

PUBLIC RECORD**Dates:** 07/01/2026 – 23/01/2026**Doctor:** Dr Neill GARRARD**GMC reference number:** 6159385**Primary medical qualification:** MB BS 2007 University of London**Type of case**
New - Misconduct**Outcome on facts**
No facts found proved**Outcome on impairment**
Consideration of impairment
not reached**Summary of outcome**
Case concluded**Tribunal:**

Legally Qualified Chair	Miss Rachel Birks
Lay Tribunal Member:	Mr James Riley
Registrant Tribunal Member:	Dr Charlotte Jones

Tribunal Clerk:	Mr Matt O'Reilly
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Attendance and Representation:

Doctor:	Present, represented
Doctor's Representative:	Mr Michael Rawlinson, Counsel, instructed by Weightmans Solicitors
GMC Representative:	Mr Christopher Hamlet, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts – 23/01/2026

Background

1. Dr Garrard began his medical training in 2001 and completed his Foundation Programme at King's College Hospital NHS Foundation Trust in 2007. He then developed a portfolio career and became a Locum Registrar whilst working at Croydon University Hospital. Dr Garrard also worked as a Locum Senior Registrar at Lister Hospital from August 2015. He undertook various locum posts at different hospitals and was appointed a Forensic Medical Examiner for the UK Border Force in September 2018.
2. In March 2019, Dr Garrard began work as a Locum Senior Clinical Fellow at Crawley Hospital and continued to work there until the start of the COVID-19 pandemic. He started working at Lewisham and Greenwich NHS Trust ('Lewisham Trust') in May 2019. Dr Garrard was appointed as a CESR (Certificate of Entry into the Specialist Register) Fellow at Lewisham Hospital in July 2019 and worked in that role until December 2022 when he was dismissed. He continued to take locum shifts at various hospitals including: the Royal Hampshire County Hospital, Winchester from January 2020, and hospitals in Cardiff and Salisbury. Dr Garrard is an Associate of the Royal College of Emergency Medicine.
3. The matters before this Tribunal related to Dr Garrard's alleged conduct during his care of two patients, which included alleged sexually inappropriate conduct including words spoken both in respect of Patient A on 27 March 2021, and Patient B on 27 December 2021. It is also alleged that he ensured that both patients exposed their breasts and that Patient B

pulled down her trousers and underwear. It is further alleged that he inappropriately touched Patient A.

4. Patient A attended the Accident and Emergency department of the Royal Hampshire County Hospital, Winchester on 26 March 2021. She had been taken there by ambulance after suffering from a severe headache/migraine. Patient A had previously been prescribed a number of medications to address symptoms of Functional Neurological Disorder (FND) by a Consultant at Basingstoke Hospital. Patient A's daily medication included co-codamol, duloxetine, pregabalin, diazepam, naproxen and bisacodyl. On arrival at A&E at approximately XXX, Patient A was triaged and taken to Bay 13 where she was first seen by Dr Garrard at XXX on 27 March 2021. Dr Garrard commenced her on oxygen and advised she needed to sleep. It is alleged that during her time at the hospital Dr Garrard had visited her in Bay 13 four or five times and had dug his fingers into Patient A's shoulder; squeezed her fingers; touched Patient A's breasts on one or more occasion; squeezed Patient A's nipple on one or more occasion; chanted to Patient A in a hypnotic way; said to Patient A *"you will lust for me"* or words to that effect, and *"you'll want to kiss me"* or words to that effect. It is alleged that the physical contact was inappropriate, carried out without consent and was sexually motivated.

5. XXX on 27 March 2021, whilst still in bed in Bay 13, Patient A telephoned the police and reported that she had been sexually assaulted by a doctor. A Health Care Assistant ('HCA'), Ms C walked in to Bay 13, overheard this telephone conversation and escalated matters to a senior member of the nursing team, Sister D. Ms C made a handwritten note of her recollection of events and Sister D also made a record of what she had been told by Patient A. Patient A spoke to her husband about what she alleged happened to her and he made a referral to the GMC on 28 March 2021. The police carried out a video interview with Patient A on 1 April 2021.

6. Dr Garrard was subsequently questioned by the police. It was decided that the case did not meet the evidential threshold, and no charges were brought against Dr Garrard.

7. Patient B attended the Urgent Care Centre at Lewisham Hospital on 27 December 2021 at around XXX, having been experiencing symptoms of anxiety, loss of balance and an elevated heart rate since her COVID booster vaccination on 21 December 2021. Patient B's mother was concerned that her symptoms were interfering with antidepressants she had recently been prescribed. Patient B had called 111 XXX explaining her symptoms and had been called back by a doctor. Patient B told the 111 doctor that she had an elevated heart rate, anxiety, shaking, bad balance, a lack of appetite, headaches, diarrhoea and tiredness. She also told the doctor that after going to sleep at night she would suffer from memory loss

and sleep disorientation, and that she would wake up in a sleepwalking state. She said that she would not remember anything about it the next morning.

8. Patient B was booked in for an appointment at Lewisham Hospital that XXX as the 111 doctor wanted to exclude serotonin syndrome. Patient B arrived at around XXX. Dr Garrard brought her in from the waiting room to a consultation room. Patient B told Dr Garrard the symptoms she had been experiencing and said she needed to go between his room and the waiting room several times for various reasons, for example for blood tests. It is alleged that during the consultations Dr Garrard had with Patient B, he told her to go to a nearby garage to buy herself some water and buy him a coffee; asked Patient B to remove her clothes/underwear when it was not clinically indicated; made inappropriate comments and spoke to her in a hypnotic way. It is alleged that he told her that her boyfriend was causing her sleepwalking and anxiety and that she was not to trust him or her parents; that no one understood Patient B and her symptoms apart from him; and that she should wait at a bus stop where he would pick her up after his shift and take her home. It is alleged that Dr Garrard's conduct was carried out without consent and was sexually motivated.

9. The following day, Patient B emailed a complaint to the Patient Advice and Liaison Service ('PALS') at Lewisham Hospital. The Deputy Chief Nurse subsequently contacted Patient B about the complaint. As the matter was being dealt with by the hospital, Patient B did not report the matter to the police. On 29 December 2021 Patient B contacted her GP regarding her antidepressant medication and also told her GP about what she had experienced at Lewisham Hospital with Dr Garrard. A Trust investigation was subsequently carried out which included taking accounts from Patient B and Dr Garrard, following which Dr Garrard was dismissed.

10. These matters were first considered by a Medical Practitioner's Tribunal ('MPT') in late 2023 ('the 2023 Tribunal'). The 2023 Tribunal found the entirety of the Allegation not proved. The decision of the 2023 Tribunal was subject to an appeal brought by the Professional Standards Authority on 28 January 2024, on the basis that the 2023 Tribunal had been wrongly directed and had wrongly applied the legal test, in respect of cross admissibility. The appeal was upheld by the High Court. Its direction was that the case be remitted back to be heard by a differently constituted MPT.

11. On 25 February 2025 parties returned to the High Court as they were unable to agree on whether the remitted case could be considered 'on the papers' as witness evidence had already been heard, or whether witnesses needed to be called again. The High Court directed that this decision be made by an MPT. On 19 November 2025 an MPT determined that, even though Patient A was willing and available to give evidence it was appropriate and fair to all

parties that the oral evidence of both Patients A and B, previously heard by the 2023 Tribunal, be presented to this Tribunal in transcript form, without further oral evidence being given by them.

The Allegation and the Doctor's Response

12. The Allegation made against Dr Garrard is as follows:

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

1. On or around 27 March 2021, whilst treating Patient A in the Accident and Emergency department at Royal Hampshire County Hospital, you:
 - a. dug your fingers into Patient A's shoulder; **To be determined**
 - b. squeezed Patient A's fingers; **To be determined**
 - c. touched Patient A's breasts on one or more occasion; **To be determined**
 - d. squeezed Patient A's nipple on one or more occasion; **To be determined**
 - e. chanted to Patient A in a hypnotic way; **To be determined**
 - f. said to Patient A:
 - i. 'you will lust for me' or words to that effect; **To be determined**
 - ii. 'you'll want to kiss me' or words to that effect. **To be determined**
2. Your actions as described at paragraph 1a-d above amount to inappropriate physical contact with Patient A. **To be determined**
3. On or around 27 December 2021, whilst treating Patient B at Lewisham Hospital, you:
 - a. asked Patient B to remove her:
 - i. vest on one or more occasion; **To be determined**
 - ii. bra on one or more occasion; **To be determined**
 - iii. trousers; **To be determined**
 - iv. underwear; **To be determined**

when it was not clinically indicated; **To be determined**

- b. told Patient B:
 - i. to go to a nearby garage to buy some water for herself and some coffee for you; **To be determined**
 - ii. that Patient B's boyfriend was causing her sleepwalking and anxiety and that Patient B was not to trust him or her parents;
To be determined
 - iii. that no one understood Patient B and her symptoms apart from you;
To be determined
 - iv. to wait at the bus stop and that you would pick Patient B up after your shift and take her home; **To be determined**
- c. spoke to Patient B on one or more occasion in a hypnotic way.
To be determined

4. Your actions set out at:

- a. paragraphs 1a-e and 2 were carried out without Patient A's consent;
To be determined
- b. paragraph 3c were carried out without Patient B's consent;
To be determined
- c. paragraphs 1, 2, 3a, 3b ii-iv and 3c were sexually motivated.
To be determined

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

The Facts to be Determined

13. In light of Dr Garrard's denial of the Allegation made against him, the Tribunal is required to determine the entirety of the Allegation.

Witness Evidence

14. The Tribunal received oral evidence via MS Teams on behalf of the GMC from Mr E, Deputy Director of Finance at Lewisham and Greenwich NHS Trust (at the time of events). Mr E also provided a witness statement, dated 18 September 2023.

