so close to her that your face was approximately 5cm away from Ms A's face;

Admitted and found proved

- b. and:

- i. you inhaled Ms A's smoke from her vape and blew it back in her face;

Admitted and found proved

- ii. your lips touched Ms A's lips.

To be determined

5. In the foyer area of the venue you:

- a. intentionally tipped some of your drink onto Ms A's cleavage and/or chest;

To be determined

- b. moved your head close to Ms A's cleavage and/ or chest;

To be determined

c. licked Ms A's cleavage and/or chest.

To be determined

6. Whilst Ms A was seated outside the venue, with her eyes closed, you:

a. touched Ms A's breast and/or chest and/or cleavage on one or more occasion;

To be determined

b. said 'she won't mind', or words to that effect when told to stop, or words to that effect, by Ms B.

To be determined

7. Your conduct as described at paragraphs 3-6:

a. was sexually motivated;

To be determined

b. 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.

To be determined

Ms C

8. During a conversation with a junior colleague Ms C, in which she asked if she could have your bow tie, you:

a. leaned in close to her ear;

Admitted and found proved

b. said 'you can have it but only if you take it off with your teeth', or words to that effect.

Admitted and found proved

9. During a second conversation with Ms C, you said ‘yes, she does’, or words to that effect to a question about whether Ms C has nice breasts, or words to that effect.

To be determined

10. Your conduct as described at paragraphs 8-9:

- a. was sexually motivated;

To be determined in relation to paragraph 8

Deleted in relation to paragraph 9 following a successful 17(2)(g) application

- b. 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 C, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms C.

Deleted in relation to paragraph 8, 9 following a successful 17(2)(g) application

11. Your conduct as described at paragraphs 1, 3, 4, 5, 6, 8 and 9 was an abuse of your more senior position.

Admitted and found proved in relation to paragraph 1

To be determined in relation to paragraphs 3, 4, 5, 6, 8

Deleted in relation to paragraph 9 following a successful 17(2)(g) application

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

8. At the outset of these proceedings, through his counsel, Mr Rawlinson, Dr Johnson made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

9. In light of Dr Johnson's response to the Allegation made against him, the Tribunal is required to determine whether, whilst at the Work Christmas Party on XXX 2022, Dr Johnson moved his hand up and down Ms A's spine as far down as her coccyx; touched Ms A's lips with his lips whilst she was vaping outside the venue; intentionally tipped some of his drink onto, moved his head close to and licked Ms A's cleavage and/or chest; touched Ms A's breast and/or chest and/or cleavage on one or more occasion; said 'she won't mind', or words to that effect when told to stop, or words to that effect, by Ms B. The Tribunal must also consider whether, during a conversation with Ms C , you said 'yes she does', or words to that effect to a question about whether Ms C has nice breasts.

10. The Tribunal is also required to determine whether Dr Johnson's conduct as described in relation to Ms A and Ms C was sexually motivated and constituted sexual harassment as defined in Section 26 (2) of the Equality Act 2010, and whether it was an abuse of his more senior position.

Witness Evidence

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

- Ms A, member of the XXX at the Trust, dated 19 July 2024;
- Ms B, XXX at the Hospital, dated 11 July 2024;
- Ms C, XXX Hospital, XXX, dated 11 July 2024;
- Ms D, Office Assistant at "Benevolent AI", previously employed as a XXX Personal Assistant at the Trust, undated ;
- Ms N, XXX at the Trust, dated 4 September 2024;

12. Dr Johnson provided his own witness statement, dated 29 August 2025 and also gave oral evidence at the hearing. In addition, the Tribunal received evidence from the following witnesses on Dr Johnson's behalf:

- Ms F, Senior XXX Service Manager.

Documentary Evidence

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

- Ms A's Trust statement, dated 16 December 2022;
- Text messages between Ms A and Ms J, dated XXX 2022;
- Notes of Ms A's Trust Interview, dated 16 January 2023 and 20 January 2023;
- Ms A's second Trust statement, undated;
- WhatsApp messages between Ms A and Dr Johnson, dated 19 October 2019 to 4 November 2022;
- Photograph of Ms A and Dr Johnson, dated XXX 2022;
- Notes of Ms A's evidence at the Trust's hearing, dated 15 June 2023;
- Ms B's Trust statement, undated;
- Notes of Ms B's Trust interview, dated 20 January 2023;
- Notes of Ms B's evidence at the Trust's hearing, dated 13 July 2023;
- Ms C's Trust statement, undated;
- Notes of Ms C's Trust interview, dated 30 January 2023;
- Notes of Ms C's evidence at the Trust's hearing, dated 15 June 2023;
- Email from Ms C to Mr P, dated 16 June 2023;
- Email from Ms C to the GMC, dated 10 September 2025;
- Ms D's Trust statement, dated 12 January 2023;
- Notes of Ms D's Trust interview, dated 19 January 2023;
- Declaration of concerns form, dated 30 November 2023;
- Notes of Dr Johnson's Trust interview, dated 24 February 2023;
- Dr Johnson's statement of case, Undated;
- Notes of Dr Johnson's evidence at the Trust's hearing, undated;
- Notes of Ms F's Trust interview, dated 16 January 2023;
- Notes of Ms F's Trust interview, dated 3 March 2023;
- Notes of Ms F's evidence at the Trust's hearing, undated
- Supplemental statement of Ms F dated 8 October 2025
- Email exchanges from Ms F and Ms A dated 12 December 2022

The Tribunal's Approach

14. A summary of the LQC's advice to the Tribunal, which was accepted is as below.

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

16. The Tribunal was advised that it must consider all the evidence before it, before making findings as to the credibility of any witness. When assessing a witness's credibility, it should not rely exclusively on a witness's demeanour when giving evidence as per the principles from the cases of *Dutta v GMC* (2020) EWHC 1974 (Admin) and *Khan v GMC* [2021] EWHC 374 (Admin).

17. The Tribunal was advised that in a case such as this, where the allegations relate to sexual misconduct, it should be cautious not to apply stereotype images of how an alleged victim or alleged perpetrator ought to have behaved at the time, or how they ought to have appeared when giving evidence. Instead, the Tribunal needs to judge the evidence on its intrinsic merits and without prejudice.

18. The Tribunal was advised that Dr Johnson has no adverse regulatory findings. It must therefore consider his good character when assessing his credibility and the likelihood of him having behaved as alleged. His good character is not a defence to the Allegation, it is simply one factor to consider when considering all of the evidence in the round. The weight to assign to Dr Johnson's good character is a matter for the Tribunal to determine.

19. The Tribunal was advised that, when considering whether Dr Johnson's actions were sexually motivated, it should have regard to the case of *Basson v GMC* [2018] EWHC 505 which states:

"A sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship... The state of a person's mind is not something that can be proved by direct observation. It can only be proved by inference or deduction from the surrounding evidence".

20. The Tribunal was further advised that it must consider whether there was a plausible alternative explanation before determining if the conduct was sexually motivated. It was directed to consider the case of *Haris v General Medical Council* [2021] EWCA Civ 763.

Unlawful harassment

21. In regard to the allegation of unlawful harassment by virtue of Section 26(2) of the Equality Act 2010, as particularised at paragraph 15 of the Allegation, the LQC advised that the law states that:

*'A person (A) harasses another person (B) if—
(a) A engages in unwanted conduct of a sexual nature, and
(b) the conduct has the purpose or effect referred to in subsection (1)(b).
(1)(b):
(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
(4) In deciding whether conduct has the effect referred to in (1)(b), each of the following must be taken into account
(a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that effect'*

The Tribunal's Analysis of the Evidence and Findings

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

23. The Tribunal bore in mind Dr Johnson's good character as a factor in its assessment of all the evidence.

24. The Tribunal considered the context that related to all the paragraphs of the Allegation to be determined. It was a Christmas party, held on XXX 2022 and all the witnesses it heard from had consumed alcohol through the course of the night, with the exception of Ms N. She had not consumed alcohol as she had been driving.

25. Ms A, Ms D and Dr Johnson had accepted having started drinking alcohol from before arriving at the party. They all readily accepted that their alcohol consumption had had an impact on them and their memory of the night. Ms B accepted having had some alcohol but stated that she was clear in her memory of the events that she had witnessed. Ms A and Ms B, Ms D and Dr Johnson also accepted that in tandem with the passage of time, there were details of the night that they could now not remember. The Tribunal therefore made allowances for that.

Motive

26. The Tribunal also considered at length the suggestion that the complaint made by Ms A had arisen due to an unrelated grievance that she may have had or that Ms A may have been influenced by colleagues. The Tribunal heard evidence that at the time, both Dr Johnson and Ms F were unpopular in the department due to changes in working practice they implemented following Covid. In and around September 2022, Ms A's friend, Ms I had made an application for a XXX position. It heard that Ms I may not have been qualified for this position and both Dr Johnson and Ms F separately escalated and raised the issue of Ms I not being qualified. Dr Johnson said that he had raised it anonymously via the 'Freedom to Speak up Guardian' route and Ms F had separately raised it with the senior manager of the team who was recruiting. In his oral evidence, Dr Johnson also referred to an incident that took place in 2019, where he had had a falling out with Ms I. He stated that she had taken his desk lamp which he had not wanted her to. He stated that certain property within the laboratory and the office belonged to two different Trusts, and he didn't want it to be moved.

27. Ms A's evidence was that whilst Ms I had been her friend, all she knew was that she did not acquire the job as she did not have a master's degree, which had not been part of the job description of the role advertised. She denied being annoyed or aggrieved or otherwise affected by it.

28. The Tribunal also noted that whilst there had been inappropriate messages from Dr Johnson to Ms A in 2018 - 2019, the tone of these messages had broadly changed from the latter part of 2020. This was after Dr Johnson had had a meeting with his clinical director in respect of his professional boundaries. Nevertheless, the social relationship had continued, and it was evident from the messages that both parties would share aspects of their daily lives, both personal and professional. The Tribunal considered that in the relationship Ms A and Dr Johnson, there had been an abuse of Dr Johnson's more senior position, as admitted by him. It considered that there was an age and a hierachal difference between them. 3 years on there was evidence of an ongoing mutual friendship, something that Ms A had also accepted. It further considered that there was evidence of a continuing relationship that was friendly and cordial leading to the Christmas party in 2022.

29. Dr Johnson confirmed that there had not been any adverse events during the period, from the end of the WhatsApp messages seen by this Tribunal, to when Ms A made her initial complaint. The Tribunal concluded that there was no evidence before it which led it to

consider that there was any motivation for Ms A having fabricated her complaints or that she had borne a grudge which was the basis of her complaints.

Meeting between Ms A and Ms F

30. The Tribunal heard evidence that there had been previous rumours circulated within the Trust of a relationship between Dr Johnson and XXX. This had led to a Trust investigation which concluded that there was no substance to the rumours, and the matter was closed. As part of its conclusion, the Trust instructed those concerned to quash any future rumours, at the earliest opportunity should they arise.

31. The Tribunal considered whether the meeting that Ms F had with Ms A on XXX December 2022, XXX after the Christmas party, had been an attempt by Ms F to dissuade Ms A from making any complaints relating to the alleged behaviour of Dr Johnson at the Christmas party. It considered Ms A's evidence that whilst she could remember parts of the night in question, and not details of conversations, she may 'possibly' have called Dr Johnson a 'naughty boy' referring to the rumours that had been ongoing, concerning him and Ms F. Dr Johnson, in his statement of case, had stated that their colleague Ms J (Mr O) had overheard parts of his conversation with Ms A. Ms F's evidence to the Tribunal was that she had been in text communication with Mr O, XXX, and that he had informed her that Ms A had teased Dr Johnson about the 'gossip' relating to XXX and Dr Johnson.

32. Ms F in her initial and most contemporaneous account of March 2023 had stated that 'gossip' had been investigated and closed and that they '*had been told that if there was anyone discussing it or gossiping, then I should speak directly to them and shut it down.*' The Tribunal noted the contemporaneous evidence in support which were the email exchanges with Ms A, the WhatsApp text message Ms F had sent to Ms A's line manager and senior manager, before the meeting with Ms A on 12 December 2022, and also an email sent subsequent to the meeting. These supported Ms F's account that the meeting was further to '*someone overhearing discussions.....with a staff member directly quizzing Mark [Dr Johnson].*' The email stated, referring to the gossip, '*this had been investigated and that no evidence was found and the investigation was now closed. I said about the work you and S are doing to try and improve the culture around the Trust and [XXX]. I asked for them to consider the impact of these discussion on both careers and mental health of involved individuals and that I am asking people to not participate in such conversations going forward.*'

33. The Tribunal also considered Ms F's response to Ms A enquiring what the meeting was about. Ms F had responded '*it's regarding [XXX] and Mark [Dr Johnson].*' In her oral evidence, Ms A accepted the content of the email Ms F had sent to her. Her perspective was that Ms F was emphasising that *she*, i.e. Ms A needed to think about the impact on Dr Johnson and also think about his career. Ms A had considered this to be an indirect instruction to Ms A to not report the alleged events of the night of the Christmas party.

34. Ms F on the other hand clearly told the Tribunal that the only information she had become aware of XXX and before the time of her meeting with Ms A, XXX, was the information from the text exchange with Mr O. She had not known of any other allegations until after Dr Johnson was escorted off the site and suspended in the weeks that followed. Ms F stated that in her meeting with Ms A, Ms A had '*seemed surprised and had not said much*'. Ms A also had not reported or complained about the alleged events to Ms F in the meeting.

35. Having considered both accounts carefully, the Tribunal took the view that whilst the timing of the meeting requested by Ms F, was XXX after the Christmas party, it was likely to be due to the reference to 'naughty boy/bad boy' i.e previous gossip that had already been shut down by the Trust. Ms A had conceded that she 'possibly' did make such a reference. The Tribunal considered it plausible and likely that Ms F would want to deal with any potential of the rumour restarting without delay. It considered that whilst Ms F's intention for this meeting had been to deal with any potential rumours resurfacing, Ms A had considered it as an indirect ploy to dissuade her from reporting the events of the Christmas Party. The Tribunal considered this to be understandable. However, it took the view that it more likely than not, that both Ms A and Ms F had been at cross purposes. On the evidence before it, the Tribunal rejected the notion that there had been any attempt by Ms F to dissuade Ms A from reporting the events of the night.

Paragraph 3 (b)

36. The Tribunal considered Ms A' most contemporaneous account dated 16 December 2022, XXX after the Christmas party. Ms A reports:

'Dr Johnson greeted me with a hug and as we were chatting he was moving his hand up and down the length of my spine which was uncomfortable. He was quite "touchy feely"'.

In her interview with the Trust, on 16 January 2023, Ms A stated:

'I can't remember the exact words [as to how Dr Johnson greeted her]. I was under the influence. He said hello and that I looked nice. He gave me a hug. Then as we were talking about, I don't know, he was rubbing his hands up and down my spine.'

In her evidence to the Trust hearing on 15 June 2023, Ms A stated that she could not remember being upset. In Ms A's GMC statement dated 19 July 2024, she stated:

'...I think he stood up and then gave me a hug, but instead of just hugging me and letting go, he dropped his hand down my back and whilst he was asking me if I was ok, he was moving his hand up and down my spine, moving it as far down as my coccyx and as far up as the middle of my back, just above my waist.' Ms A further stated, 'I didn't mind Dr Johnson initially giving me a hug, as I am a "huggy" person and I don't mind a hug, but I was not comfortable when he moved his hand further down to my lower back. Ms A had also stated in her witness statement that 'memories of whole party in general are a bit of a blur'.

37. Dr Johnson's account in his interview with the Trust on 24 February 2023 was that he did put his hand on the upper part of her back in a soothing way. He also stated that:

'I did not run my hands up and down her spine but I did touch her back in a soothing gesture. It was done to convey sympathy and not in a sexual manner'.

Dr Johnson maintained this in his statement of case. In his witness statement dated 29 August 2025, he accepted that he:

'..very briefly moved his hand up and down Ms A's upper back over her clothing'.

He stated that Ms A had become upset talking about her life and that she had not had a boyfriend for some time. He states that he was trying to express sympathy and console her as a work friend. Further, Dr Johnson stated that if he had touched her back lower than she felt comfortable with, then he apologised sincerely for it.

38. Dr Johnson also referred to details of conversations that took place at that time with Ms A. He said that she showed intimate photos of her breasts to him on her mobile phone and that she had also sent these to her XXX. She had asked him what he had thought of them. Ms A stated that she did not recall being upset at the time but conceded not having a memory of the details of her conversations with Dr Johnson at the time, due to alcohol intake but also due to the passage of time. She stated in her oral account that she only

remembered some parts and not others due to being under the influence of alcohol. She also accepted that she did have intimate photos of her breasts on her phone and had sent them on to her XXX. She accepted that the only way Dr Johnson would have known about these would have been via her communicating this to him. In oral evidence, Ms A also confirmed that at a point later on and not that night, Ms B had told her that Dr Johnson's hand had been quite low on Ms A's back. This detail, however, did not feature in Ms B's account to the Trust, or in her GMC statement.

39. Dr Johnson also maintained that he is a 'touchy-feely' person in his account to the Trust and also in oral evidence to the Tribunal, something which Ms A also confirmed. The Tribunal noted that Ms N's evidence was that Dr Johnson had been rubbing her arm, during a conversation at the party, and she had told him to '*get off me*'. Dr Johnson maintained that this was to comfort Ms N as she had shared private news with him. Ms N could not recall if this was the case but accepted that Dr Johnson would only have known about it via her communicating it to him.

40. Ms A indicated in her oral evidence that she had started drinking whilst getting ready for the party. On arrival at the party, she had consumed an alcoholic welcome drink and continued to drink wine at the table. She stated that by this time of the night, she had only consumed a starter as opposed to a main meal. She felt that she had 'sobered up' after the main meal. The Tribunal assessed all the evidence. It considered that Ms A was an honest witness, but her memory had been impacted at that point of the evening due to alcohol, and before her having consumed her main meal which called in question the reliability of her account. It also considered that Ms A confirmed that the word 'coccyx' was her 'own word' which had featured in the GMC statement but not in any earlier accounts to the Trust. The earlier accounts had instead referred to Dr Johnson having rubbed her back 'up and down the length of her spine' which it considered was not a clear indication of him having touched her 'as far down as her coccyx'. Coupled with her limited recollection of the details of the events at this time, it considered that the evidence was evenly balanced, and that the GMC had not discharged its burden in proving this sub-paragraph of the allegation to the required standard. The Tribunal therefore found paragraph 3 (b) not proved.