15. The Tribunal also received evidence on behalf of the GMC in the form of witness statements/transcripts from the following witnesses who were not called to give oral evidence:

- Patient A:
witness statement, dated 22 July 2022
supplemental witness statement, dated 11 July 2023
transcript of oral evidence before 2023 Tribunal
- Ms C:
witness statement, dated 8 August 2023
transcript of oral evidence before 2023 Tribunal
- Patient B:
witness statement, dated 5 July 2022
supplemental witness statement, dated 30 June 2023
transcript of oral evidence before 2023 Tribunal

16. Dr Garrard provided his own witness statement, dated 16 October 2023, and a supplementary witness statement, dated 19 December 2025. The Tribunal received a transcript of his evidence before the 2023 Tribunal. He also provided oral evidence during this hearing.

Expert Witness Evidence

17. Mr F, Senior Consultant in Emergency Medicine, provided an expert report into Dr Garrard's care of Patient A, on behalf of the GMC, dated 27 September 2022. Mr F also provided a supplementary expert report, dated 10 August 2023. Mr F was not called to give expert evidence during this hearing. The Tribunal received a transcript of his oral evidence before the 2023 Tribunal.

18. Mr G, Lead Consultant in Emergency Medicine, provided an expert report in respect of Dr Garrard's care of Patient B, on behalf of the GMC, dated 24 August 2022. Mr G also provided a supplemental report, dated 17 July 2023. Mr G was not called to give expert evidence during this hearing. The Tribunal received a transcript of his oral evidence before the 2023 Tribunal.

19. Dr H, Consultant in Emergency Medicine and Intensive Care, and Clinical Toxicologist, also provided an expert report in respect of Patient B, on behalf of the GMC, dated 16 November 2023. Dr H was not called to give expert evidence during this hearing. The Tribunal received a transcript of his oral evidence before the 2023 Tribunal.

20. Professor I, Professor of Psychopharmacology, provided an expert report on behalf of Dr Garrard, in respect of Patient B, dated 4 June 2022. He also provided two supplemental reports, dated 6 November 2023 and 8 November 2023. Professor I was not called to give expert evidence during this hearing. The Tribunal received a transcript of his oral evidence before the 2023 Tribunal.

Documentary Evidence

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

On behalf of the GMC

- Patient A's medical records, dated 26-27 March 2021, including the paramedic record and hospital record;
- Hampshire Constabulary Occurrence Report, dated 27 March 2021;
- The police transcript and the police record of interview with Patient A, both dated 1 April 2021;
- Summary of Patient A's amendments to the police record of interview, undated;
- Patient A's husband's referral form to the GMC, dated 28 March 2021;
- Handwritten recollections of events of Ms C, Nurse P and Sister D, dated 27 March 2021;
- Police statement of Ms C, dated 6 May 2021;
- Pre-prepared police witness statement of Dr Garrard, dated 30 April 2021;
- Email from Hampshire Police to Hampshire Hospitals NHS Foundation Trust ('Hampshire Trust') confirming that they were taking no further action in respect of Patient A, dated 10 May 2021;
- Patient B's medical records, dated 27 December 2021, and an extract of Patient B's GP records, dated 1 October 2021 to 31 March 2022;
- Screenshots of text messages from Patient B to her friend, dated 27-28 December 2021;
- Screenshots of text messages from Patient B to her boyfriend, dated 27-28 December 2021;

- Email complaint from Patient B to Lewisham Trust PALS, dated 28 December 2021 at 18:30;
- Lewisham Trust interview notes of Patient B, dated 23 February 2022;
- Appendices 1-16 of the Lewisham Trust Investigation Report;
- NHS 111 Report – Patient B, dated 27 December 2021;
- Meeting notes regarding Maintaining High Professional Standards ('MHPS') process, dated 17 June 2022;
- Article: Opioid-induced Hallucinations: A Review of the Literature, Pathophysiology, Diagnosis and Treatment, dated October 2016;
- Article: Functional Auditory Hallucinations in a Case of Serotonin Syndrome, dated 1 January 2013;

On behalf of Dr Garrard

- Patient and Multi-Source Colleague Feedback, various dates;
- Dr Garrard's witness statement to the police regarding Patient A, dated 30 April 2021;
- Sketch of section of the Emergency Department at Royal Hampshire County Hospital (author unknown);
- Extracts from the British National Formulary ('BNF') in relation to morphine, diazepam, pregabalin and duloxetine;
- Dr Garrard's witness statement regarding Patient B, dated 11 January 2022;
- Dr Garrard timesheet for 27-28 December 2021;
- Sketch plan of layout of the Urgent Care Centre at Lewisham Hospital (author unknown);
- Extracts from text message exchanges between Dr Garrard and Dr J, dated 29 December (year unknown);
- Three testimonial statements.

Summary of Transcripts of evidence given at the MPT hearing commencing 13 November 2023

- Transcript of Ms C's evidence, dated 13 November 2023;
- Transcript of Patient A's evidence, dated 14 November 2023;
- Transcript of Patient B's evidence, dated 15 November 2023;
- Transcript of Mr F's evidence (GMC expert), dated 16 November 2023;
- Transcript of Mr G's evidence (GMC expert), dated 17 November 2023;
- Transcript of Dr H's evidence (GMC expert), dated 20 November 2023;

- Transcript of Dr Garrard’s evidence, dated 21 November 2023;
- Transcript of Professor I’s evidence (defence expert), dated 21-22 November 2023;

High Court Judgments

- Professional Standards Authority for Health and Social Care v GMC (1) Dr Neill Charles Garrard, dated 28 January 2025;
- Professional Standards Authority for Health and Social Care v GMC (1) Dr Neill Charles Garrard, dated 25 February 2025.

The Tribunal’s Approach

22. In reaching its decision on the facts, the Tribunal will apply the civil standard of proof. This means that the Tribunal must decide whether, on the balance of probabilities, the GMC is able to prove it is more likely than not that the matters occurred as alleged. The burden of proof rests with the GMC and it is for the GMC to prove the case that it is presenting against Dr Garrard. There is no burden on Dr Garrard to prove or disprove anything.

23. The Tribunal will approach fact finding by firstly identifying agreed facts and evidence. To reach a decision on the disputed facts, the Tribunal will assess the evidence in the round. It will consider what conclusions and inferences can be drawn from the documentary evidence. The Tribunal will then consider the available oral evidence and subject that evidence to critical scrutiny against the agreed facts and documentary evidence to consider a witness’ reliability and credibility. The Tribunal should not decide reliability and credibility based on the demeanour of a witness alone.

24. The Legally Qualified Chair ('LQC') also provided her legal advice which was accepted in which she advised that this case has been remitted back to be heard by this freshly constituted Tribunal. This Tribunal should not be influenced by the fact that an earlier Tribunal found the allegations not proved. This Tribunal should reach its own independent conclusions on the facts, based on the evidence before it. The LQC also gave the following advice:

Cross admissibility

25. The Tribunal will need to bear in mind the following matters:
- a. There are two primary grounds on which evidence may be cross-admissible. Namely:

- i. where it may establish propensity to commit that kind of conduct and/or
 - ii. where it may rebut coincidence (*Freeman [2008] EWCA Crim1863 at para 14 and 15*).
- b. The ground on which the Tribunal are being asked to cross admit the evidence is to rebut any suggestion of coincidence.
- c. The Tribunal will need to consider whether the evidence in question is capable of being cross admitted, and that is done by evaluating whether there is a sufficient connection and similarity between the facts of the particulars of allegation concerning Patients A and B (*Chopra [2006] EWCA Crim 2133*).
- d. Where the evidence is admitted in order to attempt to rebut the suggestion of coincidence, before attaching weight to the evidence the Tribunal needs to adopt the following approach:
 - i. The Tribunal needs to exclude collusion or contamination as an explanation for the similarity of the evidence before it can assess the force of the argument that the allegations are unlikely to be the product of coincidence.
 - ii. If collusion or contamination is excluded, considering the evidence as a whole, the fact of two patients making such allegations reduces the likelihood of there being an innocent explanation for them (*R v H [2011] EWCA Crim 2344 para 24*).
 - iii. It is not necessary to find one allegation to be proved before relying upon the evidence in respect of that allegation in support of the other allegation concerning the other patient (*Adams [2019] EWCA Crim 1363 at para 15*).

Hearsay evidence

26. Patient A and Patient B have not attended this hearing to give oral evidence. Their evidence both written and the transcript of their oral testimony amounts to hearsay evidence. “Hearsay” means a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated. This Tribunal will need to bear in mind that the GMC (Fitness to Practise) Rules 2004 provide:

Preliminary legal arguments

30.

Where the Committee or a Tribunal considers and determines any preliminary legal argument, such determination is to bind any subsequent Committee or Tribunal considering the case notwithstanding that any panellist or tribunal member present at the original hearing is not present at the subsequent hearing, or that any panellist or tribunal member present at the subsequent hearing was not present at the original hearing, unless the subsequent Committee or Tribunal considers that—

- (a) there has been a material change in circumstances and that it is in the interests of justice to reconsider the matter; or*
- (b) it is otherwise in the interests of justice to do so.*

27. A decision was made prior to this hearing by another MPT that the evidence of Patients A and B (written evidence and transcripts of oral evidence before the 2023 Tribunal) could be read. It is not suggested to this Tribunal by either party that the circumstances in Rule 30 (a) or (b) above apply, and therefore this Tribunal's task is not to decide whether the evidence is admitted (the determination of the earlier MPT is binding), but rather the weight it can give to that evidence.

28. This Tribunal is invited to consider the approach to weighing of hearsay evidence by reference to the Civil Evidence Act 1995 Section 4(1)(a), as referenced by Mr Rawlinson in his written submissions. These are not civil court proceedings in that MPT hearings operate with separate procedural rules to the civil courts, but professional discipline does sometimes draw on the law applicable to other proceedings, and it is appropriate for the Tribunal to consider s4 of the Civil Evidence Act, bearing in mind that:

- a. In civil proceedings the starting position is that 'evidence shall not be excluded on the ground that it is hearsay' (Section 1 of the Act).
- b. In this case the starting point was that the GMC had to apply to admit the hearsay evidence (on the basis Dr Garrard did not agree to it being admitted) and so the MPT considering the case management matters has already given some consideration as to why the GMC has not called Patients A and B to give oral evidence before this Tribunal, and whether it was relevant and fair to admit their hearsay evidence.

- c. The Tribunal can consider the reasons why Patients A and B are not in attendance to give oral evidence as set out by the parties in the agreed form of words, in assessing the weight of their evidence. It needs to be mindful that it is bound by the earlier MPT's decision in relation to hearsay and should not seek to go behind that or revisit that.

Assessing evidence

29. R. (on the application of Dutta) v The General Medical Council [2020] EWHC 1974 (Admin)

- a. Tribunals should base factual findings on inferences drawn from documentary evidence and known or probable facts and use oral evidence to subject the documentary records to critical scrutiny, consider the witness's personality and motivation. Tribunals should assess the evidence in the round.
- b. Tribunals should not assess a witness's credibility exclusively on their demeanour when giving evidence. A witness's veracity should be tested by reference to the objective fact(s) proved independently of their testimony, in particular by reference to the documents in the case.
- c. Tribunals should make a rounded assessment of a witness's reliability, rather than approaching their reliability in respect of each charge in isolation from the others.

Expert evidence

30. The expert evidence is just one element of the evidence in this case and this Tribunal will need to weigh it against the other evidence before it, scrutinising its reliability and any potential limitations. The Tribunal should not automatically defer to expert evidence but should give clear reasons if it rejects any evidence, or prefers one expert's view over another.

Sexually motivated

31. The following cases should be considered:

- a. R v H [2005] EWCA Crim 732

to find that the conduct alleged was sexually motivated a Tribunal must be satisfied that a reasonable person:

- a. would consider that the conduct could be sexual, and
 - b. in all the circumstances of the case the conduct had in fact been sexual.
- b. *Basson v GMC [2018] EWHC 505 (Admin)*, in which Mostyn J described the test for sexual motivation as: “*that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship*”.
- c. *GMC v Haris [2020] EWHC 2518 (Admin)* *Haris v General Medical Council [2021] EWCA Civ 763*, in which it was said that the only reasonable inference from the facts was that the behaviour was sexual. This derives from:
- a. The fact that the touching was of the sexual organ.
 - b. The absence of a clinical justification

Good character

32. Dr Garrard is of good character in that he has no previous convictions or cautions and no previous fitness to practise history.

33. Good character is not a defence to the particulars of allegation, but it may be relevant in two ways, namely in relation to credibility and propensity.

- a. In relation to credibility, his good character is a positive feature of Dr Garrard to consider when evaluating his evidence.
- b. In relation to propensity, having no past history may make it less likely that he acted in the way alleged.

The Tribunal’s Analysis of the Evidence and Findings

34. The Tribunal has considered each paragraph of the Allegation and has evaluated the evidence to make its findings on the facts.

35. Before determining the facts of the case as alleged, the Tribunal considered the issue of cross admissibility of evidence across both patients. The ground on which the Tribunal is

being asked to cross admit the evidence is to rebut any suggestion of coincidence. The Tribunal considered whether the evidence in question is capable of being cross admitted, and in considering that it evaluated whether there is a sufficient connection and similarity between the facts of the particulars of allegation concerning Patients A and B. It noted that on an initial broad consideration of the case there did appear to be similarities in the nature of the two complaints, namely:

- Patient characteristics;
- Dr Garrard’s tone of voice /chanting/use of 'hypnotic' to describe the experience/clicking of fingers;
- Controlling behaviour or comments; and
- Patient A and Patient B having their breast(s) exposed or exposing them themself.

36. The Tribunal proceeded to consider these apparent similarities in more detail to understand fully their significance.

Patient characteristics

37. The Tribunal noted that both Patient A and Patient B were vulnerable, lone females who had symptomatic mental health difficulties at the time of their presentation at hospital. In that sense there were similarities between the two cases. The Tribunal accepted however that as a A&E doctor during COVID-19, it would be very common for Dr Garrard to see patients with these particular characteristics, and it did not place any significance on this similarity.

Tone of voice /chanting/use of 'hypnotic' to describe the experience/clicking of fingers

Patient A

38. In the Occurrence Report, created by the police at XXX on 27 March 2021, it was recorded that “*Caller reporting that she has been sexually assaulted by a doctor at Winchester Hospital.*” The details of what had happened are recorded as:

“The assault is that the Doctor Neill GARRARD was the on duty Doctor [XXX] 26th [XXX] 27th March 2021 when [Patient A] was taken into the department by Ambulance suffering from severe headache/migraine. She is alleging that over several hours Dr Garrard has entered the cubicle that she was being kept in and has inappropriately groped both her breasts by using his hands underneath and on top of her hospital gown.”

This has occurred 4 or 5 times over the course of the night and on one of the occasions he has squeezed her nipple hard causing her pain. Each time he has attended her he has ‘chanted’ to her that she will soon be out of pain and able to walk and she will thank him and fall in lust with him and want to kiss him.

[Patient A] believes he was trying to hypnotise her and was seeing whether she was awake of (sic) not before assaulting her each time. He would do this by squeezing her finger and squeezing her muscle on her shoulder. She said that she didn’t respond each time and so he must have thought she was sleeping.”

39. The Tribunal noted that this was an early contemporaneous account of Patient A claiming that Dr Garrard had tried to hypnotise her on the day in question.

40. The GMC referral form, completed by Patient A’s husband on her behalf, dated 28 March 2021, stated:

“Dr Neill Garrard, was the Doctor that was meant to be treating [Patient A]. He was very shifty when he first entered the room pacing up and down and not keeping still. He told [Patient A] to close her eyes and relax while shaking her arms. He puts oxygen on her and puts her mask back over her face without telling her. Kept saying when you awake you will be able to walk and have no headache (hypnosis style chanting)...

...Approx 20 minutes later he came back, he removed her jumper from under her head and her phone. As he moved the jumper he pulled the gown to the side, he shook her arms and squeezed a finger and shoulder where the trap is, chanting relax keep your eyes closed and go to sleep, he then felt the left breast and left. after approx. 20 minutes he entered, again chanting the same sentence, he squeezed a finger and shoulder where the trap is; he lifted her gown to check her belly (went in with head problems) he lifted it high enough (sic) to look up at her breasts, he then purposely brushed both breasts then left (chanting all the time). 20 minutes approx he then returned, he moved to my left side moving her head over to the right to face the curtain, chanting when you awake you will have no headache, you will walk, you will lust for me, love me, thank me, kiss me and thank me endlessly) he then lifted her gown and squeezed her left nipple hard then felt right breast (continuously chanting). He left for roughly 40 – 60 minutes within this time she had chance to find her phone and put it under her bum...When he came in for the last time he didn’t say anything as she believes he noticed she moved, he squeezed a finger and trap, groped her right boob and left.”

41. The Tribunal bore in mind that the referral to the GMC was made the following day after the alleged incident and, as with the Occurrence Report, made reference to Dr Garrard having been repeating words and ‘*hypnosis style chanting*’.

42. In her account to the police, as recorded in the transcript of her interview, on 1 April 2021, Patient A stated:

“...[Dr Garrard] said “Right, close your eyes, close your eyes, go to sleep. When you wake up from this you will be – you’ll feel a lot better. You’ll be fine” ... He then came round to my right and he’s waving my arms around, like this, and all the time he’s waving my arms around saying, “When you wake up – relax, go in a deep sleep. When you wake up from this you will – you will feel better.”

...

“I didn’t open my eyes, I knew it was him because he’d come in and he was like, “Stay sound asleep. When you will wake up from this you will be feeling great” ... all the time he’s telling me, “Stay sound asleep. When you will wake up from this, you will be walking. You will be – you will thank for me this. You will be pain free. This headache will have gone from your body”. Then he felt my – still while chanting all this, he then felt my left breast over the top of my gown...”

...

So the third time he came back in. Again I knew it was the same man. “Stay sound asleep. When you wake up from this ... All this time he is chanting, he’s wiggling my arms, “When you wake up from this, you will thank me. You will be pain free” and just things, to words of that effect, all the time...”

“Again, 20 minutes approximately later he came back in and, again, chanting the same – same things. He came to my left side again. He’s wiggling my arms, he squeezed my fingertips, dug his fingers both into my left – my left and my right traps. I didn’t think anything was weird until this point. He was chanting the same thing but this time he – he was chanting, “You will wake up from this, and you will want – you will lust for me. You will want to kiss me. You will be thankful – you’ll be forever thankful for me. You will walk. You will be pain free”.

“... this time he was saying, “You will lust after me. You will ...” and it was – it was like sex breathing, like, I don’t know, like a – I don’t know, pest. It was horrible. He was breathing different. He was close to me.

...each time it was like he was trying to put me in a, like, a trance or a state of – I don’t know what, he was trying to make me go to sleep or hypnotise me. This time he never

spoke and he squeezed my finger, dug it in there and he was really quick and then he had a – a good grope of my left – my right boob and then left without saying any – anything at all this time. There were no chanting, no talking, nothing.”

43. The Tribunal noted that in the police interview Patient A was asked to describe what Dr Garrard’s voice sounded like. She said he was softly spoken. She went on:

“...on entering the room, it was, “Relax into a deep sleep. When you wake up from this you will – keep your eyes” – yeah, “Keep your eyes”, like, the same chant, like, “Keep your eyes closed. When you wake up from this you will be pain free. You will be walking. Just relax into a deep sleep”. It’s always the same, and it’s always like chanted and it’s repeated...”

...The whole time he’s in the room, whatever he were doing, whether he were wiggling my arms, squeezing my fingers, the chant was always going. It didn’t stop when he was putting his fingers into my – my traps. It was, “When you wake up from this you will thank me. You will be pain free. You will be – relax, go deeper, deeper into your sleep”. I believe he thought I was asleep and he was telling me to, “Keep your eyes closed, go deeper into this sleep. You will wake up, you will be pain free” and things like that. It was – it was constant, you know, the whole time.”