Paragraph 7 (a) and 7 (b) as it related to paragraph 3

41. Dr Johnson's alleged conduct in having moved his hand as far down as Ms A's coccyx was not proved (paragraph 3b). His admitted conduct at paragraph 3(a) was that, during a conversation with Ms A, he had moved his hand up and down Ms A's spine, as far up as the

middle of her spine, was not sufficient in itself to support any allegation of sexually motivated behaviour or conduct that could be classed as sexual harassment. Ms A's evidence was that she did not mind being hugged. The serious aspect of this allegation was the alleged conduct of Dr Johnson having moved his hand as far down as Ms A's coccyx which had not been proved. Therefore, the Tribunal found that paragraphs 7 (a) and 7 (b) of Allegation as it related to paragraph 3 in its entirety was not proved.

Paragraph 11 as it related to paragraph 3 of the Allegation

42. In light of paragraph 3 (b) not having been proved, the Tribunal considered that there was no wrongdoing proved on Dr Johnson's part which could be considered as an abuse of his more senior position. It therefore considered that paragraph 11 as it related to paragraph 3 of the Allegation in its entirety was not proved.

Paragraph 4

43. The Tribunal bore in mind that Dr Johnson had admitted standing so close to Ms A whilst she was vaping, that his face was approximately 5cm away from her face. He had also admitted that he had inhaled Ms A's smoke from her vape and blew it back in her face.

44. He did not admit that his lips had touched Ms A's lips.

45. In her most contemporaneous account dated 16 December 2022, Ms A stated that:

'later on that evening I was outside vaping where Dr Johnson was getting very close to my face. I blew vape smoke into his face to try and get him away. He inhaled the smoke and then blew it out thinking it was a clever trick. He then did this a second time and came so close that his lips ever so slightly touched mine'.

46. The Tribunal noted the contemporaneous text messages Ms A sent to her friend Ms J at 22:51 that evening stating that '*Mark kissed me.....I was vaping....'* And further that it was a '*peck*' as opposed to a '*full snog*'. When asked in her interview to the Trust if Dr Johnson was '*moving in to kiss her*', Ms A responded to say, '*I didn't at the time...we were both drunk and he was staggering a bit...he was under the influence as well.*' In her oral evidence, Ms A maintained that Dr Johnson's lips '*ever so slightly*' touched hers. She confirmed in her oral account that she had stood still, and it was Dr Johnson who had moved his face towards her.

47. The Tribunal noted Ms B's initial account in her interview with the Trust. She stated '*Ms A was stood with Mark who was trying to catch vape out of her mouth and he was touching her lips.*' Subsequently, in her GMC statement, she had stated 'I am not sure if his lips made contact with her lips, but they were very close to hers'.

48. The Tribunal also noted that Ms D, another colleague, was present with Ms A, outside during the vaping incident. She could not remember whether Ms A and Dr Johnson's lips touched.

49. Dr Johnson's account in his Trust interview was that '*it became a bit of a to and fro game. We discovered the closer you are then the more effective in harvesting it*'. Dr Johnson confirmed they were close but denied touching Ms A's lips.

50. The Tribunal bore in mind that both Dr Johnson and Ms A were under the influence of alcohol at the time and affected by it. It considered that 5 cm between their faces was close proximity and with Dr Johnson moving his face closer as part of the 'game,' it was more likely than not that their lips did touch 'ever so lightly' as described by Ms A. It considered that Ms A's text message to Ms J shortly after the vaping 'game' was corroborative of Ms A's account and it determined that paragraph 4 (b)(ii) was proved.

Paragraph 7 (a) and 7 (b) as it related to paragraph 4

51. The Tribunal considered that at the time of the Christmas Party, there had been an established and mutual friendship between Ms A and Dr Johnson. Dr Johnson consistently maintained that the 'vaping/blowing smoke' had been a game, a playful game which he didn't dislike and denied that it was sexually charged. He described the vape vapour dispersing and how covering each other in it was a playful game. The Tribunal noted that Ms D had stated that he had also tried to play this game with her, but she had outrightly rejected wanting to participate and had called him a 'creep'. In her GMC statement, Ms D stated that Dr Johnson had been saying to Ms A, '*Look at this, let's try this*'. She could not remember whether Ms A and Dr Johnson's lips touched but she remembered Ms A looking awkward. Ms D stated that Dr Johnson asked her to try it with him, but she '*said something along the lines of, in a jokey and sarcastic way "no thank you, that's completely inappropriate".*' Dr Johnson recalled this as him trying to steal Ms D's cigarette. Ms N's evidence too had been that he had taken the vape she was smoking '*out of her mouth with his hands*' but could not recall how many times he had done this. In her GMC statement, she referred to telling him,

“*don’t do that*” quite bluntly’. Ms A, in oral evidence had accepted it as a fair characterisation that both she and Dr Johnson were ‘messing about’.

52. Considering the evidence before it, the Tribunal considered that it was probable that the ‘vaping’ incident had been a game that Dr Johnson had tried to play with others in addition to Ms A. It was clear from the evidence that both parties had been under the influence of alcohol. It considered that it was also more likely than not that the touching of the lips had been accidental, as indicated by Ms A. From the evidence before it, it did not consider that an inference of sexually motivated conduct could be established. It considered that Dr Johnson had been candid in saying that ‘he didn’t dislike it’, referring to the game but maintained that it was part of just that, ‘a playful game’. The Tribunal considered that it could not be established that Dr Johnson had intentionally and ‘ever so slightly’ as per Ms A’s description, touched her lips, for sexual gratification or in pursuit of a future sexual relationship. It considered more likely than not, that it had been an accident.

53. In her GMC statement, Ms A had stated:

‘I sent Ms J this text message saying this because at the time that this happened, I thought him kissing me was intentional, but now, on reflection, I think that he probably just did it by accident, but I did feel a bit weirded out by it. I am not the sort of person to make a big deal out of things, so I didn’t say anything. I now feel like it was accidental rather than intentional because I felt that he wanted to get really close to my face and was drunk and he leant in a bit further than he intended to by accident, but I think if he had meant for his lips to touch mine on purpose he would have probably grabbed me or placed his hands on me to some extent, as someone usually would when they kiss someone, but he was not touching me at this point.’

54. In her oral evidence, Ms A agreed that the vaping incident was both she and Dr Johnson ‘messing around’. Further that Dr Johnson had not made any sexualised comments and that the ‘ever so slight’ touching of their lips had been an accident. She further agreed that it was fairly insignificant and not the type of incident that she would have reported. She had confirmed that the height of what the incident had made her feel was ‘a bit weirded out’ which she confirmed is what she meant by saying ‘yeahhhh’ in the text message to Ms J who had asked her if she was ok.

55. Additionally, in her GMC statement, Ms A stated that after she felt Dr Johnson’s lips touched hers:

‘..He then inhaled some more of the same smoke from the same inhale of my vape, and blew it out again. I didn’t say anything to him about this, and we all just carried on with the conversation. I felt awkward about this.’

The Tribunal considered that it was later, and on reflection that Ms A had considered the ‘lip touching’ to be accidental. It carefully considered her detail of the effect on her at the time of feeling ‘a bit weirded out’ and ‘awkward’. Whilst it did not expect Ms A to have to use the words prescribed with the Equality Act 2010 to convey the effect of the events on her, it considered that her own description of the effect on her could not be said to be tantamount to her dignity being violated nor to it creating an intimidating, hostile, degrading, offensive or humiliating environment for her, nor was there any evidence which suggested that Dr Johnson’s proven conduct had such purpose.

56. It therefore considered that both paragraphs 7 (a) and 7 (b) as it related to the entirety of paragraph 4 of the Allegation was not proved.

Paragraph 11 as it related to paragraph 4 of the Allegation

57. The Tribunal considered that the ‘blowing to and fro’ of the vape smoke, had been a playful game and one that Dr Johnson had played with Ms A with whom he had an established friendship. It considered that on balance, that the touching of the lips had been accidental and not sexually motivated on part of Dr Johnson. In its evaluation, having considered these elements, it took the view that the conduct as proved by paragraph 4 of the Allegation was not an abuse of Dr Johnson’s more senior position. It did not consider that his status as a consultant was a feature of the ‘playful’ game that took place at a Christmas party, and the likely accidental touching of the lips did not support this paragraph of the Allegation either.

58. It therefore did not find paragraph 11 as it related to the entirety of paragraph 4 of the Allegation to be proved.

Paragraph 5

59. In Ms A’s most contemporaneous account dated 16 December 2022, she stated:

‘Dr Johnson purposely poured his beer down my chest and proceeded to clean it up using his mouth. I did not react to this as fast as I would have done, if I was sober. I did not realise

what was happening as it did not last long. I only realised after it had happened when Ms D quickly appeared and shouted “what the fuck are you doing” directed at Dr Johnson’.

In her interview with the Trust on 16 January 2023, Ms A maintained that she was:

‘standing at the top of the stairs in the foyer...it was a full glass of beer and he [Dr Johnson] tipped it first jokingly. Then the second time he actually did it, and it actually fell onto me. It happened so quickly and I looked down and his face was down here on my chest. Ms D came up to us and said “what are you doing”..’

60. In her GMC statement Ms A stated:

‘Dr Johnson purposely poured his beer down my dress onto my chest at the party and then proceeded to clean it up using his mouth. Before this happened, I had gone upstairs to find a toilet as I couldn’t find the toilets downstairs, so I was stood at the top of the stairs in the foyer. I remember taking a photo with someone just before Dr Johnson approached me, but I cannot remember who this was with. I think I was on my phone at the time, and Dr Johnson approached me holding a beer. He was very unsteady on his feet, and I said to him something along the lines of: “Be careful, you’re going to spill that.” I think he then made a joke about spilling it, and I said: “Don’t do that.” He then tipped a bit of the drink onto my cleavage area of my chest. I can confirm that Dr Johnson had a full glass of beer, but he only spilt a small amount of it on my dress. It was enough to feel it and make my dress damp, but not enough to ruin my outfit, or for me to have to change my outfit. I know that this was an intentional spill, not an accidental spill, because he was bringing the beer closer to me before he did this, and was tipping it to the side over my chest area. His eyebrows were raised as if he were saying: “Ooo I’m going to do it”, and this made me think it was intentional. There was no one near us that could have jolted him and made him spill it. I remember looking down at where he had spilt the drink, and then I saw him move his head towards my chest area, and he licked my chest. His tongue made contact with my skin on the cleavage area of my chest. This contact lasted between two to four seconds. I didn’t say or do anything when he did this, because I was under the influence of alcohol at the time and my reaction time was very delayed, and I didn’t initially realise what he was doing. I don’t remember him saying anything before, during or after when he did this. Ms D then came over and said: “Mark, what the fuck are you doing”. I think Dr Johnson then left, and Ms D asked me what was going on’.

61. In her oral account, Ms A confirmed that by the time of this incident, she had continued to drink alcohol. In cross examination she was asked what was meant by her

statement '*didn't last long and that she had only reacted after it happened.*' Ms A clarified that she had not noticed what had happened until Ms D had shouted. When asked if she could feel the sensation of being 'licked', Ms A's response was '*not as far as I can remember*' and she further stated that she did not think her eyes were closed. She was further challenged on how she could give a detailed account within her GMC statement when she also stated that she had not realised what had happened until after the event, nor could she remember the actual sensation of being licked. Ms A stated that she wrote down what had happened at the time and could not comment on it now as she couldn't remember.

62. Ms D's most contemporaneous record was her interview with the Trust dated 19 January 2023. She stated that:

*'I didn't see the drink being poured but I saw [Dr Johnson] in the [XXX] with his head on her chest. Ms A was awkwardly laughing. I thought it was just him being Mark'. Ms D confirmed this in her GMC statement and stated '*I walked into the [XXX], and Dr Johnson and Ms A were standing together, and Dr Johnson had his head on Ms A's chest. I cannot recall whether this was over her clothes or touching her skin. His head was making physical contact with her chest. Ms A was laughing uncomfortably saying "Mark, get off". I said "Oi oi" as I thought that they were messing around, but it was awkward and I didn't feel comfortable with it, but I thought it was just Dr Johnson being Dr Johnson, and I didn't think there was any intention behind it at the time. When I walked in, Dr Johnson took his head off Ms A's chest. I think he had his head on her chest for around five seconds. He seemed quite intoxicated. He seemed to be joking around with her and he looked like he was being a bit creepy with her and that she was trying to play it off as a joke, and I thought this was sleazy, but I cannot remember exactly what happened'*.*

63. In her oral account Ms D explained that she didn't mention this to the Trust in her initial account as it didn't directly involve her, as opposed to the vaping incident, where Dr Johnson had directly interacted with her. She maintained that Dr Johnson's head had made physical contact with Ms A's chest and that Ms A was laughing uncomfortably and had said '*Mark get off*'. Ms D readily accepted that the passage of time and consumption of alcohol had had an effect on her but she could clearly remember what she saw, just not the 'ins and outs' of what was said. She further maintained that she said '*oi oi*' as she initially had thought it was '*joking*' and nothing was meant by it, although she qualified it to say that it was still inappropriate and '*not something you do*'. Ms D refuted the suggestion that Dr Johnson had not at any stage put his head on Ms A's chest. The Tribunal considered Ms D to be credible, clear and consistent in her accounts and thought it was to her credit that she readily

accepted aspects of the conversation that she could not clearly remember due to having drunk alcohol.

64. The Tribunal considered Dr Johnson's account. Dr Johnson maintained his flat denial of such an incident. In his Trust interview dated 24 February 2023, he stated:

'I don't remember pouring or spilling my drink. That did not happen to my best recollection'.

Within his GMC statement he stated:

'I am sure that I did not pour my drink on Ms A or put my head on or near her chest at any time during the party.'

In his statement of case, he maintained, *'I just don't think this happened'* and in his Trust hearing he confirmed that he thought that this was a malicious allegation against him. He further maintained his denial within his oral evidence.

65. The Tribunal also noted that Dr Johnson had confirmed that whilst he initially drank a Gin and Tonic before the party, and then prosecco as a welcome drink, he had then been drinking white wine at the table, but had thereafter moved onto drinking beer, consuming 6 pints of it during the evening. It also considered that one possibility was that Dr Johnson's memory about this incident may have been affected, due to being under the influence of alcohol.

66. Having assessed all the evidence before it, the Tribunal discounted the likelihood of there being an established malicious motive on part of Ms A to fabricate such an allegation against Dr Johnson. It also considered that there was no evidence before it from which it could conclude that Ms A had been influenced by other colleagues to fabricate such an allegation. Ms D had given clear evidence that she had not spoken to Ms A about the index events. It considered the cross examination of Ms A at length. Ms A had been honest and candid with the Tribunal in as far as her recollection allowed. It noted that in her most contemporaneous account she had clearly stated that Dr Johnson had purposefully poured his beer down her dress and onto her chest and proceeded to clean it up using his mouth. She had stated that she had not reacted as fast as she would have done, had she been sober. She had articulated not realising straight away what had happened, particularly as she had said that it was quick, and that it was only due to Ms D's intervention that she realised what was occurring. Ms A's oral account had been consistent with this. The Tribunal considered that it was plausible and understandable that a person who had been affected by alcohol,

would have taken some time to process an event and any sensations that had happened ‘quickly’. There had been a passage of time since the index events. It considered that it was reasonable that there may now be some impact on memory. Nonetheless, it considered that Ms A’s earlier accounts to the Trust were consistent with her later accounts to the GMC and her oral evidence. It considered Ms A’s account plausible that whilst she had not felt the sensation of being licked instantly, or as it occurred, she had realised what had occurred soon after, and on Ms D’s intervention. Ms D was clear in her oral account that she had heard Ms A ask Dr Johnson to ‘get off’ and Ms D too had intervened to question what Dr Johnson was doing. It considered both Ms A and Ms D’s accounts to be cogent, clear and consistent and supportive of the core allegation. The Tribunal further considered that Ms A had not used the word ‘licked’ in her initial accounts, but rather that Dr Johnson had used *‘his mouth to clean up the drink’*. It considered that the corroborating evidence of Ms D regarding Dr Johnson’s head on Ms A’s chest, led to a strong inference that Dr Johnson’s head had been there to clean up the drink with his mouth and by licking her chest area, the drink that he had purposely poured on her.

67. Accordingly, the Tribunal found paragraph 5 in its entirety to be proved.

Paragraph 7 (a) and 7 (b) as it related to paragraph 5 of the allegation

68. The Tribunal considered that the proven conduct as described in paragraph 5 was inherently sexual. Dr Johnson’s evidence was that he had spent 50% of the evening in the company of Ms A. It further considered that Dr Johnson had been drinking since before arriving at the party. It noted that this incident occurred at a point after 22:51, when Ms A had sent Ms J the text message. Dr Johnson was increasingly impacted by alcohol as time went on and this was not in dispute. It considered that Dr Johnson was likely to have been disinhibited by alcohol. Ms A had described him as staggering and unsteady on his feet, and Ms D had also commented that he *‘seemed quite intoxicated.’* However, it considered that there was no plausible alternative innocent explanation for Dr Johnson intentionally tipping his drink onto Ms A’s chest area, moving his head close to her chest and licking the drink off to clean it up. It considered that such conduct was more likely than not for Dr Johnson’s own sexual gratification.

69. The Tribunal further considered that in her evidence to the Trust, Ms A stated that it was *‘too far’*, *‘things overstepped the line’* and *‘it was a little bit too much’*. She stated in her GMC statement and in her oral evidence that she had not propositioned Dr Johnson for sex and that even if she had, that did not *‘automatically allow consent’* or the *‘right’* to be

touched. Ms D's evidence was that she had heard Ms A state, '*Mark get off*' and that she had been 'laughing uncomfortably'. In her statement, Ms A stated that she spent time with Dr Johnson at the party because she did not want to make a scene. Further that he was just being silly and although it was uncomfortable, she was under the influence of alcohol at the time and knew '*she would get over it*'. In her oral evidence she stated that whilst the contact was fleeting, it was uncomfortable, '*even more so than others*' and did not agree with the suggestion that it was 'a fairly insignificant' incident. The Tribunal considered that whilst Ms A had not used the exact words as per the Equality Act to describe the effect on her, it considered that the description that she had given as above of how she felt at the time and had sought to minimise the impact on her, due to fear of not being believed and not creating a scene, demonstrated the uncomfortableness that she experienced was tantamount to her dignity being violated by Dr Johnson's physical conduct towards her. It was unwanted conduct and Dr Johnson putting his head close to her chest after purposefully pouring beer on her, and then proceeding to clean it up by his mouth by licking her chest area was conduct of a sexual nature. The Tribunal further considered it reasonable for Dr Johnson's conduct to have affected Ms A in this way. It determined that such conduct did constitute sexual harassment as defined by s26(2) of the Equalities Act 2010.

70. It therefore found both paragraphs 7 (a) and 7 (b) as it related to the entirety of paragraph 5 of the Allegation, proved.

Paragraph 11 as it related to paragraph 5 of the Allegation

71. The Tribunal bore in mind the conduct as found proved, further that a sexual motivation had been found proved in respect of paragraph 5. Ms A stated:

'I didn't want to report it initially because it worried me that I was under the influence of alcohol when these incidents happened, and he is a consultant, and I am a [XXX]. I have never been involved in anything like this before and I thought that it was going to be stressful if I reported it and I wanted a peaceful workplace. What happened was not consensual, but I was initially going to go back to work and act like nothing had happened, but when everyone who had seen things that had happened at the party were talking about it, I felt like I had to report it.'

72. The Tribunal also had regard to Ms F's account that she had limited her alcohol intake as she had recently been appointed to a senior position and wanted to make a good impression on staff and get to know her colleagues. It considered Dr Johnson's conduct to be

in stark contrast. It further considered that despite their established friendship; an imbalance of power did exist between Dr Johnson and Ms A, due to the hierarchy that existed; Ms A being a XXX and Dr Johnson being a consultant, both working within the same department of the Trust. This had already had an impact on Ms A's consideration on whether to report the matter or not. It considered Ms A's evidence that she had initially said to Dr Johnson '*Don't do that*' when he jokingly made out that he was going to pour the beer on her, yet he had carried on. It also considered Ms D's earlier evidence that she felt '*comfortable enough*' to say '*no*' to Dr Johnson as she no longer worked at the Trust. She agreed that it was hard to argue back because of Dr Johnson's position, and that she could '*completely understand how Ms A felt*'.

73. The Tribunal considered that acting in a sexually motivated way, whilst at a work Christmas party, towards a junior member of staff, was an abuse of Dr Johnson's more senior position. It therefore determined paragraph 11 as it related to paragraph 5 of the Allegation proved.

Paragraph 6

74. The Tribunal considered Ms A's most contemporaneous account (16 December 2022). She stated

'Towards the end of the night, I remember sitting down on a chair outside with my eyes closed and my head resting on my right hand. I know I was outside with Ms B and Dr Johnson... Whilst my eyes were closed, I felt someone prodding my chest (specifically my breast) which was then when I heard Ms B telling Mark to stop. I then felt the prodding again to which Ms B warned him off a second time.' Ms A further stated, *'Although I cannot remember exactly what was said during these incidents (including what I myself said) and being under the influence of alcohol, I can recall these incidents happening. Again, as I was quite drunk, I probably did not react as fast as I would have done if I was sober.'*

75. In her interview with the Trust on 20 January 2023, Ms A accepted that she had '*quite a lot to drink*.' She further stated that she felt '*a hand prodding her breast*' and that was when she heard Ms B say something like "*Mark stop it*" and that Dr Johnson has said "*she won't mind*'. Ms A further confirmed that Dr Johnson '*did it again*' and Ms B smacked his hand away. Ms A detailed that what she felt was '*a prod with a middle and ring finger*'. Further that it was definitely on her breast.

76. The Tribunal considered Ms B, most contemporaneous account. In her undated statement to the Trust she stated that

'Ms A had sat in a chair and looked like she had fallen asleep.....[Dr Johnson] came over. After a few minutes he leaned over Ms A and started stroking her cleavage area.' Ms B stated that she then said 'something like "stop it that's disgusting" whilst I was saying that I pushed his arm away. He then said, "She won't mind" as he said that he leaned in and did it again. I again repeated what I said and pushed his arm away again.'

77. In oral evidence, Ms B confirmed that she had consumed a bottle of wine over the course of the evening but was not 'feeling drunk' and was fully aware of what was occurring.

78. The Tribunal noted that in her Trust interview which took place on 20 January 2023, Ms B stated that:

'I was trying to remember, I know she had a jacket on. I can't remember if her jacket was completely closed or whether it was partly open. I am not 100% sure on that situation, was obviously looking at her and then he just sort of leaned in as if to go and wake up her up but rather as you would do, rub somebody on the arm he sort of leaned towards her sort of chest area. As I say I am not sure whether her coat, whether it was on flesh or just on to her jacket. I am trying to remember if I did at that point push his arm away, I can't remember exactly but I know I spoke cos I told him either 'stop' or 'don't do that' and that is when he replied, 'oh she won't mind' and lent back in to do the same.'

Ms B further agreed that it was '*a kind of palm*' towards Ms A. In her evidence to the Trust hearing in July 2023, she stated that she wrote her statement because the events had been on her conscience and after she had spoken to her husband about it. She said that '*Mark tried to wake Ms A by touching her chest*' and confirmed that this was her 'cleavage area'.

79. The Tribunal noted that Ms B's evidence in her GMC statement was inconsistent in part with her initial evidence. In her GMC statement that was made later in time, dated 11 July 2024, Ms B stated that Dr Johnson

'leaned on towards her with 'the open palm of his hand to wake her up, but I can't remember which hand he did that with. He then touched her cleavage area in between her breasts for a few seconds'.

Further that '*this area was exposed as she was wearing a jacket, but this didn't cover her cleavage area, so he touched her bare skin*'. Ms B referred to a second time that Dr Johnson leaned in towards Ms A but stated that she could not remember whether he '*made contact*' this time.

80. The Tribunal also noted that in her oral evidence, Ms B could not explain the inconsistency in her accounts as to whether Dr Johnson has stroked her or touched her cleavage with his open palm and further whether it was over her clothing or Ms A's bare skin. Ms B demonstrated to the Tribunal that Dr Johnson had touched Ms A with his open palm, his hand held vertically with his fingers pointing upwards. It also noted that Ms B had stated that Ms A had been wearing a XXX dress that night whilst Dr Johnson stated that it was XXX. The Tribunal had seen a photo of Ms A from the Christmas party, but it was not determinative, in its view of what colour her dress had been – she herself had not been asked to confirm the colour of her dress in evidence. The Tribunal also considered Ms B' account that she had not spoken to Ms A about the incident after it happened whilst she was in the car with Ms A and Ms N who was driving. It considered it plausible that Ms B wanted to discuss it with her husband, XXX, before she decided on the next steps.

81. The Tribunal considered that Dr Johnson denied such an event taking place. His account in the Trust interview in February 2023 had been that he had been chatting with Ms F on the dance floor and had then gone with her to the cloakroom to retrieve her coat; he had been carrying Ms F's cloakroom slip and her bank card. He stated that they then '*walked upstairs and out of the venue*'. Dr Johnson denied being alone with Ms A at this time nor having any physical contact with her. He stated that there were venue door staff around as well as other work colleagues. He detailed in his GMC statement that as he left with Ms F, he saw Ms A and Ms B and that Ms A initially had her eyes closed. He maintained the same in oral evidence and that he and Ms F had a discussion with Ms A and Ms B about the party, wished them a good weekend and that they would see each other at work the next week.

82. The Tribunal considered Ms F's oral evidence corroborated the sequence of events given by Dr Johnson. She commented on how she had questioned Dr Johnson still holding on to his beer glass at the end of the party outside and told the Tribunal that she had stayed with Dr Johnson since the time when she had retrieved her coat from the cloakroom to the time they left the venue. The Tribunal considered Ms F's broader evidence. Ms F did not remember Ms C or the conversation that Ms C had had with Dr Johnson about 'bow ties'. Ms F also denied any recollection of being walked to her car at a previous point in time and being told by Dr Johnson that he liked her 'boobs', something Dr Johnson had admitted doing in his

earlier texts to Ms A. It also considered that she had been adamant in her account that Dr Johnson was not ‘drunk’ or affected by alcohol in any way, throughout the course of the evening. This was something other witnesses had commented on, and had considered Dr Johnson to be affected by alcohol, which he himself had not denied. Whilst it noted that Ms F had not spent the earlier part of the party with Dr Johnson, it considered that she would have noticed Dr Johnson being affected by alcohol, particularly towards the end of the party, and more so having seen him taking his beer glass outside the venue with him. It considered that there was an element of Ms F wanting to ‘protect’ Dr Johnson who she considered to be her friend.

83. Both Ms A and Ms B’s oral account had been that Ms F had not been present at the time of the incident. Ms A stated that she had opened her eyes after hearing Ms B tell Dr Johnson to stop. That Ms F has been present ‘more at the entrance and later came to get him [Dr Johnson]’. Ms B evidence was similar. She stated that at the time in question, it had been just her, Ms A and Dr Johnson present. She said that there were others in the vicinity, but they were further away and that they were ‘facing away’ from them. Ms B also confirmed that Ms F had not been there initially.

84. Ms B stated that she had not spoken to Ms A about the incident immediately after it occurred. She did however raise the concern about what she had witnessed, to Ms N, in the car journey home, once Ms A had been dropped off. This conversation was supported by Ms N in her oral evidence.

85. Whilst it considered that Ms B did not have a complete recall of the night, nor of details in respect of Ms A’s jacket and dress positioning or Dr Johnson’s hand placement, it considered that Ms B did clearly remember the core allegation that Dr Johnson had touched her in her chest area. Ms A, in her oral evidence had stated that whilst her eyes were closed, her other senses were heightened. She accepted that she had been reliant on what Ms B had told her at a later point but also relied on what she had felt. She recalled hearing Ms B stating, ‘*Don’t do that*’ and Dr Johnson responding with ‘*She won’t mind*’. Ms A further accepted that the touch was a ‘prod’ rather than a ‘cupping’ or a ‘groping’ and that there were no associated sexualised comments. However, in answer to whether there were any inappropriate sexual comments suggestive of a sexual motivation, Ms A stated, ‘*just the comment – “she won’t mind”*’.

86. The Tribunal considered the entirety of the evidence and considered that on balance; it preferred the account of Ms B and the description given by Ms A. It considered Ms N’s

account of Ms B raising her concern soon after, in the car, to be corroborative and supportive. On balance, it considered it more likely than not, that whilst Ms A was seated outside with her eyes closed, Dr Johnson touched Ms A's chest area on at least one occasion. Further that he said '*she won't mind*' or words to that effect when told to stop by Ms B. It therefore found paragraph 6 in its entirety proven as a fact.

Paragraphs 7 (a) and 7 (b) as it related to paragraph 6 of the Allegation

87. The Tribunal considered that touching of the chest area could establish a sexual motivation. However, it examined the known facts available to it. Dr Johnson denied this allegation in its entirety. It was not disputed that both Ms A and Dr Johnson had been drinking throughout the course of the evening since before arriving at the party. It considered that memories had been impacted, and any comments made, or actions taken were likely to have been influenced by the amount of alcohol consumed. Ms B had also been drinking, and whilst she had considered her recollection to be clear, there had been some inconsistencies in her account. The Tribunal considered that it was also not disputed that Dr Johnson had been trying to 'wake up' Ms A who had sat with her eyes closed and resting her head in her hand. It considered that Dr Johnson 'prodding' Ms A, in her chest area, on top of her clothing, could be an attempt on his part to wake Ms A. It also considered that the words 'She won't mind' could be Dr Johnson telling Ms B that Ms A wouldn't mind being woken up, as opposed to not minding her chest area being touched in a sexually motivated manner. The Tribunal considered that such an action could be a 'clumsy' attempt to wake Ms A and could be devoid of any sexual motivation, such as sexual gratification.

88. The Tribunal evaluated all the evidence, including the potential propensity of Dr Johnson's actions to be sexually motivated, in line with his earlier proven conduct. However, it considered it improbable that Dr Johnson would touch a colleague sexually, even someone he was friends with, in front of other colleagues and venue staff, and then would do this by 'prodding' her in her chest area.

89. The Tribunal could not safely discount the possibility that his actions were a clumsy attempt to wake Ms A, as less than probable, in light of the full circumstances before it. It therefore considered that the burden on the GMC to prove such conduct as sexually motivated conduct had not been discharged. Paragraph 7(a) as it related to paragraph 6 of the Allegation was not proved.

90. In her statement to the GMC, Ms A stated that the following week, Ms B had asked her if she was 'ok'. She stated that this was because Ms B had witnessed the incident of Dr Johnson prodding her chest. Ms A further stated that she cannot remember who else asked her about this. Further that this was enough to make her think that she needed to report this. In her oral evidence, in reference to this incident, Ms A stated that she wanted to forget about it. She also stated that until the meeting with Ms F later that day, she did not have any intention of reporting it. Ms A also conceded in her oral evidence, that she had categorised Dr Johnson's actions as 'silly', and not the most serious until other people had referred to it as an 'assault'. Ms A also consistently maintained that she did not consider Dr Johnson's actions to be malicious. Later in her oral evidence, Ms A referred to the physical touching 'outside' as assault. Whilst the Tribunal considered that regardless of Dr Johnson's intentions, sexual harassment could be found on the 'effect' the events had on Ms A, it considered that there was insufficient evidence before it from Ms A, in respect of the effect on her at the time, of the conduct found proved on Dr Johnson's part, such that it could come within the Equality Act 2010.

91. It therefore found paragraph 7(b) as it related to the entirety of paragraph 6 of the Allegation not proved.

Paragraph 11 as it related to paragraph 6 of the Allegation

92. In consideration of the evidence, specifically in respect of the conduct found proved at paragraph 6, the Tribunal could not discount that Dr Johnson's actions were a clumsy attempt to wake Ms A, and that his words '*she won't mind*' were in respect of Ms A not minding being woken up as opposed to being touched in her chest. It had not found a sexual motivation to Dr Johnson's actions. Overall, it considered that his actions at this time were not linked to his more senior position and accordingly could not establish were an abuse of his position in this context. It therefore found this paragraph of the Allegation as it related to paragraph 6, not proved.

Paragraph 10 (a) as it related to paragraph 8 of the Allegation.

93. The Tribunal noted Dr Johnson admitted paragraph 8 in full.

94. The Tribunal considered Dr Johnson's evidence. He had admitted leaning in close to Ms C's ear and making the comment alleged. In his undated statement of case, he stated that he was surprised at Ms C's request asking him for his bow tie as he did not know her

particularly well. He said that she seemed quite cheerful and that he ought to have set a clear boundary by saying no, but with the ‘merriment’ of the moment, the comment he made was a way to discourage Ms C from removing his bow tie. He said that his guard was down. He stated that he did explain to Ms C that he did not want her to lose it and that he would retrieve it towards the end of the evening. He referred to Ms C as cheerful at the point when she obtained the bow tie and on retrieving it appeared ‘merry’. In his oral evidence, Dr Johnson explained that he *‘was throwing the comment back at her with the same joviality.’* Further that he commented about something that was so unlikely to happen, that it would act as a deterrent to her, taking his bow tie.

95. In his interview to the Trust, Dr Johnson stated that Ms C asked if she could remove the bow tie, she didn’t know how to, and he had shown her. Whilst in his GMC statement he stated that Ms C had reached up and pulled at the end of it nearest to her. That it had come partially undone. Despite this discrepancy, Dr Johnson explained that his recollection was that he had been alone walking across the room when Ms C had approached him. Ms C had touched the bow tie whilst asking if it was real and had tried to remove it.

96. In his oral evidence, Dr Johnson further explained that he leant in and whispered close to Ms C’s ear due to the noise of the Christmas party. He denied that he had leaned in, in order to make his comment sound more risqué. Ms F had separately confirmed in her evidence that the band had been playing after dinner. The Tribunal noted Dr Johnson’s evidence that he had let his guard down and his conduct had been ill-judged, and inappropriate. Whilst it noted Dr Johnson’s concession that his comment had been ‘banter’ and inappropriate and ill-judged, the Tribunal considered that the comment was sexual innuendo. However, it accepted Dr Johnson’s account that he had made a comment about something ‘unlikely’, he didn’t know Ms C well at all, and had done so, in keeping with the jovial nature of the setting and in order to dissuade Ms C from taking his bow tie. In light of the evidence, it considered that neither an intention to pursue a future sexual relationship with Ms C, nor sexual gratification could be established from his comment. Therefore paragraph 10 (a) , as it related to the entirety of paragraph 8 was not proved.

Paragraph 11 as it related to paragraph 8 of the Allegation

97. In considering whether Dr Johnson’s conduct in leaning in and making the comment to Ms C, was an abuse of his senior position, the Tribunal considered that it was more likely than not the Dr Johnson’s ill-judged and inappropriate comment, by his own account, was in effect to dissuade Ms C from taking his bow tie. It did not consider that there was any causal

link between his seniority and his comment. It accepted his account that he should have put boundaries in place and had just said ‘no’ to the request rather than trying to mirror the jovial and playful setting. It had also considered that whilst Ms C had felt junior to Dr Johnson, she was not line managed by him and considered that the evidence showed that she was able to make a comment, in his presence, about Dr Johnson’s purported ability to judge the bra size of a breast on a slab, something which she had considered to be inappropriate. Overall, considering these aspects of the evidence, the Tribunal did not find Dr Johnson’s conduct at paragraph 8 to be an abuse of his more senior position and found this paragraph, 11, as it related to paragraph 8, not proved.

Paragraph 9

98. In her oral evidence, Ms C indicated that she had had a ‘medium’ amount to drink and was able to *‘converse, walk, discuss things with people’* and was *‘not incapacitated’*. Having been taken to her most contemporaneous recording which included a note that she had had a ‘lot’ to drink, she accepted that and indicated that whilst she had consumed a lot, that did not mean that she didn’t remember what happened. However, she also accepted that some of her memory would be affected by the consumption of alcohol but also due to the passage of time.

99. Ms C’s most contemporaneous accounts referred to Dr Johnson *‘commented on my breasts later in the evening saying that I had nice boobs...’*, and in her interview with the Trust, dated 30 January 2023, she stated *‘I was outside sitting with some girls, MJ [Dr Johnson] came over and started talking to people and at some point he made a comment about my breasts, saying I had nice boobs’*. In her oral evidence however, she clarified that a colleague had posed the question to Dr Johnson, ‘Doesn’t she have nice boobs, in reference to her [Ms C] and in response, Dr Johnson said, ‘yes she does.’ She further explained that the inaccuracy of the earlier recordings was not deliberate.

100. In her GMC statement dated 11 July 2024, Ms C stated that she could not remember how the conversation initially came about, however everyone at the table were talking about breast sizes. Further, Dr Johnson was not party to this conversation prior to him approaching the table. As he did, Ms C ‘said something along the lines of “Mark is able to tell a bra size from a slab”. She confirmed that thereafter a colleague posed the question, unsolicited to Dr Johnson, who had responded.

101. In answer to Tribunal questions, Ms C confirmed that making the comment about Dr Johnson's purported ability to judge bra sized from breasts on a slab, was not a 'warning' to others, but her contribution to the conversation about 'breasts' that was ongoing.