44. Patient A reiterated in the interview that Dr Garrard was saying all this in a very soft gentle voice. She said that he was chanting *“Go deeper into your sleep and when you wake up you’ll” – you know, the same thing. Like nothing – like, “Keep your eyes closed, keep going deeper into your sleep” and just the same – it was repeated and repeated and repeated, yeah.”*

45. Patient A told the police that when Dr Garrard was chanting or when he squeezed her ear to see if she would react, she did not react. She also said:

“...and I didn’t want to wake up... ...“Stay deep within your sleep. When you wake up from this you will be pain free. You will be walking...” He come round and he’s still chanting “You will lust after me. You will want to kiss me. You will be ever great – forever grateful for me. You will want to hug me. You will want to hold me tight”...he’d squeezed me and – so at that point I was... frightened so I weren’t going to open my eyes anyway and confront him because I didn’t feel safe because that’s when – before – this was even before he tweaked – he’d squeezed my nipple really hard, like, the chants come before, them chants, sort of chants, had come before he squeezed my nipple.”

46. In her witness statement to the GMC, dated 22 July 2022, Patient A stated,

“...I recognised his voice and chanting on each further occasion that he entered my Bay. I believe I would still recognise his voice now...”

47. In the transcript of Patient A’s oral evidence before the 2023 Tribunal, on 14 November 2023, Patient A stated:

“He moved my dressing gown which was – it were just covering probably ... my belly button. He lifted up my gown and at first he looked ... he lifted it up and looked at my left boob and then he lifted the other side up, because it weren’t quite up enough, and [he] looked at my right boob. He put it back down. All this time he is chanting ...”

48. Patient A also said that every time Dr Garrard came into the cubicle he was saying “Eyes closed, you’re sleep”, she explained this as though Dr Garrard was trying to put her in a ‘trance’. She was asked whether she was ever in a trance and Patient A said she was not, and that her brain does not switch off like that.

49. Patient A said in re-examination that she described the way Dr Garrard was talking as chanting because he had repeated the words he was saying, over and again, the same thing the same way. She said that the chanting was not loud enough for others to have heard in other cubicles.

50. Following a question from the 2023 Tribunal regarding Dr Garrard’s chanting, Patient A clarified that:

“So, initially walking into the room, “Keep your eyes closed, you’re in a deep sleep. When you wake up you will be pain free, you will be pain free, you will be thanking me”, and then like towards the back end of the chanting, like the – on different episodes, like the – I don’t know if it was third or fourth, he was then chanting in a different way like – it’s embarrassing, but it’s like a sex call, like a lot of breath and, “You will lust after me, you will love me, you will want to kiss me. When you wake up from this sleep you will be besotted by me”, things like that, like very breathy, I don’t know, pesty almost.”

51. Patient A was also asked by that Tribunal about a phrase she used in answer to a question on behalf of the GMC regarding, “hypnosis style chanting”. Patient A clarified:

“Like really repetitive and telling me when I wake up I’ll be like doing this or doing that. It was like really repetitive, constant, like second, third visits, like as soon as the curtains were moved it would be, “Keep your eyes closed, you’re in a deep sleep”, and that was the same each time and it were – I don’t know, I’ve only seen hypnosis on TV and that’s sort of where I’ve taken that from, you know, like the repetitional thing.”

52. The Tribunal then considered the account of Ms C, a bank Health Care Assistant (‘HCA’) on duty that night. Ms C made a contemporaneous handwritten account of what Patient A had told her XXX of the same day as the alleged incident. She wrote that Patient A told her Dr Garrard sexually assaulted her and that the doctor had said her *“arm would go solid”*, that she would be able to walk again and would cuddle him and lust after him. No reference was made in this note of hypnosis, chanting or Dr Garrard’s tone of voice.

53. In her statement to the police dated 6 May 2021, Ms C did not mention anything about Patient A’s account of what Dr Garrard had said to her.

54. In her witness statement to the GMC, dated 8 August 2023, Ms C stated that at XXX, on 27 March 2021, she saw that Patient A was on her mobile phone as she saw the light from her phone. She said that when she went to the cubicle, Patient A was on the phone to the police and overheard Patient A saying that she had been sexually assaulted. Ms C stated that whilst Patient A was still on the phone, Patient A said to her *“you tied my gown and now it’s undone.”*, Ms C stated that she explained to Patient A that she had tied her gown, but only loosely. Ms C stated that, *“Patient A told me that she remembered Dr Garrard untying her gown and began to describe being hypnotized by him, her going back to sleep and that Dr Garrard touched her breast.”* Ms C stated she said to Patient A that she appeared to be asleep during the night and really peaceful, as a way to assure her and Patient A told her that she was scared.

55. The Tribunal considered that in the various accounts provided by Patient A she had stated that Dr Garrard had used a soft tone of voice, repetitive use of words which she described as *‘chanting’* trying to put her in a *‘trance like’* state or to *‘hypnotise’* her. It appeared to be a significant feature of her concerns.

Patient B

56. The Tribunal then considered whether there were similarities in this regard in respect of Patient B.

57. Patient B was initially referred to Lewisham Hospital after a call to 111 on 27 December 2021, at XXX. The 111 record of the call had the reported condition as:

“Cannot remember what happened last night – Mother saw pt fall over and hurt themselves on arms and legs. Has started a new medication 5 weeks ago – Sertraline 50mg Tablets”

58. Once at Lewisham Hospital, Patient B was messaging her boyfriend and a friend. At XXX she sent a message to her boyfriend stating:

“...The doctor made me go to the garage to get some water and a coffee for him That’s weird right”

59. Patient B also sent a message to her friend at XXX stating:

“...The doctor made me go to the garage to get myself water and him a coffee...”

60. Patient B had said to both her boyfriend and friend, at around the same time, that Dr Garrard has ‘made’ her go to the garage to get herself some water and him a coffee. Patient B stopped messaging her boyfriend at XXX that night. She did however have some further text exchanges with her friend in which she stated at XXX:

“Also the doctor was really weird and wanted me to wait at the bus stop so he could drop me home. I said no twice and walked home

He also insinuated my partner was causing my anxiety and to avoid him. I hadn’t said anything really about [...] also [...] wasn’t there for the episodes in the last 3 days...”

61. The following day, Patient B made a complaint to Lewisham Trust PALS via email, dated 28 December 2021. In the complaint she stated:

“I came in Lewiston(sic) hospital after calling 111 yesterday for an assessment of anxiety, shaking, bad balance and fast heart rate, as well as memory loss/sleep walking and disorientation after going to sleep at night and waking up a few hours later. (This was all linked with some anti-depressants I had recently been prescribed.)

I’d like to raise an anonymous complaint against the doctor who treated me.

After taking my blood, he told me to get him a coffee from outside the hospital (at the Shell garage) and pick up some water for myself while we waited for blood test results. I had said I'd preferred a drip, which had been given as an option, but he said I had to leave the hospital and go to the garage to get the water.

Later on, he said my boyfriend was causing my sleepwalking and anxiety, my parents didn't understand my anxiety and none of them could be trusted - only he could be. He said that I should follow all his instructions and to avoid my boyfriend.

He insisted on me waiting at the bus stop, no matter how long it took, and he would take me home from there after I was signed off to go home. I said no, I'd walk. He insisted again. (I did walk home).

He made me take off my bra for a subsequent blood pressure test which wasn't necessary the first time.

He also made me drop my trousers and pants, but didn't explain why..."

62. The Tribunal noted that in this relatively brief complaint, Patient B was reporting what she considered to be the significant events to her. There was no mention however of how Dr Garrard spoke to her or the tone of his voice. There was no use of 'hypnotic' to describe anything nor of repeated words or phrases. She did reference the fact he had insisted she meet him at the bus stop.

63. On 29 December 2021, Patient B spoke to a GP at her local practice about her visit to the hospital, the concerns regarding sertraline that she was already taking and the experience she said she had with Dr Garrard.

64. Patient B's GP record of 29 December 2021 states:

*"History had very vivid dream, for 2-3 nights also
sertraline started about 5 weeks ago – had shakes / diarrhoea / nausea
/ tremor.
Seen in A&E see discharge.
Resting heart rate
Sertraline 50mg but has
COVID vaccine well tolerated, booster seemed to fatigue her – feeling
better energy wise. Seen in A&E – discharge noted, ? sick euthyroid
(sic), repeat TFT in 2-3 mths, patient has appropriately(sic) reported Dr*

*to PALS because of these behaviours – asked her to go to shop for water and by him a coffee, asked for her to remove bra for BP, asked her to take off her bottoms as part of examination.
Did not have ECG in A&E – for ECG, wean of sertraline – tritrate(sic) down over 2-4 wks,
get ECG and rebook
anxiety levels better as boyfriend back. Feeling better now.”*

65. The Tribunal noted that there was no mention in the GP record of Patient B reporting hypnosis or hypnotic style speaking, repeated requests or chanting.

66. Patient B was subsequently contacted via telephone by Ms K, Deputy Chief Nurse at Lewisham Hospital on 24 January 2022, to discuss her complaint. The Tribunal did not have before it the notes Ms K took from that telephone call. It did, however, have an email summary of her telephone call, which was sent subsequently to Ms L who undertook the Lewisham Trust investigation. The email summary, originally sent on 24 January 2021, stated:

“She initially said that she did not want us to use her name because UHL is her local hospital and she was worried about the repercussions and she might see the Dr again.

However she would be happy for her name to be used if there had been prior reports and it meant that something would be done.

Since her visit to UHL her heart rate has remained up. She has been to see her GP and they have made the decision for her to come off the sertraline. She has been on a reducing dose and took the last dose today.

Her specific concerns where(sic) about his request for her to go across the road and get him a coffee. He was very specific regarding this . She later realised that there was a shop in the hospital that she could have gone and got a drink from or she could have been given water. They also had a discussion about her having an IVI which initially he had suggested and then he said about going across the road to get the coffee.

Although she had already had her B/P checked he asked her to remove her top and bra so that he could repeat it.

He also asked her to remove her trousers and pants.

As part of the neurological exam he kept on repeating the same questions – about waiting at the bus stop and then he would take her home. She said no but then he would repeat the question again to see if she gave the same response.