102. In Dr Johnson's most contemporaneous account which is the Trust interview of 24 February 2023 and his undated statement of case, he stated that when he went to retrieve the bow tie, he noticed that the bow tie was around Ms C's neck towards her chest, and he wondered how to retrieve it. He stated that he didn't know Ms C that well and he felt uncomfortable. He stated that he made a joke to lighten the mood and said that something had reminded him of Ms C's husband's XXX. He had accepted that this was a '*bad joke*'. In his GMC statement dated 29 August 2025 he referred to being asked a question at that time, as to whether Ms C had nice breasts. He stated that this had put him on the 'spot' and he did not think that he said 'yes' or 'no' but had deflected the question and the need to answer. He said that he sought to switch the conversation into appropriate territory then by asking C how her husband was. The Tribunal noted however that the 'joke' he made in respect of 'something reminding' him of C's husband's XXX, was nevertheless a reference to XXX. Dr Johnson maintained this account in his oral evidence, i.e that he didn't answer the question posed to him and made a joke instead. He further accepted that his joke was in poor taste, and he regretted making it.

103. The Tribunal also noted that Ms C had subsequently corrected an answer that she had given to the Trust's internal hearing Tribunal. This was however in relation to the order of events. She also could not recall Dr Johnson making the joke, i.e that something was reminding him of Ms C's husband's XXX. Ms C could only remember that Dr Johnson had asked after her husband. Nevertheless, she maintained that Dr Johnson did respond with 'yes she does', to the question posed to him. She said she was 'confused' as Dr Johnson had commented on her breasts and straight away moved the conversation to ask after her husband. The Tribunal considered that Dr Johnson had been drinking, and had a propensity to make inappropriate remarks, as demonstrated by his admission in respect of the 'bow tie' comment and also his own evidence about the joke he made which was in poor taste. It considered on balance that it was more likely than not, that Dr Johnson had responded to the question posed to him, and stated 'Yes she does', when put on the spot.

104. The Tribunal had however already determined that even if this paragraph of the Allegation was proved as a fact, there was insufficient evidence before it for such conduct to be sexually motivated or constitute sexual harassment or an abuse of Dr Johnson's more

senior position. Whilst it had found paragraph 9 proved as fact, it considered that paragraphs 10 (a), 10(b) and 11 as it related to paragraph 9 was not proved.

The Tribunal's Overall Determination on the Facts

105.The Tribunal has determined the facts as follows:

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

1. Between 6 November 2018 and 15 November 2019, on one or more occasion, you sent inappropriate messages to a junior colleague Ms A as set out in Schedule 1, that included inappropriate comments about other colleagues, some of which were:

- a. derogatory;

Admitted and found proved

- b. sexually demeaning.

Admitted and found proved

Work's Christmas Party on XXX 2022

Ms A

2. On XXX 2022, you attended a Christmas party, organised by your employer at the time.

Admitted and found proved

3. During a conversation with Ms A near the dinner table, you moved your hand up and down Ms A's spine:

- a. as far up as the middle of her back;

Admitted and found proved

- b. as far down as her coccyx.

Not proved

4. Whilst Ms A was vaping outside the venue you:

- a. stood so close to her that your face was approximately 5cm away from Ms A's face;

Admitted and found proved

- b. and:

- i. you inhaled Ms A's smoke from her vape and blew it back in her face;

Admitted and found proved

- ii. your lips touched Ms A's lips.

Determined and found proved

5. In the foyer area of the venue you:

- a. intentionally tipped some of your drink onto Ms A's cleavage and/or chest;

Determined and found proved

- b. moved your head close to Ms A's cleavage and/ or chest;

Determined and found proved

- c. licked Ms A's cleavage and/or chest.

Determined and found proved

6. Whilst Ms A was seated outside the venue, with her eyes closed, you:

- a. touched Ms A's breast and/or chest and/or cleavage on one or more occasion; **Determined and found proved**

- b. said 'she won't mind', or words to that effect when told to stop, or words to that effect, by Ms B.

Determined and found proved

7. Your conduct as described at paragraphs 3-6:

- a. was sexually motivated;

Not proved in relation to paragraph 3,4,6

Determined and found proved in relation to paragraph 5

- b. 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.

Not proved in relation to paragraph 3,4,6

Determined and found proved in relation to paragraph 5

Ms C

8. During a conversation with a junior colleague Ms C, in which she asked if she could have your bow tie, you:

- a. leaned in close to her ear;

Admitted and found proved

- b. said 'you can have it but only if you take it off with your teeth', or words to that effect.

Admitted and found proved

9. During a second conversation with Ms C, you said 'yes, she does', or words to that effect to a question about whether Ms C has nice breasts, or words to that effect.

Determined and found proved

10. Your conduct as described at paragraphs 8-9:

- b. was sexually motivated;

Deleted in relation to paragraph 9 following a successful 17(2)(g) application

Not proved in relation to paragraph 8

b. 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 C, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms C.

Deleted in relation to paragraph 8, 9 following a successful 17(2)(g) application

11. Your conduct as described at paragraphs 1, 3, 4, 5, 6, 8 and 9 was an abuse of your more senior position.

Admitted and found proved in relation to paragraph 1

Deleted in relation to paragraph 9 following a successful 17(2)(g) application

Not proved in relation to paragraph 3,4 ,6, 8

Determined and found proved in relation to paragraph 5

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 - 03/11/2025

106. 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 Johnson's fitness to practise is impaired by reason of misconduct.

The Evidence

107. 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.

108. Dr Johnson provided a range of additional evidence for the impairment stage. This includes certificates and materials from several courses on professional boundaries, insight and remediation, and values in practice, all completed between January 2024 and July 2025. He has also completed a short course on social media use for doctors and submitted records of his continuing professional development.

109. He has provided a report from Ms Q, an NHS Leadership Academy coach, confirming that they held six coaching sessions between September 2024 and March 2025. These sessions focused on communication, professional relationships, reflection, and managing stress.

110. Dr Johnson has submitted multi-source feedback from colleagues dated November 2024, showing positive ratings and comments about his professionalism, communication, and teamwork. His annual appraisal for 2024–2025, completed in July 2025, confirms that he has completed his personal development plan and engaged in reflective and professional learning activities.

111. He has also provided reflective log entries from November 2023 to September 2025, describing how he applies learning about boundaries and professionalism in his daily work. He has also provided a written reflection completed in December 2024, feedback from teaching sessions, and correspondence from colleagues.

Submissions

112. On behalf of the GMC, Ms Fordham reminded the Tribunal that, as set out in *Roylance v General Medical Council (No 2) [2000] 1 AC 311*, misconduct means behaviour that falls short of what would be proper in the circumstances. She referred to *Meadow v General Medical Council* [2007] QB 462, which confirms that when assessing a doctor's current fitness to practise, the Tribunal must consider how the doctor has acted in the past. Ms Fordham also referred to *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), where it was held that serious misconduct is behaviour that would be regarded as deplorable by fellow practitioners.

113. Ms Fordham submitted that the GMC relies upon the findings of fact made by the Tribunal, and that those findings, taken both individually and cumulatively, amount to serious misconduct. She referred the Tribunal to its findings regarding Dr Johnson's conduct at the Christmas party, including the physical contact with an intoxicated colleague and his participation in the "vaping game". She submitted that such behaviour, whether or not sexually motivated, would be considered deplorable by fellow practitioners and represents a serious departure from the standards expected of a registered medical practitioner.

114. Ms Fordham drew the Tribunal's attention to the relevant paragraphs of *Good Medical Practice* ('GMP') (2013), namely paragraph 36, which reads,

36 You must treat colleagues fairly and with respect

Ms Fordham submitted that the Dr Johnson's conduct, as found proved, was plainly inconsistent with that obligation. She noted that while the current 2024 edition of *GMP* includes more explicit reference to not acting in a sexual way towards colleagues where that behaviour could cause offence, embarrassment or distress, those standards were nonetheless implicit and well understood by the profession at the time of the events.

115. Ms Fordham also referred to the GMC's later guidance, *Maintaining Personal and Professional Boundaries* (January 2024), which she submitted does not introduce new concepts but codifies expectations that were already well established. That document, at paragraph 23, provides examples of unacceptable sexual or boundary-crossing behaviours including, but not limited to, sexual or sexist comments, jokes, innuendo, unwanted touching, and excessive or unwelcome comments about appearance. She submitted that these examples closely reflect the conduct found proved in this case.

116. Turning to the question of current impairment, Ms Fordham reminded the Tribunal of the guidance in *Grant* [2011] EWHC 927 (Admin), in which Mrs Justice Cox emphasised that impairment may arise where a doctor's behaviour has brought the profession into disrepute, breached one of its fundamental tenets, or demonstrated that the doctor's integrity cannot be relied upon. Ms Fordham referred to the guidance on the approach to be taken as provided by Dame Janet Smith in the Fifth Shipman Report, as referred to in the case of *CHRE v NMC & Grant* [2011] EWHC 927 (Admin), which states:

"Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/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."*

117. In assessing the Dr Johnson's current fitness to practise, Ms Fordham accepted that the Tribunal has before it evidence of reflection, remediation and professional development. She referred to the additional material provided by Dr Johnson, including attendance on professional boundaries and insight courses, engagement in coaching, and positive feedback from colleagues. However, she submitted that the Tribunal would wish to note the chronology of these activities. The first boundaries course was undertaken in January 2024, some considerable time after the misconduct occurred and after the GMC investigation had commenced and the course on social media risks was not undertaken until March 2025. In her submission, while the evidence demonstrates some developing reflection, the timing suggests that insight has been relatively late in forming and remains at a developing stage. She noted that the Dr Johnson himself acknowledges in his own personal development plan that further work remains ongoing.

118. Ms Fordham submitted that, in relation to the more serious findings, particularly the physical contact with a colleague, there is limited evidence of insight given that Dr Johnson has not accepted that his actions were sexually motivated or amounted to harassment. While she did not invite the Tribunal to hold that position against him, she submitted that it necessarily limits the extent to which he can demonstrate full understanding of his motivations or the impact of his behaviour on those affected.

119. Accordingly, Ms Fordham submitted that Dr Johnson's conduct amounted to serious departures from the standards expected of the profession, in that it brought the profession into disrepute and breached a fundamental tenet requiring doctors to act with integrity and respect towards colleagues. It is therefore the GMC's submission that the Dr Johnson's fitness to practise is currently impaired. Such a finding, she submitted, is required both to reflect the ongoing need to protect the public and maintain confidence in the profession, and to uphold proper professional standards, in accordance with *Grant*.

120. On behalf of Dr Johnson, Mr Rawlinson submitted that Dr Johnson does not seek to contest the Tribunal's findings in respect of paragraphs 1 and 5 of the Allegation. He accepts that, taken together, those findings amount to serious misconduct. Mr Rawlinson submitted that this reflects the insight Dr Johnson has developed; he recognises the seriousness of those findings and does not seek to minimise or dispute them.

121. Mr Rawlinson noted that although Dr Johnson only formally admitted paragraph 1 of the Allegation, he accepts the Tribunal's findings on paragraph 5 of the Allegation. In light of

those findings, Mr Rawlinson made no positive submission that paragraph 5 amounts to anything other than misconduct as properly understood in law.

122. However, Mr Rawlinson submitted that the remaining matters paragraphs 4, 6, 8 and 9 of the Allegation must be viewed differently. He reminded the Tribunal that those allegations were neither found to be sexually motivated nor found to constitute harassment or an abuse of position. In those circumstances, he submitted, it is difficult to see how such behaviour, whether considered individually or cumulatively, could properly amount to *serious professional misconduct* as defined in *Royal v General Medical Council (No 2)* [2000] 1 AC 311 or as described in *Nandi v General Medical Council* [2004] EWHC 2317 (Admin). The conduct, while unwise or inappropriate, does not, in his submission, reach the threshold of behaviour that would be regarded as “deplorable” by fellow practitioners.

123. Accordingly, Mr Rawlinson submitted that Dr Johnson cannot properly be said to be impaired in respect of Allegations 4, 6, 8 and 9, since they do not amount to serious professional misconduct either as a matter of fact or of law. The central focus of this case, he submitted, has always been paragraph 1, and now, following the Tribunal’s findings, paragraph 5.

124. Turning to paragraph 1, Mr Rawlinson submitted that, but for the seriousness of the findings under paragraph 5, the Tribunal could properly have concluded that Dr Johnson’s fitness to practise is not currently impaired. He pointed to the passage of time since the events, the steps Dr Johnson has taken to reflect, remediate and learn from them, and the extensive evidence before the Tribunal showing his personal and professional development. He referred in particular to the reflective materials, professional boundaries courses, coaching records and feedback contained within the most recent bundle, which collectively demonstrate a thoughtful and sustained process of learning. He accepted that paragraph 1 amounts to misconduct but submitted that, given Dr Johnson’s insight and remediation, the Tribunal might reasonably find that his fitness to practise is no longer impaired in respect of that conduct.

125. In contrast, Mr Rawlinson accepted that paragraph 5 is of a qualitatively different nature. The Tribunal has found that it was sexually motivated, amounted to harassment, and represented an abuse of professional position. He accepted that, on those findings, the conduct is inherently serious and would ordinarily require to be marked by a finding of impairment in order to maintain public confidence and uphold professional standards. He submitted that this conclusion arises not from any lack of insight or remediation on Dr

Johnson's part given that the allegation was denied and could not have been the subject of reflective work prior to the Tribunal's findings, but rather from the inherent seriousness of the conduct itself.

126. Mr Rawlinson referred the Tribunal to the principles in *Sawati v General Medical Council* [2022] EWHC 2834 (Admin) and *Sayer v General Osteopathic Council* [2021] EWHC 3418 (Admin), both of which emphasise that a doctor who has maintained a rejected defence should not be treated as lacking insight merely because of that stance. In those circumstances, it would not be appropriate to criticise Dr Johnson for the absence of specific reflection on paragraph 5 prior to the Tribunal's findings.

127. Mr Rawlinson accepted that there is, at this stage, no evidence of developed insight or remediation in respect of paragraph 5, as given Dr Johnson's position before the Tribunal. Nevertheless, he acknowledged that the conduct as found proved is sufficiently serious that the Tribunal may consider a finding of current impairment appropriate, not because of any ongoing risk, but in order to uphold proper professional standards and maintain public confidence in the profession.

128. In summary, Mr Rawlinson submitted that Dr Johnson's fitness to practise is not currently impaired in respect of paragraphs 4, 6, 8 and 9, and that the Tribunal could properly find no current impairment in respect of paragraphs 1, given the evidence of remediation and reflection. In respect of paragraph 5, however on the Tribunal's findings, a finding of current impairment would be justified on public interest grounds.

The Relevant Legal Principles

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

130. 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 misconduct, and that the misconduct was serious and then whether the finding of that misconduct which was serious could lead to a finding of impairment.

131. The Tribunal must determine whether Dr Johnson's fitness to practise is impaired today, taking into account Dr Johnson's conduct at the time of the events and any relevant

factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

132. In relation to misconduct, the Tribunal was reminded of the case of *Remedy UK v GMC* [2010], which identified two principal categories of misconduct: (a) serious professional misconduct arising in the course of professional practice, and (b) conduct of a morally culpable or otherwise disgraceful kind occurring outside professional practice but which brings the profession into disrepute.

133. The Tribunal was also referred to *Roylance v GMC (No.2)* [2000] 1 AC 311, where misconduct was described as 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 is to be judged by reference to the rules and standards ordinarily expected of a medical practitioner.

134. The Tribunal was advised that “serious professional misconduct” should be given its ordinary meaning and has been described in *Nandi v GMC* [2004] EWHC 2317 (Admin) as conduct which would be regarded as “deplorable by fellow practitioners”. The Tribunal was reminded that, where guidance in GMP is relied upon, it must consider the edition in force at the material time, which in this case was the 2013 version.

135. The Tribunal was advised that there is no statutory definition of “impairment”. However, the test formulated by Dame Janet Smith in *CHRE v NMC and Grant* [2011] EWHC 927 (Admin) provides assistance. The Tribunal should consider whether its findings show that the doctor: (a) has in the past acted, or is liable in the future to act, so as to put a patient or patients at unwarranted risk of harm; (b) has in the past brought, or is liable in the future to bring, the medical profession into disrepute; (c) has in the past breached, or is liable in the future to breach, one of the fundamental tenets of the profession; and/or (d) has in the past acted dishonestly.

136. The Tribunal was advised that it must determine whether Dr Johnson’s fitness to practise is impaired today, taking account of his conduct at the time of the events as well as any subsequent developments. In doing so, the Tribunal should consider whether the matters found proved are remediable, whether they have been remedied, and the likelihood of repetition. It should also assess the doctor’s level of insight.

137. The Tribunal was advised that insight is relevant to the assessment of future risk and must not be equated simply with an admission of wrongdoing. A doctor who maintains his innocence is not necessarily without insight.

138. In *Meadow v GMC [2007] QB 462*, it was observed that the purpose of fitness to practise proceedings is not to punish past misconduct but to protect the public against the acts and omissions of those who are not fit to practise. The assessment of impairment is therefore forward-looking, though it must be informed by past behaviour.

139. In *Sawati v GMC [2022] EWHC 283 (Admin)*, it was noted that doctors are properly entitled to defend themselves, and the Tribunal must consider whether any apparent lack of insight is merely a reflection of a rejected defence rather than genuine attitudinal risk.

140. The Tribunal was referred to *GMC v Shah [2025] EWHC 899*, which confirmed that the Tribunal must form its own reasonable view as to whether the proven conduct would be regarded as “deplorable” by members of the profession and the public. The case also emphasised that there exists a spectrum of misconduct, and even sexual harassment may, in certain circumstances, not reach the threshold of seriousness. The *Equality Act 2010* is not determinative of seriousness.

141. The Tribunal was further advised that, in assessing the risk of repetition, it may consider the doctor’s circumstances in the round, including the improbability of the practitioner jeopardising their career or reputation. The absence of risk need not depend solely on remorse or shame. Insight, remediation and risk of repetition are distinct concepts but often overlap.

142. The Tribunal was advised that it must consider all three limbs of the overarching objective in determining impairment. Even in cases of low risk of repetition, a finding of impairment may be required to maintain public confidence and proper professional standards. In *Yeong v GMC [2009] EWHC 1923 (Admin)*, it was observed that there will be occasions where a finding of impairment must be made, notwithstanding remediation, to maintain public confidence in the profession and its regulatory processes.

143. Finally, the Tribunal was reminded that it must provide full and reasoned written reasons for its decision.

The Tribunal's Determination on Impairment

Misconduct

144. The Tribunal first considered the paragraphs of the allegation found proved at the facts stage.

145. In relation to paragraph 1, the Tribunal found that between November 2018 and November 2019 Dr Johnson sent a series of inappropriate messages to a junior colleague, Ms A, which contained sexually demeaning and derogatory comments about other colleagues. This behaviour was an abuse of his senior position. The conduct occurred over a prolonged period of time, in a professional context. It represented a clear and significant departure from the standards expected of a doctor, as outlined in paragraph 36 of GMP, which requires doctors to treat colleagues fairly and with respect and not to abuse their professional position.