She only realised how strange this all when she spoke to a friend the following day.

I asked her if she wanted to go to the Police and she said should she. I said it was up to her but I wanted her to know that the option was open to her. She asked could she change her mind and said she could go to the Police at any point.”

67. The Tribunal noted that there was no mention of hypnosis or hypnotic style speaking or chanting by Dr Garrard to Ms K, but there was mention of repeated questioning in respect of the neurological exam, repeatedly asking her to wait at the bus stop and wanting to take her home.

68. Earlier In the email thread regarding the complaint, Dr J (ED Consultant) commented on 17 January 2021, that:

“The complaint has similar undertones to the previous one - but has occurred at UHL”

69. On 23 February 2022, Ms L interviewed Patient B as part of the Lewisham Trust investigation. The Tribunal had a typed version of the interview. It was not, however, a verbatim transcript of what was said. It recorded that Patient B again gave the account that Dr Garrard had asked her to get him a coffee from the garage and repeatedly asked her to meet him at the bus stop. She again gave the account of the inappropriate requests from Dr Garrard to take her top and bra, bottoms and underwear off. At the end of the interview, Patient B was asked if there was anything else she would like to add. She said:

“It was odd how he did things; he told me to close my eyes and then he clicked his fingers, not quite hypnosis, but it felt a bit like that, and he would say the weird things when my eyes were closed (about waiting at the bus stop and taking me home, also that was when he’d also say that no one but him understood the anxiety, to not trust my parents or my boyfriend, to only trust him).”

70. The Tribunal considered that there was a consistency in Patient B’s accounts, save for the fact that it was when Ms L asked Patient B whether there was anything else, that for the first time she mentioned the word ‘hypnosis’. This was something not mentioned in all her other previous accounts. Despite the use of the word hypnosis Patient B said that it was him asking her to close her eyes and then clicking his fingers that was ‘not quite hypnosis’, but felt

a bit like that. Patient B said clearly in oral evidence during the 2023 Tribunal that she did not think that Dr Garrard was trying to hypnotise her.

71. In her witness statement for the GMC, dated 15 July 2022, Patient B stated that at some point Dr Garrard asked her to close her eyes and that he did not tell her why she had to do this or what kind of examination he was performing. She stated that whilst her eyes were closed, Dr Garrard then started speaking to her in a different tone of voice, which she described as *“a more soothing tone”*. She said that Dr Garrard made a *“double-clicking noise”*, which she presumed he was doing with his fingers. Patient B stated Dr Garrard asked her to open her eyes and that his tone of voice would change to what she considered to be *“normal”*, then talking about something unrelated to what he was saying when she had her eyes closed, though she could not recall what exactly. Patient B stated that when Dr Garrard asked her to close her eyes again, she did. She stated that this time Dr Garrard started saying things that concerned her, that it was her boyfriend who was causing her sleepwalking and anxiety, that she should not trust him or her parents as no one understood her or her symptoms apart from him. Patient B stated that she was not sure whether it was during this ‘phase’ of having her eyes closed, or whether he double clicked and changed the topic. She said he then asked her to close her eyes again, did the double-clicking noise again, asked her to open her eyes, then asked her to close her eyes again. She said Dr Garrard was then more insistent on her waiting for him at the bus stop.

72. Patient B stated that at some point during this exchange, and whilst Dr Garrard was speaking in a soothing voice, he asked her to take off her trousers and pants. Patient B stated that Dr Garrard did not explain why. She stated that whilst she felt uncomfortable, she assumed this was part of an examination and so followed his instruction. Patient B stated that almost as soon as she did, Dr Garrard asked her to put both her trousers and pants back on. She stated that she assumed this was because he was alarmed to see that she was on her period. She said that Dr Garrard only asked her to do this once.

73. Mr Rawlinson asked Patient B during the 2023 Tribunal about Dr Garrard’s tone of voice. Patient B said Dr Garrard had asked her to close her eyes, and his voice was more soothing. She confirmed that Dr Garrard was not chanting. Mr Rawlinson asked Patient B whether she thought Dr Garrard was trying to hypnotise her or anything like that. Patient B said, *“I don’t think so.”* She later said, when asked about his tone of voice and whether she had a specific recollection of what he was saying *“I remember his tone of voice being weird, even if I don’t remember the exact conversation”*.

74. Patient B confirmed in her cross examination that she did not think that being asked to take her top off and put it back on and/or the taking down of her trousers and underwear,

were sexualised requests or sexually motivated. She confirmed that Dr Garrard did not make any sexualised comments towards her. Patient B also confirmed that Dr Garrard's breathing never changed, there was no heavy breathing or staring, and further, that she was not even sure that Dr Garrard looked at her, or was facing her, when she removed her trousers and underwear.

75. The Tribunal considered that in the case of Patient A, she was of the view that Dr Garrard had been chanting and repeating phrases in a hypnotic way, and that he was using a very soft gentle voice, with sexually motivated or sexualised language. Patient B on the other hand said that she did not think that Dr Garrard used any chanting or hypnotic type language or phraseology. She did say he changed his tone to a softer soothing tone, but not in the context of the way in which Patient A had described. Patient B accepted that Dr Garrard's change in tone could have been related to being part of a neurological exam.

76. It was Patient A's case that Dr Garrard was trying to put her into a trance with his chanting in a hypnotic way. Patient B on the other hand said that Dr Garrard did speak in a soft tone of voice and was double clicking his fingers, but she said that she did not think that he was trying to hypnotise her and put the double clicking down to being a part of his neurological examination.

77. The Tribunal did not attribute any significance to the fact that both patients described Dr Garrard as having a soft tone of voice. It is not disputed that he saw both patients and it would not be unusual to use a soft tone of voice for patients who were unwell, anxious and/or in need of reassurance. Patient B specifically said that Dr Garrard was not chanting and so there was no similarity in that respect. The Tribunal did not attribute any significance to Dr Garrard clicking his fingers, it being part of a recognised neurological examination that Dr Garrard said he would have carried out for both patients.

78. The similarity in terms of how Dr Garrard spoke to the two patients which the Tribunal was most struck by was the use of the specific word '*hypnosis*' by both patients to describe the manner in which Dr Garrard spoke to them. However, it did note that although both patients used the same word, Patient A thought Dr Garrard was trying to put her in a trance whereas Patient B in contrast did not feel that Dr Garrard was trying to hypnotise her.

Controlling behaviour or comments

79. The Tribunal considered that Dr Garrard had allegedly told Patient A to close her eyes, go to sleep, that she would lust after him and want to kiss him. Dr Garrard had also allegedly

told nursing staff to leave her alone and let her sleep. She said that he chanted how she would feel when she woke up and that she would be able to walk.

80. Patient A alleged that Dr Garrard had touched her breast(s), nipple, squeezed her finger and the trap of her shoulder on more than one occasion. She alleged that Dr Garrard's behaviour towards her was a sexual assault.

81. The Tribunal considered that Dr Garrard had allegedly told Patient B to take her top and sports bra off, to drop her trousers and her underwear. He had also allegedly told her to go to the garage to get herself some water and him a coffee.

82. Patient B alleged that when Dr Garrard had instructed her to drop her trousers and underwear, she did not think that Dr Garrard even looked at her, that he may not even have been facing her, and she did not consider his behaviour towards her to have been sexual in nature or motivation. The Tribunal noted that Patient B has accepted that it was an inference she made about Dr Garrard wanting her to get him a coffee, and that he had not made a specific request for her to do so.

83. The Tribunal did not consider there to be similarity in terms of Dr Garrard attempting to control the two individuals, there being very different evidence about what he is said to have said to each patient, the manner in which it was said and even whether it was actually a request by him in respect of the coffee. It would not be unusual for there to be direction from an A&E doctor during an examination and the Tribunal did not attribute any significance to any similarity in that regard.

Patient A / Patient B having their breast(s) exposed and/or touched

84. The Tribunal then considered Patient A's account with regards to Dr Garrard having touched one or both of her breasts.

85. In the GMC referral form, completed by Patient A's husband on 28 March 2021, it is recorded that:

"Dr Neill Garrard, was the Doctor that was meant to be treating [Patient A]. He was very shifty when he first entered the room pacing up and down and not keeping still. He told [Patient A] to close her eyes and relax while shaking her arms. He puts oxygen on her and puts her mask back over her face without telling her. Kept saying when you awake you will be able to walk and have no headache (hypnosis style chanting) he

then left and said to the other staff she has a neuro problem leave her to sleep (no obs was conducted through the [XXX] and only looked through a crack in the curtain).

Approx 20 minutes later [Second visit – Tribunal emphasis] he came back, he removed her jumper from under her head and her phone. as he moved the jumper he pulled the gown to the side, he shook her arms and squeezed a finger and shoulder where the trap is, chanting relax keep your eyes closed and go to sleep, he then felt the left breast and left. after approx 20 minutes he entered [Third visit], again chanting the same sentence, he squeezed a finger and shoulder where the trap is; he lifted her gown to check her belly (went in with head problems) he lifted it high enough to look up at her breasts, he then purposely brushed both breasts then left (chanting all the time). 20 minutes approx he then returned [Fourth visit], he moved to my left side moving her head over to the right to face the curtain, chanting when you awake you will have no headache, you will walk, you will lust for me, love me, thank me, kiss me and thank me endlessly) he then lifted her gown and squeezed her left nipple hard then felt right breast (continuously chanting). He left for roughly 40 - 60 minutes within this time she had chance to find her phone and put it under her bum, each time he left he would place her dressing gown in a position so he would know if she moved or not. When he came in for the last time [Fifth visit] he didn't say anything as she believes he noticed she moved, he squeezed a finger and trap, groped her right boob and left."

86. In her witness statement for the GMC, dated 22 July 2021, Patient A stated that "...It was only on the third or fourth occasion when Dr Garrard lifted up my top and squeezed my nipple...", "It was only the third or fourth time, I realised that I was being sexually assaulted."