146. The Tribunal noted that both parties agreed that the behaviour was serious and amounted to misconduct. Although Dr Johnson recognised that his conduct was inappropriate and has since modified his behaviour, the Tribunal considered that the nature and extent of the conduct rendered it sufficiently serious to amount to serious misconduct.

147. The Tribunal next considered paragraph 4 of the Allegation, which concerned the incident outside the venue when Dr Johnson stood close to Ms A and his lips touched hers while vaping. The Tribunal accepted that this was foolish behaviour which occurred in the context of alcohol consumption, and playing a ‘game’ during a Christmas party. The touching of the lips was accidental. The ‘game’ was ill-judged, but the Tribunal did not consider it sufficiently serious to amount to misconduct.

148. The Tribunal considered paragraph 6, which involved Dr Johnson touching Ms A’s chest while she was seated outside the venue. The Tribunal did not find it to be sexually motivated. It carefully considered the submissions of both parties. The Tribunal accepted that this behaviour was clumsy and inappropriate but having considered the context and circumstances, in that it was not in dispute that Dr Johnson’s actions were to ‘wake up’ Ms A. It determined that it was not sufficiently serious to amount to misconduct.

149. The Tribunal then considered paragraphs 8 and 9, which involved comments made to Ms C at a work function. Dr Johnson admitted that these were ill-judged and inappropriate

remarks, and the Tribunal agreed that they reflected poor judgment. However, the conduct was limited in scope and did not reach the threshold of seriousness required for a finding of misconduct. The Tribunal therefore determined that paragraphs 4, 6, 8 and 9 did not amount to misconduct.

150. The Tribunal next considered paragraph 5, which concerned Dr Johnson's actions in the foyer area when he intentionally tipped his drink onto Ms A's chest, moved his head close to her cleavage, and licked her chest. The Tribunal found this conduct to be sexually motivated and constituting sexual harassment as defined under section 26(2) of the *Equality Act 2010*. The Tribunal determined that this was an abuse of his senior position, a breach of personal and professional boundaries, and a significant departure from the standards expected of a doctor. The conduct was deliberate and occurred in a public setting at a work-related event.

151. The Tribunal therefore found that paragraph 5 amounted to serious misconduct.

152. The Tribunal determined that all the conduct found to amount to misconduct was inherently serious. It represented a clear departure from the principles of GMP, namely paragraph 36.

153. Accordingly, the Tribunal found that Dr Johnson's conduct as set out in paragraphs 1 and 5 of the Allegation amounted to serious misconduct.

154. The Tribunal determined that paragraphs 4, 6, 8 and 9 did not amount to misconduct and therefore did not proceed to consider impairment in respect of those matters.

Impairment

155. The Tribunal having found that the facts found proved amounted to misconduct went on to consider whether, as a result of that misconduct, Dr Johnson's fitness to practise is currently impaired.

156. The Tribunal reminded itself of the guidance in *Grant* and considered in particular whether Dr Johnson has in the past brought, or is liable in the future to bring, the profession into disrepute (limb B), and whether he has breached, or is liable in the future to breach, one of the fundamental tenets of the profession (limb C). It considered both these limbs to be engaged.

157. The Tribunal confined its consideration of impairment to paragraphs 1 and 5 of the Allegation, as these were the paragraphs found to amount to serious misconduct.

158. The Tribunal first considered paragraph 1, which concerned the inappropriate and sexually demeaning messages sent to a junior colleague over an extended period. The Tribunal considered whether this conduct was remediable, whether it had been remedied, and the risk of repetition.

159. The Tribunal noted that the evidence before it demonstrated that, over the past two years, Dr Johnson has undertaken a range of remedial steps. He has completed a professional boundaries course, engaged in coaching, and reflected on how he communicates and interacts with colleagues. The Tribunal considered that there is now a clear distinction between Dr Johnson's conduct before and after the events in question, and that he has shown genuine insight into why his behaviour was unacceptable and how he must maintain professional boundaries.

160. The Tribunal therefore considered that the misconduct at paragraph 1 is remediable, has been remedied, and that the risk of repetition is low. It was satisfied that Dr Johnson has demonstrated sufficient insight and remediation.

161. However, the Tribunal determined that, notwithstanding the evidence of remediation, a finding of impairment is required in the wider public interest. The conduct in paragraph 1 represented a serious abuse of a senior position and was derogatory and sexually demeaning nature towards colleagues. The Tribunal determined that a fully informed member of the public, aware of the facts of this case, would expect a finding of impairment in order to uphold proper professional standards and maintain confidence in the profession.

162. Accordingly, in relation to paragraph 1, the Tribunal found Dr Johnson's fitness to practise to be impaired on the grounds of the wider public interest, namely, 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.

163. The Tribunal then considered paragraph 5, which concerned the incident in which Dr Johnson intentionally tipped his drink onto Ms A's chest, moved his head towards her chest, and licked her chest. This conduct was found to be sexually motivated and to constitute sexual harassment and an abuse of his senior position.

164. The Tribunal considered whether this behaviour was remediable, whether it had been remedied, and the likelihood of repetition. The Tribunal accepted that, in principle, such conduct is capable of remediation. It was mindful that since its earlier findings, there had been little time for further reflection and remediation. However, it noted that there was little evidence before it of an appreciation of the grave nature of the misconduct found. There was also no evidence of reflection or meaningful remediation in respect of this incident. Whilst Dr Johnson accepted the Tribunal's findings, there was no evidence of insight into the impact of his behaviour or understanding of how to prevent its recurrence.

165. In these circumstances, the Tribunal determined that Dr Johnson has not demonstrated remediation or insight in relation to paragraph 5. The conduct was inherently serious, deliberate, and sexually motivated. It represented an abuse of authority within a workplace social setting.

166. The Tribunal concluded that there remains an ongoing risk of repetition and that a finding of impairment is necessary on the grounds of both public protection and the wider public interest.

167. Accordingly, the Tribunal found that Dr Johnson's fitness to practise is impaired in respect of paragraph 5 in order to protect, promote and maintain the health, safety and well-being of the public, and to promote and maintain public confidence in the medical profession and proper professional standards and conduct for members of that profession.

168. The Tribunal has therefore determined that Dr Johnson's fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 05/11/2025

169. Having determined that Dr Johnson's fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

The Evidence

170. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

171. Dr Johnson provided testimonial statements from Dr R, Consultant Histopathologist and Clinical Lead at the Royal Sussex County Hospital, and Ms S, Head of Service for Cellular Pathology at University Hospitals Sussex NHS Foundation Trust. Dr Johnson provided a further reflective statement dated 3 November 2025, prepared further to the facts found by this Tribunal.

172. In his reflective statement Dr Johnson accepted the Tribunal's findings of fact and the seriousness of his misconduct. He expressed deep regret for his inappropriate WhatsApp messages to Ms A and for his behaviour at the Christmas party in XXX 2022. He acknowledged that his actions amounted to serious professional misconduct, represented an abuse of his position of seniority, and were wholly inconsistent with the standards expected of a registered medical practitioner. He recognised that his behaviour caused significant distress to Ms A, undermined trust within the workplace, and damaged public confidence in the profession.

173. Dr Johnson stated that hearing Ms A's evidence during the fact-finding stage had been pivotal in helping him to appreciate the personal impact of his conduct. He accepted full personal responsibility, acknowledging that his earlier reflections had sought, in part, to explain his behaviour by reference to contextual factors, but that he now understands that he alone is responsible for his actions.

174. Dr Johnson had provided evidence of attendance at a series of professional boundaries courses since January 2024, a British Medical Association/GMC webinar on the perils of social media in September 2021, and a further webinar on social media risks for doctors in March 2025. He had also engaged in coaching and reflective practice to address issues of emotional regulation, self-awareness, and maintaining professional boundaries. He described the development of a reflective log and a "statement of commitment" setting out his values and strategies to prevent recurrence, including moderation of alcohol intake, avoidance of high-risk social situations, and regular meetings with his line manager to monitor conduct and wellbeing.

175. Dr Johnson confirmed that he is now employed as a substantive Consultant Histopathologist at the Royal Sussex County Hospital, where he has worked since October 2023. Dr R described him as diligent, professional and an asset to the department, with

exemplary conduct and positive relationships with colleagues. Ms S described him as approachable, supportive, and highly regarded by the team, with no concerns regarding his behaviour. Both testimonials confirmed their awareness of the hearing proceedings and were willing to support ongoing monitoring arrangements.

176. Dr Johnson stated that he had developed meaningful insight into the causes and consequences of his behaviour, that he has embedded sustainable behavioural change, and that he is committed to maintaining the highest standards of professionalism in future practice.

Submissions

177. On behalf of the GMC, Ms Fordham submitted that the appropriate sanction is one of Erasure. Ms Fordham referred the Tribunal to Sanctions Guidance (the ‘SG’) (2024) throughout her submissions.

178. By way of introduction, Ms Fordham acknowledged that the defence might contend that erasure would be disproportionate given the Tribunal’s factual findings, that the misconduct at the Christmas party was limited in scope but found to have been sexually motivated, to have constituted sexual harassment, and to amount to an abuse of Dr Johnson’s senior position. However, she submitted that this case is distinguishable from some other cases involving a single episode of sexual misconduct at the lower end of the spectrum. It is set apart, she said, because the proved conduct at the Christmas party occurred in addition to Dr Johnson’s admitted and proved sexually demeaning WhatsApp messages, which themselves represented an abuse of power and were derogatory.

179. Ms Fordham submitted that, whilst on one view the misconduct may appear at the lower end of the spectrum of sexual wrongdoing when compared with cases involving assault or penetration, the Tribunal must guard against becoming case-hardened. When viewed in the context of ordinary life, the incident where a senior male consultant, at a work related social event, ignored a junior colleague’s request not to spill beer on her chest, did so anyway, and then licked it from her skin was, she submitted, a grave violation of that colleague’s dignity and a serious abuse of his position of trust.

180. Ms Fordham submitted that no action could not be appropriate, as this was not an exceptional case.

181. Moving to conditions, Ms Fordham submitted that these were also inappropriate. Paragraph 82 of the SG provides that conditions are generally suitable for cases involving health concerns, deficient performance, or identifiable areas of retraining. She submitted that none of those applied here, and there were no conditions which could address or remediate serious attitudinal misconduct of this nature.

182. Turning to suspension, Ms Fordham referred to paragraphs 87–92 of the SG, which provide that suspension may be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration. Paragraph 97 sets out factors that may indicate when suspension could be appropriate, including paragraph 97(g):

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

...

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

She submitted that this paragraph marks the key distinction between suspension and erasure.

183. In that regard, Ms Fordham cited *GMC v Konathala* [2025] EWHC 1550 (Admin) and *Khetyar v GMC* [2018] EWHC 813 (Admin). She submitted that in *Khetyar*, Mr Justice Baker held that where misconduct is very serious, even a quantitatively small but nonetheless real (i.e. not fanciful) chance of recurrence may amount to a significant risk. The Divisional Court in *Konathala* endorsed that approach, holding that any real risk of repetition of behaviour amounting to serious sexual misconduct must, on any reasonable view, be regarded as significant. Ms Fordham submitted that in this case the Tribunal had found an ongoing risk of repetition which, being real and not fanciful, must therefore be significant. The risk identified was of sexually inappropriate behaviour towards a colleague, conduct which, if repeated, would amount to serious professional misconduct. Accordingly, she submitted that suspension was not an appropriate or sufficient sanction.

184. Addressing aggravating and mitigating features, Ms Fordham referred to paragraph 55 of the SG. She submitted that paragraph 55(d)(ii) refers to predatory behaviour; she submitted that Dr Johnson's actions in expressing a sexual interest in a much more junior colleague in a direct and physical way fell within that description.

55 *Aggravating factors that are likely to lead the tribunal to consider taking more serious action include:*

...

d abuse of professional position particularly where this involves:

ii predatory behaviour (see paragraphs 147–148)

e sexual misconduct (see paragraphs 149–150)

185. Turning to mitigating factors Ms Fordham accepted that Dr Johnson had no previous regulatory findings and that there had been no repetition of misconduct since December 2022. However, she invited the Tribunal to weigh that against the fact that the misconduct occurred after he had already been reminded of the need to maintain professional standards at work, as evidenced by his own WhatsApp messages in 2020 and 2021 acknowledging that he must avoid “inappropriate conversations or banter” and be “whiter than white”. She submitted that Dr Johnson was therefore plainly aware of the importance of professional boundaries and nonetheless engaged in behaviour which crossed them. Ms Fordham brought to the Tribunal’s attention a further message between Dr Johnson and Ms A which contained sexual innuendo and was sent at a time after Dr Johnson had sought to change his behaviour. She questioned whether Dr Johnson had genuine insight.

186. Turning to insight and remediation. Ms Fordham submitted that genuine insight involves timely acceptance that the behaviour was wrong, empathy for those affected, and practical steps to prevent recurrence. While Dr Johnson had completed courses on social media and professional boundaries, these occurred after the relevant conduct and did not prevent further inappropriate messaging thereafter. Even after undertaking the 2021 BMA/GMC “Perils of Social Media” webinar, he continued to send personal and sexualised messages to Ms A. That, she submitted, cast doubt on whether meaningful insight had been achieved.

187. She further submitted that Dr Johnson’s most recent reflective statement, while more developed, was provided very late in the process. Those reflections, Ms Fordham submitted, were inconsistent with his current claim to full insight and responsibility. She submitted that a doctor cannot simultaneously maintain that an allegation was fabricated and claim to have developed complete understanding and acceptance of wrongdoing.

188. In summary, Ms Fordham submitted that this was misconduct fundamentally incompatible with continued registration. It involved a serious violation of a junior colleague’s dignity by a senior consultant who was fully aware of his professional obligations. She noted

that erasure may be appropriate even where the doctor does not present a risk to patient safety, if such action is required to maintain public confidence in the profession and uphold proper professional standards.

189. Accordingly, Ms Fordham submitted that, taking account of all the circumstances, the only proportionate sanction consistent with the overarching objective was erasure from the Medical Register.

190. On behalf of Dr Johnson, Mr Rawlinson, submitted that the Tribunal will wish, first, to send out a very strong message about this type of behaviour, and nothing that he submitted should be taken as seeking to minimise or dilute the seriousness of the Tribunal's findings. His submissions were also not to cast doubt on any of the proper propositions advanced by the GMC to the effect that sexual misconduct, wherever it sits on the spectrum, is to be taken seriously.

191. Mr Rawlinson submitted that there was, however, a degree of artificiality in the GMC's approach. A registrant who has disputed an allegation and later finds that allegation proved is in a structurally difficult position: absent what might be thought to be a rather hollow, last-minute "Damascene conversion", the registrant still has to address the panel honestly as to where he is on his journey of reflection and insight. He submitted that there is not a submission that Dr Johnson's journey is complete. The proper questions for the Tribunal were: is this misconduct capable of remediation; and is there evidence that, over a reasonable period, this particular doctor is remediating and will be able to complete that process. If the answer to those questions is yes, then a period of suspension to allow that process to be completed is the proportionate outcome. Erasure, he submitted, would be wholly disproportionate in this case and would fail to reflect both the nuances of the facts and the very substantial progress already demonstrated.

192. Mr Rawlinson reminded the Tribunal that there remains, as there was at Stage 1, a qualitative difference between paragraph 1 and paragraph 5. Paragraph 1, admitted from the outset, concerned sexually inappropriate, demeaning messages, largely about third parties rather than directed at Ms A herself. Paragraph 5, which he had disputed, involved physical touching. They are conceptually distinct. It did not follow, he submitted, that because there were inappropriate messages in 2019–2021 there must, as a matter of regulatory logic, be a present, significant risk of a repeat physical act in 2025. To say so was to stretch causation and to treat two different kinds of misconduct as if they formed a single continuum. That

was, he said, the “ineluctable logic” of the GMC’s position, but it was neither what the SG says nor what common sense says.

193. Turning to sanction, Mr Rawlinson submitted that no action is plainly not available to the Tribunal. He said that conditions are also not appropriate, because this is not a case about performance, health, or a narrow area of practice that needs retraining. Turning to suspension he reminded the Tribunal of the relevant paragraphs of the SG for suspension where the conduct is serious but does not reach the point of being fundamentally incompatible with remaining on the register; where the doctor has acknowledged fault; where steps have been taken to address the behaviour; and where the Tribunal still wishes to send a clear deterrent message. He said Dr Johnson falls “fairly and squarely” within that description.

194. He accepted that the GMC placed reliance on paragraph 97(g), but he said the GMC had, in effect, tried to turn that paragraph into an almost automatic route to erasure in any sexual misconduct case where the risk is more than fanciful. That, he said, is not what paragraph 97 requires. The paragraph asks the Tribunal to decide whether this doctor, on these facts, has insight and does not pose a significant risk of repeating the behaviour. “Significant”, he said, is a judgment for this Tribunal. He distinguished *GMC v Konathala* and *Khetyar v GMC* on the basis that those were patient-facing, clinical, opportunistic assaults in circumstances of maximum power imbalance, whereas this case arose from a work social, involved alcohol, was short-lived, and took place between two colleagues who already had an informal WhatsApp relationship. It was still serious, but it was not *Konathala*, and the Tribunal should be cautious about lifting the High Court’s language from those facts and applying it here without adjustment.

195. Turning to mitigating factors. Mr Rawlinson submitted that there is evidence of developing insight and remediation (shown in the Stage 3 bundle); there is good current practice and positive testimonials from Dr R and Ms S, both know about the findings; there is lapse of time paragraph 1 is now several years old and paragraph 5 is three years old; and there is no previous fitness to practise history. All of those factors, he said, weigh in Dr Johnson’s favour.

196. On insight, Mr Rawlinson submitted Dr Johnson’s reflections were unusually detailed and self-critical in which Dr Johnson accepted the Tribunal’s finding on paragraph 5 and accepted that he had previously been “asking the wrong question”. He submitted that Dr Johnson had apologised, completed boundaries and social media courses, identified alcohol

as a risk and changed how he socialises with colleagues, and put in place regular meetings with his clinical lead. Those were, he said, real-world mitigations.

197. He invited the Tribunal also to look at the real-world evidence of risk. Since the incident, Dr Johnson has worked in a new Trust, has been appointed substantively, has worked daily with colleagues who know about the case, and has attended a Christmas party without any concern being raised. Ms S expressly said there had been “no concerns of any kind”. He said that was a better indicator of current risk than importing a High Court analysis from a very different set of facts, and it pointed away from there being any present, still less significant, risk of repetition.