87. In cross examination by Mr Rawlinson, he asked Patient A that, from what she had already said, whether it was the third occasion in which Dr Garrard squeezed her nipple and groped either one or other of her breasts, or whether it was the fourth occasion. Patient A said that she did not know. She confirmed however that it was on the second occasion Dr Garrard touched her left breast over her gown. Mr Rawlinson then referred Patient A to the account she gave the police in which she stated, "... he squeezed my nipple and then had a good grope of my left breast." Patient A stated that it may have been taken down wrong. Mr Rawlinson said that this was a transcript of what she had said so that it could not have been wrong. He asked Patient A to clarify which one was correct, whether Dr Garrard touched her left breast or her right breast. Patient A said that Dr Garrard touched both, that "he squeezed my nipple and touched my boob, right boob." Mr Rawlinson asked Patient A why she told the police unequivocally that it was her left breast, Patient A said that "It's obviously got lost in translation."

88. In the transcript of her police interview, Patient A told the police that her eyes were closed all the time and that Dr Garrard squeezed her left nipple with two fingers with what felt like maybe a folded finger and a thumb. She said she was unsure whether Dr Garrard was wearing gloves as she would not have been able to tell, the squeeze was only for seconds and it was a very hard squeeze.

“...He squeezed my fingertip quite hard and he dug his fingers into my, sort of like, trap area - trap area here, quite hard. I didn’t flinch, I’m not a - I’m not like a soft girl. So I didn’t flinch, I just - he - all the time he’s telling me, “Stay sound asleep. When you will wake up from this, you will be walking. You will be - you will thank for me this. You will be pain free. This headache will have gone from your body”. Then he felt my - still while chanting all this, he then felt my left breast over the top of my gown...”

“So the third time he came back in. Again I knew it was the same man. “Stay sound asleep. When you wake up from this” and he’s wiggling my arms. The whole time each time he came in he’s wiggling my arms, and he tests - he squeezes my finger. I didn’t think anything of it the first time he felt my breast over my top, I just didn’t - I don’t know why I didn’t feel - think anything of it. I don’t - I don’t – I don’t know. He could have did it off my chest, or whatever, I don’t know. I didn’t have a bra on...He moved my dressing gown which was - it were just covering probably to my belly button. He lifted up my gown and at first he looked at - he lifted it up and looked at my left boob and then he lifted the other side up, because it weren’t quite up enough, and looked at my right boob.”

“Again, 20 minutes approximately later he came back in and, again, chanting the same - same things. ...He then moved my dressing gown and lifted up my - the gown, and he squoze (sic) my nipple so hard. I didn’t move at this point, I thought - I didn’t know what to do, like, at this point I was like more frightened and I don’t know if I’d have - all the time I was awake and I was awake because I knew - I know what the guy in the bed at the side of me had, I know - and they - I weren’t asleep throughout all this. I didn’t think it was weird until this point. I didn’t wake up at this point because I thought if I wake up and confront him for doing that now, am I going to put myself in danger... So he squeezed my nipple, he put my - he squeezed my nipple and then had a good grope of my left breast. He - this time he was saying, “You will lust after me. You will ...” and it was - it was like sex breathing, like, I don’t know, like a - I don’t know, pest. It was horrible. He was breathing different. He was close to me. He was really close and he squeezed my breast...”

"I knew the first time he did feel my boob, and then the second time he did have a look, and the third time, I don't know, well, he's groped me and looked at me and when he squeezed my nipple..."

"Then he came in again and then he - this time he came - he came in, he came to my right side. He shut the curtain behind him each time. This time he squeezed my finger, dug his fingers into my - my neck and then he felt my left boob, and then left this time without saying anything."

"This time he never spoke and he squeezed my finger, dug it in there and he was really quick and then he had a - a good grope of my left - my right boob and then left without saying any - anything at all this time. There were no chanting, no talking, nothing."

89. The Tribunal considered that Patient A was consistent in providing references to the police of Dr Garrard having touched her breast(s) or squeezing her nipple. She was not entirely consistent, however, on what specifically happened on each occasion.

90. In the transcript of Patient A's cross examination by Mr Rawlinson for the November 2023 Tribunal, it was recorded that Mr Rawlinson put it to Patient A that:

"Q Yes, 20 minutes, and then we talk about the next one, he left after approximately 20 minutes, he entered again. "He squeezed a finger on my shoulder". This is the time that you say he lifted up your gown to look at your left boob and your right boob. That's right, isn't it?"

A Yes, he lifted it from the bottom, not from the neck.

Q Yes, but you never saw him do that, did you?"

A I had my eyes closed.

Q Yes, so the answer is you never saw him do it?"

A Yes, correct.

Q You are inferring, you told the police, from the way the air flow changed over your breast as to what he was doing?"

A No, I knew he was looking at my top..."

And further:

“Q No mention there all about him touching one or both of your breasts at the same time, is there? Do you agree?”

A That will be the visit before or visit after.

Q Right, you don't know what's happening during these visits, do you?

A Of course I do.

Q You are muddled and confused about when things have happened and what's happened, aren't you?

A Answering the questions today, yes, it was a long time ago.

Q Well, which one is right then? Is it what's on page 150 or what's in the GMC referral or don't you know?

A One of the visits he felt both my boobs. The other visit he looked.

Q This is the problem, Patient A, with your account, I'm going to suggest, is that you're taking little bits of things that you've imagined and putting them together with little bits of examinations that you have misinterpreted. You wake up and found your gown undone, you put two and two together and got five, didn't you?

A No.

Q That's what's happened here?

A That's false.”

91. The Tribunal considered the inconsistencies in the account of Patient A as to which breast was touched and on which occasion. The Tribunal reminded itself, however, that Patient A was consistent in her account that Dr Garrard did touch/grope a breast or both breasts and/or squeeze her nipple.

92. Patient A was also unclear as to who untied her hospital gown or whether it had just become undone. Ms C said that she had tied it loosely and it may have come undone whilst Patient A was sleeping.

93. In her police interview she stated that on the second occasion Dr Garrard saw her, *“...I was resting my head on my night jumper and he had - he pulled that away from me and he put it behind me on the table, where my personal belongings were moved to the side, my bag. I don’t know where my phone went but my bag was on there, that was put on that table. He then pulled the knot of my nightgown and undid the knot and pulled it from the left side, the string from the left side through, and then left.”*

94. Patient A said in cross examination that it was the first visit from Dr Garrard in which he took her jumper away from her which she was resting her head on, took her phone away and undid her gown. However, in the police interview Patient A told the police that the first visit had been appropriate and that it was the second visit by Dr Garrard in which he undid her gown. She then conceded in cross examination that it may have been the second visit. Mr Rawlinson put it to Patient A that she was confused and muddled about when things have happened. She denied that was the case.

95. The Tribunal reminded itself of the contemporaneous handwritten accounts of Ms C and Sister D. Ms C had recorded that *“at [XXX] she was on the telephone. I at the time didn’t know who she was talking to - she asked me if I tied her gown up, I relayed I did loosely.”* Sister D recorded that Patient A said that on the second occasion Dr Garrard had touched her breast over her gown, and that he had lifted her gown on the third and fourth occasions and touched her breast.

96. As already set out above, it was Patient B’s account that Dr Garrard had asked her to remove her top and sports bra on three occasions and that on the third occasion he took her blood pressure. She confirmed in the oral evidence before the November 2023 Tribunal that she had put her sports bra on when Dr Garrard took her blood pressure. She considered it unusual and thought that it was a part of a neurological examination. She did not feel as though the request was sexual or that Dr Garrard was even looking at her when she removed her sports bra.

97. The Tribunal was satisfied there were no similarities in respect of Patient A and Patient B regarding their breasts being exposed. In the case of Patient A, it is alleged Dr Garrard did this to Patient A without request and he moved her gown. Patient A describes sexual breathing from Dr Garrard. In respect of Patient B, it was Dr Garrard’s alleged request for Patient B to undress, there was no touching of Patient B’s breast(s), and it was not even suggested by Patient B that Dr Garrard had looked at her breast(s). Patient A considered what she said she experienced to be sexual in nature, Patient B was of the view that it was not sexual in nature.

98. The Tribunal was therefore satisfied that there were no significant similarities between the accounts of Patient A and Patient B in respect of them having their breast(s) exposed and/or touched.

99. The Tribunal concluded that, following a deeper review of the evidence, the only significant similarity between the two patient complaints related to them using the word hypnosis/hypnotic in their accounts. Whilst there were other similarities, the Tribunal did not consider that there was sufficient connection between the accounts of Patient A and Patient B for them to be significant. It determined that it would cross admit the evidence between the two complainants.

Whether there was any collusion or contamination in the evidence

100. The Tribunal was mindful that it needed to exclude collusion or contamination as an explanation for the similarity of the evidence before it could assess the force of the GMC's argument that the allegations are unlikely to be the product of coincidence.

101. The Tribunal noted that Patient A and Patient B did not know each other. They lived in different areas, and each attended different hospitals where they had their encounters with Dr Garrard. Patient A was taken to A&E by ambulance and Patient B went on the advice of the person she spoke to after calling 111. Dr Garrard was a locum doctor not known to either patient, and there was no way in which either Patient A or Patient B would have known who the doctor would be that they would see when they attended hospital. The Tribunal was satisfied that there was no collusion between Patient A and Patient B, and Dr Garrard did not seek to argue that point.

102. The Tribunal noted that there were no original verbatim notes from Ms L's interview with Patient B which was the first time Patient B had apparently referred to the word 'hypnosis' to describe the behaviour by Dr Garrard. The notes suggest that it was only at the point when she asked Patient B as to whether there is anything else she would like to discuss did Patient B make any reference to hypnosis. Notwithstanding the use of that word she was clear that she not believe Dr Garrard was trying to use hypnotic language on her.

103. On 9 April 2021, the Tribunal noted that there was an email sent which was a Responsible Officer ('RO') to RO transfer of information. Dr Garrard's RO at the Hampshire Trust emailed his RO at the Lewisham Trust information regarding the complaint by Patient A.