198. As to aggravating features, he accepted that paragraph 55 of the SG is engaged from the Tribunal’s findings and he did not ask the Tribunal to ignore it. Mr Rawlinson submitted that Tribunal should avoid counting the same factor twice, the misconduct is already sexual and already an abuse of seniority, and that is already why a sanction is needed. To use the same factor again to push the case from suspension into erasure would, he said, be disproportionate.

199. Mr Rawlinson submitted that erasure is intended for cases that are truly incompatible with remaining on the register; persistent, exploitative or predatory behaviour; serious criminal sexual offending; or entrenched attitudinal problems. This case, he said, was an alcohol driven, one off incident at a work social in 2022, set against earlier but different “message based” misconduct, followed by three years of faultless practice under colleagues who knew what had happened. That is not the paradigm case for erasure.

200. Finally, he submitted that suspension would achieve everything the Tribunal needs to achieve. It would mark the seriousness of the conduct, uphold public confidence, and deter others. It would also meet the public interest in retaining an experienced consultant who has plainly done meaningful work on reflection and boundaries. If the Tribunal wished, it could order a review so that a future panel can check that the insight seen on paper has been maintained.

201. Accordingly, Mr Rawlinson invited the Tribunal to impose a period of suspension, with review, as the proportionate and fair sanction.

The Tribunal’s Approach

202. The Tribunal was advised that it should consider the parties' submissions but reach its own independent decision on sanction and provide reasons for that decision. The Tribunal was advised to apply the principle of proportionality throughout, balancing the doctor's interests against the public interest, and to adopt the least restrictive sanction first before moving upwards only so far as necessary to meet the circumstances of this case and the overarching objective.

203. The Tribunal was advised that the decision must be based on the facts and circumstances of this case. The purpose of sanction is not to punish the doctor, although it may have a punitive effect. The Tribunal was advised to have regard to the overarching objective.

204. In making its decision on sanction, the Tribunal was advised first to consider the objective features of the case and assess the gravity of the doctor's conduct, taking into account any aggravating factors. It should then consider any mitigating factors, giving careful consideration to the weight to be attached to each. The correct approach is to balance the aggravating and mitigating factors against each other, and then determine which sanction, if any, will best meet the overarching objective.

205. The Tribunal was advised that in reaching its decision it must take into account all the evidence and submissions heard at this stage, together with its earlier findings on impairment. It should also have regard to the SG the purpose of which is to assist tribunals in reaching fair, proportionate and consistent outcomes. If the Tribunal departs from the SG, it must give clear reasons for doing so. The Tribunal should also ensure that it has properly considered the sanctions immediately below and above the one ultimately selected.

206. The Tribunal was advised that its conclusions on sanction must be consistent with its earlier findings of fact, misconduct and impairment. Any gaps in reasoning may undermine public confidence in the regulatory process and fail to do justice to the seriousness of the case.

The Tribunal's Determination on Sanction

Aggravating factors

207. Before considering what action, if any, to take in respect of Dr Johnson's registration, the Tribunal considered whether there were any aggravating and/or mitigating factors in this case.

208. The Tribunal identified the following aggravating factors, with reference to paragraphs 55(b), 56(e), of the SG.

55 Aggravating factors that are likely to lead the tribunal to consider taking more serious action include:

....

b a failure to work collaboratively with colleagues

e sexual misconduct

209. The Tribunal considered that Dr Johnson's conduct was of a sexual nature, constituting an abuse of his senior position. It considered that the sexual harassment element, within a failure to work collaboratively with colleagues was also engaged due to the effect of his conduct on Ms A. The sending of inappropriate messages about colleagues to Ms A, which were derogatory and sexually demeaning, also engaged paragraph 55(b) of the SG, as they demonstrated a failure to work collaboratively and respectfully with colleagues.

Mitigating Factors

210. The Tribunal identified the following mitigating factors, with reference to paragraphs 25(a) and 45–46 of the SG.

25 The following are examples of mitigating factors.

a Evidence that the doctor understands the problem and has insight, and of their attempts to address or remediate it. This could include the doctor admitting facts relating to the case, apologising to the patient (see paragraphs 42–44), making efforts to prevent behaviour recurring, or correcting deficiencies in performance or knowledge of English.

45 Expressing insight involves demonstrating reflection and remediation.

46 A doctor is likely to have insight if they:

*a accept they should have behaved differently (showing empathy and understanding)
b take timely steps to remediate and apologise at an early stage before the hearing
c demonstrate the timely development of insight during the investigation and hearing.*

211. The Tribunal considered the further reflections submitted by Dr Johnson. These were recent additional reflections dated 3 November 2025 that Dr Johnson submitted after the Tribunal made its findings of fact and its decision on his current impairment. These included many reflections by Dr Johnson, which the Tribunal considered were meaningful. These evidenced that Dr Johnson had accepted the Tribunal's findings in full and accepted that he was entirely responsible for his own actions. It showed him continuing to reflect on how his past behaviour, including being overly familiar or personal with colleagues, was inappropriate, and that he made concrete changes to his professional conduct. The evidence, including testimonials, showed that he had changed jobs, sought to work in a different and more structured environment, and has practically applied what he has learned to his day-to-day interactions.

212. The Tribunal also noted that Dr Johnson has apologised to Ms A and expressed genuine remorse for the impact of his actions on her, on colleagues, and on public confidence in the profession. He recognised that his conduct had the potential to undermine trust and damage the reputation of doctors generally.

213. In balancing the aggravating factors of the case against the mitigating factors, the Tribunal further considered the bundle of documents that it received together with the parties' submissions.

214. The Tribunal found that Dr Johnson's conduct in paragraph 5 of the Allegation was inappropriate and sexually motivated and occurred whilst Dr Johnson was intoxicated. Although the conduct was not at the most extreme end of the spectrum of sexual misconduct, it could not properly be regarded as minor. The Tribunal considered that the behaviour was spontaneous rather than predatory, but it nonetheless represented a serious departure from the standards expected of a doctor.

215. While the Tribunal acknowledged that the workplace environment at the time was described as toxic, it found that this context did not excuse or materially mitigate Dr Johnson's behaviour, which was sexually motivated and for which there was no innocent explanation. Doctors are expected to maintain professional standards irrespective of their surroundings.

216. The Tribunal also noted that Dr Johnson had admitted his conduct in paragraph 1 of the allegation from the outset, and that it was an abuse of his more senior position. He had taken active and sustained steps towards remediation. He had engaged meaningfully in

reflection and coaching, had worked closely with his line manager, and has provided a significant reflective statement and learning log which demonstrate insight and remediation. It considered that this demonstrated his capacity to gain insight and to remediate and was therefore also relevant to paragraph 5.

217. In relation to the conduct proved at paragraph 5, Dr Johnson accepted the Tribunal's findings in full and had openly recognised that he is at the beginning of a continuing journey. He acknowledged that his insight is not yet complete, but that he has made substantial progress and has put in place specific strategies to prevent any repetition. His reflections included examples of behavioural change, such as maintaining clearer professional boundaries and avoiding overfamiliar physical contact and strategies to prevent recurrence.

218. The Tribunal accepted that Dr Johnson's reflective statements and learning documentation are consistent with the definitions of insight and remediation. His reflections demonstrated empathy, understanding, and practical change. The Tribunal considered that, while he cannot yet fully demonstrate remediation for the incident found proved at paragraph 5, there is good evidence of developing and progressive insight and a realistic prospect that he could complete the process of remediation over time.

219. The Tribunal also took account of the fact that there is no evidence of repeated misconduct since the incidents in question, and that Dr Johnson has maintained appropriate professional behaviour in his current role.

220. The Tribunal considered Ms Fordham's submission that there was evidence of a text message between Dr Johnson and Ms A, which contained sexual innuendo, which was sent after Dr Johnson had claimed to alter his interactions and behaviour. The Tribunal considered that the exchange may have contained innuendo, however it was a message between two people with an established friendship, and there was an absence of any derogatory or sexually demeaning comments towards others.

221. Overall, the Tribunal concluded that whilst Dr Johnson's proven conduct was serious, he has taken credible steps to reflect and that his developing insight is genuine and supported by objective evidence from his current practice.

No action

222. The Tribunal first considered whether to conclude the case by taking no further action. Taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. The Tribunal determined that there are no exceptional circumstances in this case to justify taking no action.

Conditions

223. The Tribunal went on to consider whether imposing conditions upon Dr Johnson's registration would be appropriate in this case. It was unable to identify any appropriate, proportionate, workable or measurable conditions.

224. The Tribunal concluded that a period of conditional registration would not be an appropriate or proportionate sanction to satisfy the public interest or uphold standards for the profession.

Suspension

225. The Tribunal considered the relevance of the following paragraphs of the SG:

91 Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.

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

a A serious departure from Good medical practice, but where the misconduct is not so difficult to remediate that complete removal from the register is in the public interest. However, the departure is serious enough that a sanction lower than a suspension would not be sufficient to protect the public.

...

e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.

f No evidence of repetition of similar behaviour since incident.

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

226. The Tribunal considered that Dr Johnson's behaviour represented a serious departure from the standards expected of a doctor. It involved conduct of a sexual nature and amounted to an abuse of position. The misconduct occurred in two distinct contexts: the sending of inappropriate messages to a junior colleague over a period of time, and an incident of sexualised touching at a work Christmas party while under the influence of alcohol. Although these were separate episodes, they together reflected poor judgement and a failure to maintain appropriate boundaries. The Tribunal acknowledged both parties' submissions that the conduct was not at the extreme end of the spectrum, nevertheless, it was serious and had the potential to undermine public confidence in the profession.

227. The Tribunal accepted that the misconduct that it had found in this case, was capable of remediation. His reflective statements, prepared following the impairment stage and further developed in his Stage 3 bundle dated 3 November, demonstrated good and progressive insight into the seriousness of his behaviour and its impact on Ms A, his colleagues, and the wider profession. The Tribunal considered that there was no evidence that remediation was unlikely to be successful. It was mindful that there had been previous successful remediation since his misconduct by way of sending inappropriate messages since 2019. The Tribunal was also satisfied that Dr Johnson's reflections were genuine and that his insight has continued to develop through the hearing process. The Tribunal had particular regard to the following reflective evidence of Dr Johnson:

'Colleagues have the right to work in an environment where they are valued and respected and I recognise that this extends beyond normal working hours and outside the hospital. I am very sorry for the upset I have caused to my valued colleagues, and specifically Ms A, who was entitled to attend the party without risk of me behaving in a sexual way towards her and abusing my position.'

'I better understand some of the factors in the run up to the Christmas party that would have influenced me but nevertheless it is up to me and only me to manage my emotions and

behaviour, to recognise the circumstances and the situations I am in and to mitigate against scenarios where I could potentially not be the best version of myself or fall below an appropriate standard of behaviour. In this respect, I failed in particular to recognise the risk associated with drinking alcohol, the impairment it made on my judgement and behaviour and the negative impact that I had on colleagues as a result. At the hearing, hearing the voice of Ms A, a very familiar voice, I felt a deep sense of regret that we have not had the opportunity to have a conversation about this and for me to apologise to her’.

‘I acknowledge the gravity of my behaviour, exacerbated by the power imbalance between Ms A and myself. on Ms A and that as a result of my deplorable behaviour she had to attend the hearing to give evidence and face cross-examination, fearing that she might not be believed and would be judged. I also regret the possibility that my abuse of my position may have affected her relationships with other senior male colleagues and/or her willingness to socialise with work colleagues, fearing encountering similar behaviour again and so feeling anxious and unsafe. the reputation of doctors locally, including in the eyes of Ms A and [Ms D], as well as to wider public confidence. workplace with work on tackling sexual misconduct.’

‘I have actively thought how I build my professional relationships in Brighton and I reside within a positive and supportive culture and working environment. I am aware how important it is to maintain this and I have a good working relationship with my line manager and I feel able to raise any challenges with him. We do check in on an ad hoc basis but I have decided that moving forward we should set some regular dates to formally touch base and ensure that my behaviour remains on track in the future once these proceedings are no longer hanging over me. He has kindly agreed to do this.’

228. The Tribunal noted that Dr Johnson has worked without incident for the past two years in a new Trust, where his colleagues are aware of these proceedings and continue to support him. His testimonials, together with his evidence of changed behaviour, showed that he has applied the lessons learned. In particular, he has implemented practical strategies to manage risk, such as limiting alcohol intake at work functions, arriving later, and leaving early. The Tribunal found that there is *no* evidence of repetition since the events giving rise to these proceedings.

229. The Tribunal accepted that it could not say there is *no* risk of repetition, but it was satisfied that in light of Dr Johnson’s recent reflections and progressively developing insight, there is no significant risk that Dr Johnson will behave in a similar way again.

Nevertheless, it considered that the departure from GMP was serious enough that a sanction lower than a suspension would not be sufficient to protect the public.

Erasure

230. The Tribunal next considered whether erasure from the Medical Register was necessary to meet the overarching objective.

231. In doing so, the Tribunal had regard to paragraph 108, 109(a)(b) of the SG.
108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.

109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).

- a A particularly serious departure from the principles set out in Good medical practice where the behaviour is difficult to remediate*
- b A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.*

232. The Tribunal considered that acting in a sexually motivated way, whilst intoxicated, was a reckless disregard for principles within GMP. The Tribunal also considered that sexual misconduct is always serious and that public confidence must be maintained. However, it agreed with the submissions of both parties that the conduct in this case did not fall at the highest end of the spectrum. It also took the view that whilst serious, Dr Johnson's conduct was not persistent nor was it a pattern of predatory behaviour. The Tribunal was satisfied that the misconduct found in this case was capable of remediation, and Dr Johnson did have progressive insight and the capacity to remediate and his conduct was not fundamentally incompatible with continued registration. It considered that *erasure* would not be the only means of protecting the public or maintaining confidence in the profession.

233. The Tribunal considered that a period of suspension would be sufficient to mark the seriousness of the misconduct, to protect the public and to maintain public confidence, and to send a clear message to the profession that such behaviour is unacceptable. Suspension would also allow Dr Johnson further time to further his insight and complete his remediation.

The Tribunal therefore concluded that a period of suspension is necessary and proportionate to meet the overarching objective and the public interest.

234. Accordingly, the Tribunal determined that erasure would be disproportionate, and that a period of suspension is sufficient and appropriate to meet the overarching objective.

Length of suspension

235. Having determined that a suspension is the appropriate and proportionate sanction, the Tribunal then considered the length of the suspension.

236. In doing so, it had regard to paragraphs 99, 100 of the SG:

99 The length of the suspension may be up to 12 months and is a matter for the tribunal's discretion, depending on the seriousness of the particular case.

100 The following factors will be relevant when determining the length of suspension:

- a the risk to patient safety/public protection*
- b the seriousness of the findings and any mitigating or aggravating factors*
- c ensuring the doctor has adequate time to remediate.*

237. The Tribunal reminded itself of the seriousness of Dr Johnson's conduct, both in having sent inappropriate messages to Ms A, a junior colleague, which were derogatory and sexually demeaning about other colleagues. These had been sent over a period of a year. He had acted in a sexually motivated way towards her which had the effect of violating her dignity and was sexual harassment. Both aspects of his conduct were an abuse of his more senior position. His conduct was a serious departure from principles of GMP. It also had regard to its analysis of aggravating and mitigating factors.

238. In determining the length of suspension, the Tribunal considered that any period of suspension should be long enough both to mark the gravity of the misconduct and to provide Dr Johnson with an opportunity to continue reflecting on his sexually motivated behaviour, develop further insight and complete remediation.

239. The Tribunal determined that a period of 12 months' suspension appropriately reflects the seriousness of the misconduct, protects the public and meets the need to uphold public confidence and professional standards, and gives Dr Johnson sufficient time to

continue his process of remediation and reflection. The Tribunal considered that whilst such a sanction may have a punitive effect, it would properly reflect what the public would expect in light of the findings made.

240. The Tribunal therefore determined to suspend Dr Johnson's registration for a period of 12 months.

Review hearing

241. The Tribunal determined to direct a review of Dr Johnson's case. A review hearing will convene shortly before the end of the period of suspension. The Tribunal wishes to clarify that, at the review hearing, the persuasive burden will be on Dr Johnson to demonstrate whether matters have changed.

242. The Tribunal noted that any review hearing would provide an opportunity for Dr Johnson to produce evidence of further insight and remediation.

243. The Tribunal also recognised that any future review would take into account evidence of continued professional development and maintenance of clinical skills, ensuring that Dr Johnson remains competent and up to date in his practice. Dr Johnson will also be able to provide any other information that he considers will assist.

Determination on Immediate Order - 05/11/2025

244. Having determined to suspend Dr Johnson's registration for a period of 12 months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Johnson's registration should be subject to an immediate order.

Submissions

245. On behalf of the GMC, Ms Fordham submitted that given the facts found proved in this case and the sanction imposed, an immediate order of suspension is necessary in order to promote and maintain public confidence in the profession and to promote and maintain proper professional standards and conduct.

246. Ms Fordham referred the Tribunal to various paragraphs of the SG including paragraphs 173 and 178:

'173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.'

'178 Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.'

247. On behalf of Dr Johnson, Mr Rawlinson submitted that an immediate order is not necessary in this case. By way of background, Mr Rawlinson submitted that Dr Johnson has been subject to interim conditions since December 2023. Those conditions, he submitted, were effectively the standard ones requiring Dr Johnson to keep the GMC informed of his current post, any new posts accepted, and to permit the exchange of relevant information with employers and others.

248. He noted that those conditions add little to Dr Johnson's existing obligations under GMP. The conditions have been in place without breach or difficulty.

249. Mr Rawlinson submitted that, taking the Tribunal's determination as a whole, while it had not expressly stated there was no risk of repetition, it had clearly indicated that the risk was not significant.

250. Turning to public confidence, Mr Rawlinson accepted that findings of misconduct, impairment, and sanction have been made. However, he referred the Tribunal to *Uppal*, submitting that the very fact of these proceedings being held publicly with findings and a sanction that will take effect in 28 days sufficiently maintains public confidence. There would, he suggested, be no mischief in allowing that short period for Dr Johnson to put his affairs in order.

251. Mr Rawlinson submitted that paragraphs 177–178 of the SG make clear that the decision to impose an immediate order is discretionary and fact specific. Here, he submitted,

the findings do not concern clinical matters or patient contact, but rather a one off event at a work related social function. He submitted that this was a very particular context, not reflective of the Dr Johnson's normal practice.

252. Accordingly, Mr Rawlinson submitted that an immediate order was neither necessary nor proportionate in the circumstances.

The Tribunal's Determination

253. In reaching its decision, the Tribunal has exercised its own judgement, and has considered its earlier findings. The Tribunal has borne in mind that it may impose an immediate order where it is satisfied that it is necessary for the protection of members of the public or otherwise in the public interest or is in the best interests of the practitioner.

254. It has also borne in mind the guidance given in paragraphs , 172, 173, and 178 of the SG, which states:

'172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.'

255. The Tribunal considered the seriousness of the facts found proved against Dr Johnson. The Tribunal further balanced the interests of Dr Johnson against those of the public.

256. The Tribunal bore in mind the above paragraphs of the SG. The Tribunal considered the submissions made on behalf of Dr Johnson and on behalf of the GMC. It reminded itself of the findings which led to the imposition of the substantive sanction and of the seriousness of those findings.

257. The Tribunal noted that while it had determined there was no *significant* risk of repetition, it could not be said that there was *no* risk at all. In the circumstances, the Tribunal considered that it would not be appropriate for the doctor to return to unrestricted practice

during the appeal period. Accordingly, the Tribunal determined that it is necessary to impose an immediate order of suspension in order to protect the public. The Tribunal also considered that in light of its findings the imposition of an immediate order was also in the public interest, i.e. to maintain public confidence in the medical profession.

258. This means that Dr Johnson's registration will be suspended from today. The substantive direction, as already announced, will take effect 28 days from the date on which written notification of this decision is deemed to have been served, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

259. The interim order is hereby revoked.

260. That concludes the case.

ANNEX A – 28/10/2025

Application for anonymisation

261. At the outset of the hearing, Ms Fordham, Counsel on behalf of the GMC, made an application under Rule 35(4) of the Rules, for the anonymisation of Ms A and Ms C throughout the hearing. Rule 35(4) states that:

"The Committee or Tribunal may, upon the application of a party, agree that the identity of a witness should not be revealed in public"

Submissions

Submissions on behalf of the GMC

262. Ms Fordham stated that both Ms A and Ms C were effectively complainants in the case and that the allegations are sexual in nature. She stated that there was an inference from the criminal courts such that their identity should be protected. Ms Fordham submitted that it was in the interests of justice for the anonymity of these two witnesses to be granted.

Submissions on behalf of Dr Johnson

263. Mr Rawlinson, Counsel, stated that there was no objection to the GMC's application.

Tribunal's Decision

264. The Tribunal had regard to Rule 35(4) of the Rules and the submissions made by the parties. It noted that the use of screens for Ms A's evidence had been granted at the case management stage.

265. The Tribunal determined to grant the GMC's application for the two witnesses to be anonymised during the hearing as Ms A and Ms C. It concluded that this would be fair and in the interests of justice, given the nature of the Allegation.

ANNEX B – 27/10/2025

Application under Rule 17(2)(g)

266. On day 4 of the hearing, 23 October 2025, following the conclusion of the GMC case, Mr Michael Rawlinson, Counsel, on behalf of Dr Johnson, made an application pursuant to Rule 17(2)(g) of the Rules. Rule 17(2)(g) 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

On behalf of Dr Johnson

267. Mr Rawlinson submitted that there was no case to answer in respect of a number of paragraphs of the Allegation. Namely, paragraph 5(c); paragraphs 7(a) and (b) as it related to paragraph 3 and 4; paragraphs 10(a) and (b) as it related to paragraph 8 and 9; and paragraph 11 insofar as it is founded upon paragraphs 3, 4, 5, 8 and 9. He submitted that the state of the evidence at the close of the GMC's case was such that, taken at its highest, no reasonable Tribunal properly directed could find the allegations in issue proved.

268. Mr Rawlinson referred the Tribunal to the test to be applied by the Tribunal as set out in *R v Galbraith* [1981] 2 All ER 1060. He set out the reasons for no case to answer in relation to the following paragraphs of the Allegation:

Paragraph 3

During a conversation with Ms A near the dinner table, you moved your hand up and down Ms A's spine:

- a. as far up as the middle of her back;

Admitted and found proved

- b. as far down as her coccyx.

To be determined

Paragraph 4

Whilst Ms A was vaping outside the venue you:

- a. stood so close to her that your face was approximately 5cm away from Ms A's face;

Admitted and found proved

- b. and:

- i. you inhaled Ms A's smoke from her vape and blew it back in her face;

Admitted and found proved

- ii. your lips touched Ms A's lips.

To be determined

Paragraph 5

In the foyer area of the venue you:

- c. licked Ms A's cleavage and/or chest.

To be determined

Paragraph 7

Your conduct as described at paragraphs 3-6:

- a. was sexually motivated;

To be determined

- b. 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.

To be determined

Paragraph 8

During a conversation with a junior colleague Ms C, in which she asked if she could have your bow tie, you:

- a. leaned in close to her ear;

Admitted and found proved

- b. said ‘you can have it but only if you take it off with your teeth’, or words to that effect.

Admitted and found proved

Paragraph 9

During a second conversation with Ms C, you said ‘yes, she does’, or words to that effect to a question about whether Ms C has nice breasts, or words to that effect.

To be determined

Paragraph 10

Your conduct as described at paragraphs 8-9:

- a. was sexually motivated;

To be determined

- b. 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 C, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms C.

To be determined

Paragraph 11

Your conduct as described at paragraphs 1, 3, 4, 5, 6, 8 and 9 was an abuse of your more senior position.

Admitted and found proved in relation to paragraph 1

To be determined in relation to paragraphs 3, 4, 5, 6, 8 and 9

269. Mr Rawlinson submitted that the correct test at half-time is whether there is evidence upon which a reasonable tribunal, properly directed, could find the allegation proved. Where the GMC's evidence on a material element is tenuous, self-contradictory or inherently unreliable, the tribunal should not call upon the practitioner to answer those allegations. He submitted that, for an allegation of sexual harassment under section 26 of the Equality Act 2010, the GMC must establish three elements: first, that there was unwanted conduct; second, that the conduct was of a sexual nature; and third, that it had the purpose or effect of violating dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment. Section 26(4) requires the tribunal to consider the perception of the complainant, the other circumstances of the case, and whether it was reasonable for the conduct to have had that effect. He stated that it should not be taken at face value. Further that the evidence of the witnesses thus far, will not change and so the doctor should not be called upon to give an answer those allegations. He stated that common sense is a great part of the assessment and for instance, trivial and transitory comments do not impact dignity. He stated that there is a difference between 'an incident' and 'an environment'.

270. Mr Rawlinson reminded the Tribunal that the language of the statute is deliberately strong. He provided a summary of the key points relating to the Equality Act 2010 by reference to case authorities from the Employment Appeals Tribunal. He submitted the word "violating" is a powerful one, and as observed by Underhill J in *Richmond Pharmacology Ltd v Dhaliwal [2009] ICR 724 (EAT)*, dignity is not violated by conduct that is trivial or transitory, particularly if any offence was clearly unintended. He emphasised that context and intent are central to this assessment, and that an "environment" denotes a state of affairs rather than a fleeting moment. Similarly, in *Betsi Cadwaladr University Health Board v Hughes and others (EAT 0179/13)*, the Employment Appeal Tribunal held that "intimidating", "humiliating" and "offensive" all refer to effects which are serious and marked, not those which, though real, are of lesser consequence. In *Weeks v Newham College of Further Education (EAT 0630/11)*, Langstaff P noted that an "environment" may be created by a one-off incident only if its effects endure beyond the incident itself.

271. Mr Rawlinson submitted that, when assessing the limbs of section 26 of the Equality Act 2010, initial reaction and delayed complaint are instructive. The case of *Tribe v British Telecommunications plc* (ET Case No. 2601449/17) demonstrates that where offence arises only after reflection, the subjective element is unlikely to be met.

272. Turning to sexual motivation, Mr Rawlinson referred to the decision of the GMC Tribunal in *Basson v General Medical Council* [2018] EWHC 505 Admin, which defines sexual motivation as conduct done either in pursuit of sexual gratification or a future sexual relationship. He also relied on *Haris v General Medical Council* (2021) EWCA Civ 763, which held that motivation may be inferred from surrounding circumstances, particularly where the conduct is overtly sexual and there is no plausible innocent explanation. He reminded the Tribunal that oral evidence tested in cross-examination remains the “gold standard” of reliability, not in the sense of demeanour but as a safeguard of fairness, as recognised in *Dutta v General Medical Council* [2020] EWHC 1974 (Admin). He submitted that cross-examination in this case has materially weakened the GMC’s evidence on key particulars.

273. Mr Rawlinson submitted that the conduct alleged in paragraph 8 involving Ms C, took place in a context which she herself described as playful and jovial. Ms C asked for Dr Johnson’s bow tie; leaning in to speak and the remark about removing it with her teeth was not called out at the time. She accepted that the comment was “weird” and “not seriously offensive” and agreed it was trivial in context. He submitted that, on Ms C’s own evidence, there is no foundation from which the Tribunal could reasonably infer sexual motivation. The conduct was not overtly sexual, there was a plausible innocent explanation consistent with ‘banter’ initiated by Ms C, and the comment was not directed at her physical appearance. She did not describe any serious or marked effect on her dignity, and there is no evidence of an intimidating or hostile environment being created.

274. As to paragraph 9, even taking the GMC case at its highest, Dr Johnson merely affirmed a compliment initiated by another female colleague. He did not instigate sexualised discussion; the remark was not aimed at Ms C; and she accepted that it caused her no offence at the time. On those facts, the conduct is far removed from sexual motivation or harassment. Mr Rawlinson therefore submitted that paragraph 10(a), which alleges sexual motivation arising from paragraphs 8 and 9, cannot be sustained. The evidence does not support any finding that the conduct was done in pursuit of sexual gratification or a future relationship. Paragraph 10(b), alleging sexual harassment, also fails because any effect, assessed in accordance with section 26(4), falls well below the statutory threshold. The

incidents were brief, contextual and not called out at the time. Any later discomfort arising after reflection does not amount to the serious and marked impact.

275. In relation to paragraph 11, as it related to paragraph 8 and 9, which alleges an abuse of senior position, Mr Rawlinson submitted that there is no evidential basis for such a finding. There was no line-management or supervisory relationship between Dr Johnson and Ms C. The mere fact that he was a doctor and she a junior colleague within the wider NHS structure is insufficient. Ms C did not suggest she felt inhibited by hierarchy; indeed, she challenged him directly. Without evidence of exploitation, coercion or leveraging of professional status, an abuse of position cannot be inferred.

276. With respect to paragraph 3, concerning Ms A, Mr Rawlinson submitted that the admitted touching up to the middle of her back was brief and trivial. Ms A accepted it was not sexualised, that she was not unhappy at the time, and that she took a photograph with Dr Johnson shortly afterwards. Even if the Tribunal were to find that his hand travelled further down her back as alleged in paragraph 3(b), the surrounding context remains the same: an established friendship, mutual joking, alcohol consumption, and Ms A's own description of being "uncomfortable" at the height of it, does not get close to the threshold. Mr Rawlinson submitted that there was no evidence of a serious or marked effect, no evidence of violation of dignity, and that there was no reasonable basis to reach a determination that 3b, could be reasonably inferred to be sexually motivated or harassment.

277. In respect of paragraph 11, Mr Rawlinson submitted that Ms A did not challenge Dr Johnson and continued to interact with him. He said that this allegation in respect of abuse of more senior position falls away should the matter be dealt with sequentially and that it is difficult to foresee how giving someone a hug and running their hand up and down their spine, can be regarded as an abuse of senior position. He stated that this was not borne out of the evidence.

278. Regarding paragraph 4, Mr Rawlinson submitted that the events while Ms A was vaping outside the venue were instances of mutual horseplay between friends. Ms A herself did not characterise the behaviour as sexual. The only potentially sexualised element, lip contact, was, according to Ms A, accidental. Accidental contact cannot logically be found to have been sexually motivated, since sexual motivation requires a deliberate state of mind. Ms A further stated that the incident was trivial and not serious enough to report, a conclusion inconsistent with any finding of harassment.

279. As to paragraph 5(c), alleging that Dr Johnson licked Ms A's cleavage or chest, Mr Rawlinson submitted that this evidence is weak, tenuous and vague and materially undermined by cross examination. Ms A gave conflicting accounts, at times saying she did not feel a lick, at other times that she did, and conceding in cross-examination that both accounts could not be correct and that she could not say which was accurate. There is no corroboration of any such act. Another witness who says she observed the incident did not see licking. On that evidence, no reasonable tribunal could safely find the allegation proved.

280. Turning to the allegations of sexual motivation and harassment under paragraph 7 as it related to paragraph 3 c, Mr Rawlinson submitted that paragraph 7(a) cannot succeed. The conduct was not done in pursuit of sexual gratification or a future relationship. The evidence points to mutual, friendly interaction. Paragraph 7(b) also fails. Ms A's own description of the incident was that it made her feel uncomfortable rather than stressed and she also stated that she had not realised what was happening and did not feel any sensation. Mr Rawlinson stated that her continued friendly interaction with Dr Johnson is incompatible with a finding that her dignity was violated or that any hostile or degrading environment was created.

281. In relation to paragraph 11 as it concerns Ms A, Mr Rawlinson submitted that Dr Johnson's seniority was incidental to a longstanding friendship. There was no supervisory or managerial link, no exploitation, coercion or abuse of authority. Ms A herself did not characterise the behaviour as an abuse of position, and in the absence of such evidence, the Tribunal should not fill that gap. For conduct to amount to an abuse of position there must be evidence that the practitioner used professional standing to exploit or control another. No such evidence exists here.

282. Mr Rawlinson submitted that, viewed as a whole, the Equality Act threshold is not met in any of these allegations. The statutory words "violating," "intimidating" and "humiliating" require a serious and marked effect. Feeling uncomfortable or "weirded out" does not suffice. The concept of "environment" contemplates something continuing, not transitory. The complainant's perception must be tested against reasonableness and context. Initial reaction and any delayed reporting are instructive. Where, as here, offence arises only after reflection, the subjective limb is not satisfied.

283. Mr Rawlinson further submitted that the GMC's suggestion of "thrill-seeking" behaviour has no evidential foundation. None of the witnesses described any such motive. Assertion cannot substitute for evidence. He reminded the Tribunal that cross-examination has demonstrated the inconsistency and weakness of key parts of the GMC's case,

particularly in relation to paragraphs 5(c), 7, 10 and 11. Mr Rawlinson observed that cross-admissibility cannot overcome the lack of primary evidence on each individual allegation. He stated that the Tribunal must consider each count on its own evidential merits. Mr Rawlinson also referred to *Dutta*, where the High Court emphasised that while demeanour must be approached with caution, the process of cross-examination remains a vital component of due process and the proper testing of reliability.

284. Finally, Mr Rawlinson submitted that to establish an abuse of senior position under paragraph 11, there must be evidence that Dr Johnson used his professional status to exploit or intimidate. Mere differences in qualification or job title do not suffice, particularly where there is no working or supervisory relationship. Neither Ms A nor Ms C gave evidence suggesting inhibition due to hierarchy, and both interacted freely with him.

285. For all these reasons, Mr Rawlinson invited the Tribunal to accede to the application under Rule 17(2)(g) and to find that there is no case to answer in respect of paragraph 5(c); paragraphs 7(a) and (b) as it related to paragraph 3 and 4; paragraphs 10(a) and (b) as it related to paragraph 8 and 9; and paragraph 11 insofar as it is founded upon paragraphs 3, 4, 5, 8 and 9.

On behalf of the GMC

286. On behalf of the GMC, Ms Fordham, Counsel, agreed with Mr Rawlinson as to the test to be applied in *R v Galbraith*. She submitted that the Tribunal should consider each numbered allegation as a whole when assessing the qualifying allegations of sexual motivation, sexual harassment and abuse of position. She submitted that the division of allegations into sub-paragraphs serves only to assist the binding and recording of findings but does not require a fragmented analysis. By way of example, she submitted that it is unnecessary for paragraph 3(a) to be sexually motivated if paragraph 3(b), when viewed in the round as part of the same episode, permits a proper inference of sexual motivation. The question is whether the numbered allegation, taken as a whole, establishes the qualifying element. She stated that the alleged sexual motivation and harassment have a wide ambit. If something is at the lower end of seriousness, that should not have an effect on whether something is to be found or not.

287. Ms Fordham submitted that the statutory test for harassment under section 26 of the Equality Act 2010 is met where the GMC can show unwanted conduct of a sexual nature having the purpose or effect of violating dignity or creating an intimidating, hostile,

degrading, humiliating or offensive environment. Section 26(4) directs the Tribunal to consider the perception of the complainant, the other circumstances of the case, and whether it was reasonable for the conduct to have that effect. She submitted that *Betsi Cadwaladr University Health Board v Hughes (EAT 0179/13)* confirms that the effects must be serious and marked, but that the Tribunal should not raise the threshold so high as to exclude genuine emotional impact expressed in ordinary terms rather than the statute's own vocabulary.

288. Ms Fordham submitted that the Tribunal should approach sexual motivation consistently with *Basson* and *Haris*, accepting that motivation may be inferred from conduct and surrounding circumstances, particularly where an act is sexual per se or where plausible innocent explanations can be excluded. She noted that *case law* stresses context but does not preclude common-sense inference where conduct is plainly suggestive. She submitted that while cross-examination is a key safeguard, selective concessions made under pressure cannot eclipse the totality of the evidence viewed fairly. She submitted that the Tribunal may look at the totality of the evening's events when deciding whether a given act was sexually motivated or amounted to harassment.

289. Turning to Ms C, Ms Fordham submitted that the defence's suggestion that 'leaning in' cannot be sexual or harassing when viewed alone misstates the GMC's case. The act must be read together with the words whispered, namely that she could have the bow tie only if she removed it with her teeth. Whispering those words at close proximity is to make it sexually suggestive. Had Ms C accepted, the act would have been overtly sexual and for the doctor's gratification. From those facts, sexual motivation can properly be inferred, consistent with *Haris*, where inference is justified if no innocent explanation remains.

290. Ms Fordham submitted that Ms C's evidence supports harassment within section 26. She reminded the Tribunal that Ms C explained she did not feel comfortable calling out a consultant; that she was shocked; she felt awkward, hadn't considered it to be a light-hearted comment made in jest; She submitted, that it cannot be right that one would need to use the precise statutory words "humiliated" or "degraded." Further, that the defence's reliance on qualifiers such as "mortally offended" is artificial and does not detract from the evidence that the conduct was unwanted, sexualised and humiliating in a professional setting. Referring to the word 'banter', Ms Fordham stated that a remark can be both banter and sexually motivated.

291. Ms Fordham further submitted that paragraph 9 is plainly sexual. Endorsing a remark about whether Ms C has “nice breasts” is inherently sexual. Dr Johnson had every opportunity to remain silent or to deflect but instead chose to participate. She stated that a sexual comment in a group workplace environment has a greater capacity to humiliate. Ms C’s evidence, both in statement and in re-examination, that talking about a colleague’s breasts was sexual and made her feel awkward, satisfies the effect limb when judged under section 26(4).