104. On 17 January 2022, Dr J, ED Consultant at Lewisham Trust sent an email internally regarding Patient B's complaint. In her email she stated that *"The complaint has similar*

undertones to the previous one - but has occurred at UHL". This email is subsequently forwarded on to Ms L, Associate Director of Corporate Affairs at the Lewisham Trust.

105. In an email was from Ms K at Lewisham Trust, to Ms M, Medical Director and RO, dated 24 January 2022, she stated that Patient B:

"...did not want us to use her name because UHL is her local hospital and she was worried about the repercussions and she might see the Dr again. However she would be happy for her name to be used if there had been prior reports and it meant that something would be done."

106. The Tribunal considered that it appeared that Patient B may have been informed by Lewisham Trust that there was another complaint to encourage her to allow her name to be used for what she alleged had happened to her.

107. On 26 January 2022, Dr N, Deputy Medical Director for Workforce & Engagement, Lewisham Trust, sent a letter via email to Ms L inviting her to lead the investigation. This letter was in respect of Lewisham Trust's investigation of Dr Garrard. The letter set out the purpose of the investigation, which was:

- *"Whether on 27th December 2021 Dr Garrard inappropriately examined a patient.*
- *Whether following this consultation Dr Garrard inappropriately asked her to obtain a coffee*
- *Whether Dr Garrard willfully disregarded the Trust's Chaperone Policy when already under investigation with the GMC for a similar complaint*
- *Whether there is a pattern of behaviour"*

108. The Tribunal noted that Ms L was aware when she undertook the investigation into Dr Garrard's alleged behaviour that there were already concerns that there had been 'similar undertones' to a previous complaint (Patient A). Further, she knew that Dr N wanted Ms L to investigate whether there was a pattern of behaviour with Dr Garrard. Within the Trust there were a number of staff who were aware of the earlier complaint of Patient A at the time of Lewisham Trust's investigation into the complaint of Patient B.

109. The Tribunal had before it the notes, albeit not verbatim notes, of Ms L's interview with Patient B and with Dr Garrard. In the notes of the interview with Patient B questions are set out followed by responses given. Towards the end of the interview Patient B was asked whether there was anything else relevant she would like to add. She responded:

“It was odd how he did things; he told me to close my eyes and then he clicked his fingers, not quite hypnosis, but it felt a bit like that, and he would say the weird things when my eyes were closed (about waiting at the bus stop and taking me home, also that was when he’d also say that no one but him understood the anxiety, to not trust my parents or my boyfriend, to only trust him).”

110. The Tribunal noted that this was the first reference to hypnosis from Patient B, that there was no reference to it in her original complaint or in the GP record of her telephone consultation. It also noted that in making reference to hypnosis, Patient B was stating that Dr Garrard’s actions were ‘not’ quite like hypnosis. The Tribunal considered however that the reference to hypnosis did appear to come out of nowhere.

111. The Tribunal considered whether there was any contamination of evidence in the investigation into Patient B’s complaint, in relation to Patient A, as suggested by Dr Garrard.

112. The Tribunal noted, however, that there was no mention of a discussion about Patient A or another complaint in the notes of the Trust interview with Patient B. The Tribunal observed it would be not have been unexpected that there would be the sharing of that information between RO to RO and/or Trust to Trust, for the protection of patients. It did not necessarily follow that such information would be shared with a witness, thereby contaminating their evidence. The Tribunal noted that there had been some criticism of Ms L’s investigation during a subsequent employment tribunal. However, there is no evidence before it that the employment tribunal had concerns about the interview with Patient B.

113. In her Lewisham Trust Interview with Dr Garrard, Ms L asked questions in respect of whether there was a pattern of behaviour. Her notes recorded:

“[Ms L]: Given there have been two separate allegations, from two different patients at two different hospitals; is there anything you would like to say to us about that? Why do you think that these patients made these allegations?”

NG: The allegations are not similar, they are different. The allegation currently being considered by the GMC was investigated by the police and was disproven; the GMC will conclude there is no case to answer. This allegation is false; I am unfortunate to have received two malicious allegations.

[Ms L]: You have used the word malicious, why do you think the allegations were made?

NG : I cannot comment on the police investigation (incident 26/3/21) but can say that there was a pattern of behaviour with this patient. This (27/12/21) is not a true allegation and I don't want to speculate."

114. The Tribunal was satisfied that there was no evidence before it that the Lewisham Trust investigation and evidence gathered had been contaminated by Ms L or anyone else at the Trust.

115. The Tribunal therefore excluded Dr Garrard's suggestion of contamination in respect of Patient B's evidence and concluded there is no suggestion of collusion. The Tribunal bore in mind that the fact of two patients making allegations, where both reference hypnosis as a way of describing how Dr Garrard interacted with them, reduces the likelihood of there being an innocent explanation for the similarities. It does not entirely exclude the likelihood and the Tribunal still needed to consider the entirety of the evidence before determining the facts.

Patient A's allegations

116. In respect of that which is alleged at allegations 1a-f, the GMC relied upon the evidence of the paramedics' record; Patient A having contacted the police XXX 27 March 2021 whilst in hospital; the account of Ms C; Patient A's account given to the police; her two GMC witness statements; her medical records and Ms C's report to the police.

Hearsay evidence

117. The Tribunal considered whether less weight should be given to the evidence of Patient A as she was not in attendance to provide oral evidence at this hearing, notwithstanding she had been willing to attend. The Tribunal considered that it would have been assisted by asking Patient A questions of clarification in respect of the handwritten note made by Sister D about there having been an examination of her tummy and then Patient A having told the police that an examination was not undertaken. Further, clarification may have assisted the Tribunal as to why Patient A did not consider she had been examined. The Tribunal would also have been assisted by further clarification as to how sleepy she was XXX 27 March 2021. The Tribunal may also have been assisted by asking further questions in respect of the medication that Patient A had taken and the varying accounts she provided, given the inconsistencies in her account. The Tribunal considered that it would have been assisted to see how Patient A would have answered the questions it had.

118. The Tribunal considered however that it was assisted by the verbatim transcripts of Patient A's oral evidence before the 2023 Tribunal. In some ways it has been able to take a more forensic approach in scrutinising the evidence which has been provided, than it would

have been able to without the transcripts. The Tribunal considered that the questions that it might have asked which would have assisted it were unlikely to have been determinative to its decision, given the areas for questions had been covered in evidence already. It did not consider that the decision not to call Patient A meant that less weight should be given to her evidence.

119. The Tribunal considered that whilst it may not give the evidence less weight, it would have benefitted from being able to explore the evidence further through questions of clarification which may also have assisted the GMC's case. The Tribunal considered that the situation remains that the burden rests with the GMC to prove its case, and it had chosen not to have the patients give live evidence again.

Expert evidence

120. The Tribunal considered Mr F's expert opinion in respect of the particulars of allegation concerning Patient A. He confirmed that moving Patient A's arms and legs would be a part of a neurological and motor function examination. He further confirmed that touching her breasts would be unnecessary in the context of a patient presenting with a headache. He said a cardiovascular examination may involve palpating for the heartbeat but this should not involve touching or squeezing the body of the breast or the nipple. He stated that squeezing the fingers or the trapezius would be used to rouse a sleeping patient or check for consciousness, but digging the finger in would be below an acceptable standard of assessment.

The witness evidence

121. Patient A messaged a family friend at XXX on 27 March 2021, in which she stated that:

"[name] help me plz I'm in a and e Winchester bed 13 bring the police Iv been sexual asauleed(sic)"

122. Patient A telephoned the police to make a complaint at XXX on 27 March 2021. The Occurrence Report stated:

"Caller reporting that she has been sexually assaulted by a doctor at Winchester Hospital.

...

What has happened?

The assault is that the Doctor Neill GARRARD was the on duty Doctor [XXX] 26th [XXX] 27th March 2021 when [Patient A] was taken into the department by Ambulance suffering from severe headache/migraine. She is alleging that over several hours Dr Garrard has entered the cubicle that she was being kept in and has inappropriately groped both her breasts by using his hands underneath and on top of her hospital gown.

This has occurred 4 or 5 times over the course of [XXX] and on one of the occasions he has squeezed her nipple hard causing her pain. Each time he has attended her he has 'chanted' to her that she will soon be out of pain and able to walk and she will thank him and fall in lust with him and want to kiss him.

[Patient A] believes he was trying to hypnotise her and was seeing whether she was awake of(sic) not before assaulting her each time. He would do this by squeezing her finger and squeezing her muscle on her shoulder. She said that she didn't respond each time and so he must have thought she was sleeping."

123. Ms C came into Patient A's cubicle whilst she was on the phone to the police. Following her call to the police, Ms C took a contemporaneous handwritten note of Patient A's complaint.

124. At XXX Ms C wrote:

"...At around [XXX], The Dr assessed the Patient(sic), the Dr put patient(sic) [A] on 6 liters(sic) of oxygen. The lights were low as she said had a nasty headach(sic). The Dr said as her obs were stable she could sleep her headache of(sic)...At around(sic) [XXX] I looked to check on the patient(sic) and noticed she was wide awake. Previously(sic) on the checks I presumed(sic) she was sound asleep. On checking on her at [XXX] she was on the telephone. I at the time didn't know who she was talking to - She asked me if I tied her gown up, I relayed I did lossly(sic). She need started telling me what happened... I immidently(sic) went and informed the nurse in charge."

125. In her statement to the police, dated 6 May 2021, Ms C stated:

"...I was directed by the doctor in charge to leave [Patient A] to sleep but check on her ever hour and to observe any significant changes. When I performed observations on [Patient A] I didn't enter the cubicle at any point but simply checked on her via the gap in the curtain that was pulled across. On every one of my checks, [Patient A] appeared to be asleep and at no point appeared agitated or upset. I never saw [Patient A] move

nor heard her utter a word. I also do not recall her pressing her button to call for assistance.

At about [XXX] hours I performed a check on [Patient A] and at that point I could see that she was awake and using her mobile phone. It transpired that she was on the phone to the police. [Patient A] asked me whether I had undone her gown at any point, which I confirmed I had not. [Patient A] said that her gown had been undone and that she believed the doctor in charge of her care had sexually assaulted her. I alerted the nurse in charge...”