292. Ms Fordham submitted that paragraph 10 is made out on both limbs. Paragraph 10(a) is satisfied because the combination of whispering a sexual proposition and endorsing a sexual remark permits a reasonable inference of sexual motivation. Paragraph 10(b) is satisfied because the conduct created a degrading and humiliating environment in a professional setting, saying that it was recognised that even short incidents can amount to harassment if the impact is immediate and marked.

293. Ms Fordham submitted that paragraph 11, alleging abuse of position, is open on the evidence. Ms C stated that she considered herself junior to any consultant in NHS hierarchy. She explained that, although she did not report directly to him, she regarded consultants as senior by convention. That evidence, Ms Fordham submitted, demonstrates the imbalance of power. The reluctance to challenge Dr Johnson at the time is explicable by hierarchy and supports the inference that he acted with confidence that his seniority insulated him from challenge.

294. Ms Fordham submitted that paragraph 3, concerning Ms A, should also be assessed holistically. She submitted that deliberately placing a hand as low as the coccyx is sexual per se between heterosexual colleagues. On the evidence at this stage, a reasonable tribunal could infer sexual motivation, consistent with *Basson*, which recognises that pursuit of sexual gratification may take subtle as well as overt forms. The suggestion of a comforting gesture is inconsistent with Ms A’s own evidence that she did not require comfort. The location and nature of the touch exclude any innocent explanation. Ms Fordham also referred to the case of *Professional Standards Authority for Health and Social Care v Health and Care Professions Council and Yong [2021] EWHC 52 (Admin)*, in making a parallel between the alleged facts of this case with the facts of *Yong*.

295. Ms Fordham submitted that Ms A’s account of feeling uncomfortable and that the doctor is “always touchy-feely,” and her decision not to escalate to avoid spoiling the party, are consistent with harassment. Ms Fordham stated that whilst Ms A said that this was a

fairly trivial incident when compared to the others [alleged incidents], that did not mean that it wasn't the start of her feeling that way. She said that these factors also fed into her being affected by Dr Johnson being in a senior position.

296. Ms Fordham submitted that paragraph 4 also meets the tests of sexual motivation and harassment. Although Ms A described it as a "game," she submitted that the sexual charge and risk were created by Dr Johnson. Moving his face towards Ms A's face, until their lips touched, even if contact was accidental, shows a deliberate advance towards intimacy. *Haris* permits an inference of sexual motivation from such conduct. Ms A's contemporaneous messages, her evidence that she felt awkward, and the cessation of the game at that point demonstrate that it was unwanted conduct of a sexual nature having the effect required by section 26.

297. Ms Fordham submitted that there is sufficient evidence for paragraph 5(c) to proceed. Ms A's original statement recounts Dr Johnson pouring drink down her chest and placing his head in her cleavage to clean it with his mouth. Although she later expressed uncertainty about sensation, the contemporaneous account was spontaneous and unprompted by anyone. When coupled with evidence from another witness who saw Dr Johnson's head in Ms A's chest area, the Tribunal could properly infer the use of his mouth to "clean up," for which there is no innocent explanation. That act, she submitted, is sexual per se and plainly capable of proving both sexual motivation and harassment.

298. Ms Fordham submitted that the doctor's senior position is relevant throughout paragraphs 3 to 5. She reminded the Tribunal of Ms A's own words, that Dr Johnson was a consultant and she, a XXX employee who feared that she wouldn't be believed if she reported it, illustrate the power imbalance. Ms Fordham submitted that this satisfies paragraph 11 insofar as it relates to Ms A.

299. Ms Fordham therefore submitted that, taken at its highest, the GMC's evidence discloses a case to answer on all the qualifying elements attached to paragraphs 8 and 9 (paragraph 10 sexual motivation and harassment), paragraph 11 (as it relates to Ms C), and paragraphs 3, 4 and 5 (as they relate to Ms A) together with paragraphs 7 and 11 (as it relates to Ms A). She reminded the Tribunal that credibility and reliability are matters to be considered at the fact-finding stage.

300. Accordingly, Ms Fordham submitted that the Tribunal should reject the no case to answer.

The Legal Advice and the Tribunal's Approach

301. The Tribunal had regard to Rule 17(2)(g) of the Rules:

302. “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”.

303. It reminded itself that, at this stage, its purpose was not to make findings of fact but to determine whether sufficient evidence, taken at its highest, had been presented by the GMC such that a Tribunal, correctly directed as to the law, could properly find the relevant paragraphs proved to the civil standard.

304. The Tribunal considered the submissions of both parties. It also took account of all of the evidence presented to date, both oral and documentary, in reaching its decision.

305. The Tribunal had particular regard to the case of *R v Galbraith* [1981] 1 WLR 1039, which sets out that:

(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's 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.'

306. It also noted that this authority had been applied by the courts to disciplinary proceedings in the case of *Solicitors Regulation Authority v Sheikh [2020] EWHC 3062 (Admin)*. In that case Davis LJ held that the key question at the half-time stage is whether, on one possible view of the evidence, there is evidence upon which a reasonable Tribunal (not all reasonable Tribunals) could find the matter proved when making the final adjudication. If the answer is 'yes', then there is a case to answer.

The Tribunal's Decision

307. The Tribunal carefully considered the evidence, not to make findings of fact, but to consider whether, taking the GMC's case at its highest, there is sufficient evidence on which a properly directed Tribunal could find the relevant facts proved. The Tribunal approached each numbered paragraph as a whole, as submitted by Ms Fordham, and assessed whether there was sufficient evidence in relation to the alleged facts and how they related to allegations of sexual motivation, sexual harassment as defined by section 26(2) of the Equality Act 2010, and abuse of a more senior position.

Paragraph 3

308. The Tribunal noted that paragraph 3(a) was admitted and found proved. Mr Rawlinson made no submission that there was insufficient evidence for paragraph 3(b) to be found proved. It therefore considered the submission in respect of paragraphs 7 and 11 relating to paragraph 3.

309. Taking the GMC's case at its highest, Ms A described Dr Johnson moving his hand down her spine to her coccyx. She referred to the context and the alleged action in her written accounts and also gave oral evidence on it. The Tribunal considered that, if accepted, and the factual allegation was found proved, then whilst alternative plausible explanations would be considered, an inference could be made and such behaviour could properly be viewed as deliberate and intimate touching, making sexual motivation capable of proof. A properly directed Tribunal could therefore find paragraph 7(a) proved as it related to paragraph 3(b).

310. Ms A's oral and written evidence, included evidence as to the effect of the alleged act of Dr Johnson moving his hand up and down her spine and as far down as her coccyx. Taken

at its highest, and in the event 3(b) was found proved, the Tribunal considered that there was sufficient evidence capable of satisfying the statutory definition of sexual harassment under section 26(2) of the Equality Act 2010.

311. Similarly, on the premise that paragraph 3(b) of the Allegation is proved, Ms A's account referred to her reasons why she was not initially minded reporting the incidents or make a complaint. Taking the evidence available to the Tribunal, at its highest, paragraph 11 of the Allegation as it related to paragraph 3 was capable of proof, in that, a properly directed Tribunal could find that the conduct amounted to an abuse of Dr Johnson's more senior position.

312. Accordingly, the Tribunal determined that there *is* a case to answer in relation to paragraph 3 in its entirety and as it relates to paragraph 7 and 11.

Paragraph 4

313. The Tribunal noted that paragraphs 4(a) and 4(b)(i) were admitted and found proved.

314. In relation to paragraph 4(b)(ii), the Tribunal considered Ms A's evidence that Dr Johnson's lips touched hers, together with the contemporaneous text she sent to a friend expressing feeling awkward and feeling "weirded out." The Tribunal also had the evidence of Ms D, who observed the vaping and 'blowing/inhaling vape smoke' incident and described the behaviour as "weird."

315. Taking the evidence at its highest, the Tribunal considered that a properly directed Tribunal could find paragraph 4(b)(ii) proved.

316. The Tribunal further considered that, if the factual allegation were proved, it would be open to a Tribunal to consider alternative plausible explanations, but it would also be open to the Tribunal to infer sexual motivation from the proximity of the parties and the intimate nature of the conduct.

317. Ms A considered the alleged touching to be 'ever so slight' and expressed feeling 'awkward', further that on reflection she had considered it as 'accidental'. The Tribunal considered that if proved as a fact, there was sufficiency of evidence before it, that, taken at its highest, the facts if found proved, would be capable of being unwanted conduct of a sexual nature which had the effect described in section 26(2) of the Equality Act 2010.

318. The Tribunal also considered that, given the disparity in seniority between Dr Johnson and Ms A, a Tribunal could find that the conduct amounted to an abuse of his more senior position.

319. Accordingly, the Tribunal determined that there *is* a case to answer in relation to paragraph 4 in its entirety and as it relates to paragraph 7 and 11.

Paragraph 5(c)

320. The Tribunal considered the allegation that Dr Johnson licked Ms A's cleavage or chest. Ms A's evidence was that Dr Johnson purposely poured drink down her dress and proceeded to clean it up using his mouth; Ms D stated that she saw Dr Johnson's head on Ms A's chest and reacted immediately. Although Ms A's recollection in oral evidence varied in some respects, her earlier accounts were given a week after the alleged incidents and provided some detail.

321. Taking the evidence at its highest, the Tribunal concluded that there is sufficient evidence on which a properly directed Tribunal could find this allegation proved.

Paragraphs 8(a) and 8(b)

322. The Tribunal noted that paragraphs 8(a) and 8(b) were admitted and found proved.

323. The Tribunal considered whether, taking the evidence at its highest, the conduct could be found to be sexually motivated, to constitute sexual harassment, or to amount to an abuse of position as alleged by paragraphs 10 and 11 of the Allegation.

324. The Tribunal considered that the remark "you can have it but only if you take it off with your teeth" contained an obvious sexual innuendo. The Tribunal considered that whilst plausible alternative explanations would be explored, a properly directed Tribunal could find that this conduct was sexually motivated.

325. However, Ms C's evidence was that *she* initiated the exchange by asking for the bow tie, described it as "playful" and "jokey," and referred to the context as playful and jovial and stated that said she was not seriously offended. She continued to engage with Dr Johnson later that evening.

326. In her oral evidence, Ms C also stated that whilst she felt weird and awkward, she was not mortally offended and agreed that the remark was fairly trivial in the context of things. She also agreed that the events were not ‘triggering’ for her and stated that if they had been, she would not have spoken to him again. She also agreed that the events did not have ‘enough of an impact on her’ so as to extinguish her playfulness at the time and her mission to get the bowtie.

327. On that evidence, taken at its highest, the Tribunal considered that there was insufficient evidence from which a Tribunal could properly find that Ms C’s dignity was violated or that an intimidating, hostile, degrading, humiliating or offensive environment was created.

328. In relation to abuse of position, Ms C recognised Dr Johnson as a consultant and considered herself junior within the NHS hierarchy, although she did not work directly for him. The Tribunal considered that the evidence suggested that Ms C was able to make a comment about Dr Johnson’s purported ability to judge the bra size from looking at breast tissue on a slab, which she had considered to be inappropriate. However, taking the evidence at its highest, a Tribunal could find, when considering the matter objectively, that the making of a sexually suggestive remark, which may or may not also be sexually motivated, by a consultant to a junior colleague constituted an abuse of position.

329. The Tribunal therefore concluded that in respect of paragraph 8 of the Allegation, there *is* a case to answer in relation to sexual motivation (10 a) and abuse of position (11) but that there is *no* case to answer in respect of sexual harassment 10 (b).

Paragraph 9

330. The Tribunal noted that paragraph 9 is still to be determined.

331. Ms C’s evidence was that, during a conversation about her appearance, Dr Johnson said “yes, she does,” in response to a question about whether she had “nice breasts.” She described the remark as “inappropriate” and “shocking,” and said she felt awkward and uncomfortable in front of other colleagues. The Tribunal considered that taken at its highest, this paragraph of the Allegation was capable of proof.

332. It considered that Dr Johnson’s response, if proved as a fact, would be a comment directly about Ms C’s breasts. However, it considered that the ‘response’ if proved, would be

a response to a question posed to him, and it was not in dispute that Dr Johnson would have been put on the spot, having just walked towards Ms C to retrieve the bow tie he had loaned to her. It considered that the comment, if proved to have been said, would not be one initiated by Dr Johnson. Ms C's evidence was that Dr Johnson had soon after making this comment, moved the conversation to ask after her husband. Taking this evidence from Ms C at its highest, it considered that there was insufficient evidence from which an inference of sexual motivation on part of Dr Johnson could be made.

333. The Tribunal further considered that if paragraph 9 is proved as a fact, whether there is sufficient evidence for a case to answer on sexual harassment.

334. Ms C had stated that there was already an ongoing conversation with her colleagues about breast sizes and she had herself made a remark about Dr Johnson's purported ability to "tell a bra size from a slab...from breast cut ups.." . In her written evidence, Ms C had referred to having said this to Dr Johnson and in her oral evidence stated that she said it aloud as Dr Johnson was walking towards her and her colleagues. Ms C, in her evidence, agreed, that she was not mortally offended nor did she consider the alleged comment to be an overtly sexualised comment addressed to her. She stated that she had at a later point discussed it with her husband and had considered it to be inappropriate. Taking the evidence at its highest, the Tribunal considered that there was insufficient evidence from which a Tribunal could properly find the ingredients of sexual harassment made out within the Equality Act 2010.

335. There was also no evidence to suggest that this remark involved any exploitation or abuse of seniority or that Dr Johnson used his professional status and acted with impunity in having answered the question put to him (*if proved as a fact*).

336. The Tribunal therefore concluded that there is *no* case to answer in relation to sexual motivation (10 a), sexual harassment (10 b) and abuse of more senior position (11) as it related to paragraph 9 of the Allegation. The application under Rule 17(2)(g) was successful in this regard.

337. Overall, having considered the submissions of both parties and the evidence before it, the Tribunal determined, taking the GMC's case at its highest, that there *is* sufficiency of evidence and therefore there *is* a case to answer in respect of 5(c) and paragraphs 7 and 11 as they relate to paragraphs 3 and 4. Further that there *is* a case to answer in respect of paragraph 10 (a) and 11 as it related to paragraph 8.

338. It determined that there is *no* case to answer on paragraph 10 (b) as it related to paragraph 8. It also determined that there is no case to answer in respect of paragraph 10 (a) and 10 (b) and 11, as it related to paragraph 9.

Schedule 1:

Date	Time	Message
6 November 2018	21:36	'Yes – she looks like shit' said about Ms D
3 December 2018	21:04	'[Mr E] has been a real dick'
8 December 2018	01:14	'I really like [Ms F] 'She's actually not a nice person' said about Ms F
	01:15	'She's very selfish' said about Ms F
14 December 2018	22:06	'bo-boy'
	22:08	'Body odour' '[Mr G]' said in response to Ms A asking what 'bo-boy' meant
14 February 2019	22:01	'[Mr E] has a massive dick (apparently)
1 April 2019	20:06	'[Dr H] is being a cunt'
	20:11	'She's just a nasty person and is taking it out on me' said about Dr H
11 May 2019	13:47	'You and I get on very well and I like how straight talking you are. I struggle with some of the others...mainly someone XXX...who sends me confusing and mixed messages...' said about Ms F and/or Ms I
	14:27	'[Ms I] and I have always had some chemistry'
8 June 2019	21:40	'I get them too when I see [Ms J]' said in response to Ms A stating that she gets heart palpitations
24 June 2019	22:04	'But most of my girlfriends have had really small boobs' 'That's why I like [Ms F]...lol' 'About the same as [Ms J]' 'XXX' said in response to Ms A asking if [Ms K] has 'big [breasts]'
	22:05	'Ms [I]?' 'They are very asymmetrical' said about Ms I's breasts

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	22:16	'[Mr L] really likes blow jobs....unfortunately lots of women don't. [Ms F] isn't really into that. [Ms M] is a bit missed. How about you????'
1 July 2019	20:10	'I don't know why you like him' 'Apart from his massive cock' said about [Mr L]
28 June 2019	21:16	'But she teases me. I know she teases me to get what she wants' said about Ms F
	21:21	'Can you just tell me she's a cunt and to leave her alone' said about Ms F
1 August 2019	22:24	'Do you think [Ms F] was wearing a bra today?'
	22:26	'That's what I thought but there were no changes in contour around her chest and she has enough fat that I think it would show' said about Ms F in response to Ms A stating 'maybe strapless'
	22:32	'[Mr L] was a cunt today about Gucci stuff' 'But that's because he's a bit gay'
14 August 2019	20:46	'I told [Ms F] I like her boobs and she didn't mind'
	20:51	'There is but I actually wouldn't want to have sex with her!' said in response to Ms A stating that there was sexual tension between Dr Johnson and Ms F 'I think she'd be a shit shag' 'But I don't know why I flirt with her' said about Ms F
	20:59	'yes absolutely' 'she's really boring' said about Ms F in response to Ms A stating, 'you think she'd be shit?'
	21:02	'I think she'd be best underneath but skinny girls are shit to shag like that. She should go on top and be playful but she wouldn't do that' 'And no chance of anything a little kinky' 'I bet she wouldn't even shag out doors' said about Ms F
	21:03	'I bet she wouldn't shag on her period' said about Ms F
	21:29	'Is it bad I told [Ms F] I like her boobs? 'They are massive' said in response to Ms A stating that [Ms K] has big [breasts]
	21:36	'I feel sorry for [Ms J]' said during a discussion with Ms A about big breasts
	21:38	'Her right boob is nice'

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		'The left one is a bit big and really saggy' said in response to Ms A stating that Ms I's breasts are the perfect size
	21:44	'I told [Ms F] she needs to wear a bra that fits' 'Her boobs have shrunk' said about Ms F
19 August 2019	20:52	'I really fancy [Ms F]...and I don't know what to do lol'
	21:02	'1. I don't like her as a person 2. She's not my type 3. I'm not available' said about Ms F
	21:15	'And she's not even attractive' said about Ms F
	21:46	'I thought she looked fit when I was pissed' said about Ms F
6 September 2019	19:20	'Lol [Ms F] stopped talking to me after I asked her if anyone other than her husband had bought her a sex toy'
18 October 2019	20:53	'She completely fucks with my brain' said about Ms F
	20:53	'Enjoy talking to her when I see her. Most people think she gave me a blow job to get her job. I don't think she's that adventurous ;-)' said about Ms F
10 November 2019	19:00	'Do you think she has her head in the clouds or could she be a really devious bitch? [Ms M] has previous warned me from becoming too friendly but I think that was her jealousy issue....' Said about Ms F
	19:03	'I do think she's very attractive but she's not my type...' said about Ms F
15 November 2019	21:55	'She had her jugs out' said about Ms I
	22:28	'I always thought there was something between me and [Ms I]' 'She is so gorgeous and passionate' 'When she was single I couldn't understand why she was single'