126. The Tribunal noted that there was a consistency in the account of Ms C, and that of the Occurrence Report, albeit the description provided by Patient A at those points in time were not very detailed.

127. A further handwritten record was made by Sister D on 27 March 2021. She recorded that Patient A stated that Dr Garrard:

[XXX]

“Called to see patient as informed patient is upset and on phone to police.

Patient states that she has been sexually assaulted by an ED doctor.

Very upset + crying.

Patient states that she has been sexually assaulted on several occasions(sic) by Dr Neil Gerrard(sic) during her stay in the Emergency Department.

Patient states that on the initial examination there was no inappropriate behaviour and moved her legs felt her tummy and applied high flow oxygen. (NO chaperone present) Advised patient that she will feel Better after sleep.

Patient stated that Dr began “chanting” like trying to put her into a trance.

[XXX]

Patient states that she closed her eyes but couldn’t sleep as still had headache.

She recalls that her hospital gown was tied at this time. The curtain was closed and the nurses were informed to leave the patient to sleep + check through curtain.

The patient states the Dr came into the cubicle later + undid the gown; squeezed her finger + felt breast over gown and squeezed her neck.

Patient said she kept her eyes closed at the time.

(Patient said Dr stated she would be able to walk; have no headache + remember nothing when she awoke (as if being hypnotised)).

The Dr left + shut the curtain.

[XXX]

On the 3rd visit the patient states that Dr pulled the gown from her shoulders. Squeezed her shoulder + squeezed finger. Lifted her gown over her stomach + touched + fondled left breast. He then pulled the gown back down + placed dressing gown over stomach.

Patient states Dr repeated the same words that she would walk, her headache would be better, her arm will go solid when you awake.

The patient states the Dr then left.

[XXX]

The patient states on the 4th occasion she was lying with eyes shut facing to the right. She states the Dr came to her left side and pressed the monitor to obtain a blood pressure. He proceeded to squeeze her shoulder then her finger, she states he lifted her gown and squeezed her left nipple.

The patient states that the Dr said that she would be able to walk, her headache would be gone and that she will thank him, she will lust after him and cuddle him. The Dr then left.

[XXX]

The patient states that after he left she found her phone and was going to phone the Police but Dr returned.

The patient states on this occasion the Dr squeezed her finger, touched her right breast over the gown and left.

[XXX]

The Patient states she then phoned the police to report the incident. The nurses caring for the patient became aware that the patient was in distress and notified the nurse in charge.”

[XXX]

The patient states she then text her welfare officer + husband and notified them of the incident.

Statement read back to patient who agreed with contents. [Name] Duty Manager was informed at [XXX] of incident + Tier 1 informed + [XXX].”

128. In her witness statement to the GMC, dated 22 July 2022, Patient A stated:

“While I did not ever directly look at Dr Garrard’s face with my eyes open. Following on from his first interaction with me, I recognised his voice and chanting on each further occasion that he entered my Bay. I believe I would still recognise his voice now. I was able to squint through my eyelashes and make out his outline when he was outside my Bay, below the bottom of the blue curtain...”

129. When Patient A was cross examined during the 2023 Tribunal, it was put to her that in her witness statement she stated that she had only looked at him the first time he entered the bay she was in, and then she stated in her witness statement that she did not ever look at Dr Garrard’s face with her eyes open. She was asked whether this was true, she said “...when he first walked in I initially opened my eyes, I weren't ignorant.”, “when he first walked in...I had like a sleep mask on and it was partially over, so seeing him walk in I would see his legs first initially, but by the time he reached me I had taken my mask off, he was, like, to the side of me.”. Mr Rawlinson asked Patient A whether she ever looked directly at Dr Garrard’s face, she said that she did not. She was then asked what the extent of her view of him was. She said, “Either feet, bottom legs and then side of his body.”

130. Mr Rawlinson then asked Patient A some further questions about her view of Dr Garrard and that in her witness statement she said that she was able to squint through her eyelashes and make out Dr Garrard’s outline when he was outside her bay. Patient A stated that, “because the curtain was closed, so I recognised those trainers.”

131. The Tribunal considered that whilst this was not determinative, there was an inconsistency in the account of Patient A as to whether she actually saw Dr Garrard or not. It

was questionable as to whether she had actually seen Dr Garrard on those occasions he entered the cubicle she was in.

132. The Tribunal noted that there were two police accounts of what Patient A had said in her interview. There was a verbatim transcript of the police interview with Patient A, dated 1 April 2021, and a police record of interview, dated 1 April 2021.

133. In the transcript of police interview with Patient A, dated 1 April 2021, it was recorded that Patient A stated:

“...apart from oxygen, there was no treatment for my head, you know? Nobody looked in my eyes. No doctor looked in my eyes. Like, I’ve got a family that has suffered from, like, bleeds on their brain an aneurysms and things like that”

“Maybe there were a purpose for what he did. But not once did he sort of check me medically, like no light shining in eyes, no alert, you know, just the checking things that with a head injury you would instantly shine a torch in somebody’s eyes. I know that; [XXX] had a bleed on his brain and I know, you know, that that happens a lot.”

134. In the police record of interview, dated 1 April 2021, it is recorded that Patient A stated:

“the Dr looked in her eyes, and that her family suffer from [XXX]”

“...[Patient A] stated that at no point did Dr GARRARD check in her eyes, or ask her about anything to do with her condition. [Patient A] explained she didn't feel he did anything to do with her head injury.”

135. The Tribunal noted the discrepancies between the police records as to whether Dr Garrard did or did not shine a light into her eyes, and whether he examined her. The Tribunal placed more weight on the verbatim transcript of the Police interview as to what was said as opposed to the record of interview, which appeared to contain a typographical error.

136. In re-examination by Mr Hamlet at the 2023 Tribunal, he referred Patient A to Dr Garrard’s note of an examination he stated he performed. Patient A confirmed that she considered that note to be a fabrication, and that she was familiar with a neurological examination as she had suffered with migraines for XXX years.

137. The Tribunal had regard to Dr Garrard’s medical note of his consultation with Patient A at XXX on 27 March 2021:

“On examination not dry, jaundiced or anaemic

[chest diagram) Chest clear S1 + S2 +O

[abdo diagram) soft non-tender bowel sounds present

No DVT no oedema

Upper Limb/lower limb normal power tone reflexes throughout when relaxed

Cranial nerves 2-12 nothing abnormal

Pupils equal and reactive to light (PERL) 3mm

Tired

No DVT no oedema”

138. Patient A was asked in cross examination at the 2023 Tribunal, by Mr Rawlinson, whether Dr Garrard ever listened to her chest, she said “No”. Mr Rawlinson referred Patient A to the medical record in which Dr Garrard had drawn a diagram of her abdomen and asked her whether the doctor had ever touched it. She confirmed that Dr Garrard had tapped her abdomen. Mr Rawlinson put it to Patient A that Dr Garrard had written in the medical record “soft non-tender bowel sounds present”. Patient A said “he tapped on it. I asked him if I were bunged up, he said, “Close your eyes, relax”, something, to the words of those effects.” Mr Rawlinson referred Patient A to her statement to the police in which she said she said that Dr Garrard did “no type of examination” on her. He asked whether Dr Garrard shone a light in her eyes, she said “No”. Mr Rawlinson then asked Patient A why she did not tell the police that Dr Garrard tapped on her abdomen. She said “I thought I did. I don't know.”

139. The Tribunal noted that Sister D had recorded that Patient A told her that Dr Garrard had “moved her legs felt her tummy and applied high flow oxygen”.

140. The Tribunal also noted that in the contemporaneous handwritten account recorded by Ms C, she wrote that Patient A said that Dr Garrard chanted that Patient A would ‘thank him, lust after him and cuddle him’. In this initial account, there is no reference to Dr Garrard chanting “you’ll want to kiss me”, as subsequently alleged and as appears in the Allegation (1fii). However, in the record of her police interview, on 1 April 2021, it subsequently stated, “he continued chanting; ‘YOU WILL LUST AFTER ME’. - explained that the Dr was; ‘LIKE SEX BREATHING’ on her, and she felt like he was acting like a; ‘PEST’.”

141. The Tribunal also noted that in the Occurrence Report, it stated that Patient A alleged that, *“Each time he has attended her he has 'chanted' to her that she will soon be out of pain and able to walk and she will thank him and fall in lust with him and want to kiss him.”* There is also reference in the police record of interview in which Patient A said that *“Dr GARRARD said; 'YOU'LL WANT TO KISS ME, HUG ME, HOLD ME TIGHT”*.

142. The Tribunal noted that the terminology of what Patient A said Dr Garrard was chanting changed at times in different accounts she has given, and only the phraseology of *“you will lust for me”* and *“You’ll want to kiss me”* or words to that effect, appeared in the Allegation. She has variously said, or is reported to have said, that Dr Garrard told her she would want to cuddle him, hug him, kiss him, hold him tight, and that she would lust after him. The Tribunal was mindful that not all accounts were verbatim and/or contemporaneous. It nevertheless was concerned that the discrepancies suggested an inconsistency in reporting which might in turn be indicative of an unclear recollection.

143. Patient A’s account of the number of times Dr Garrard visited her in the cubicle changed as being either four or five times, and what happened on each occasion was not entirely consistent in her accounts.

144. The Tribunal considered whether Dr Garrard had a sound clinical basis for entering Patient A’s cubicle, Bay 13, between 3-4 times between XXX and XXX. The Tribunal considered that Patient A had been admitted with a severe migraine and that she had collapsed twice prior to being taken to hospital. Dr Garrard said in oral evidence he was the only doctor in that department on duty trained to intubate in a busy emergency department with ambulances queuing outside, and that he was checking in on Patient A to check that she was still conscious. He said that he also had in mind that the target was to clear the bed within four hours. The Tribunal considered that Dr Garrard had a legitimate clinical reason to check in on Patient A. The Cubicle was just across from the nurses’ station where they would have been working and it considered that there would not have been anything suspicious in him going in to check on Patient A. Dr Garrard told the Tribunal that it was his practice to go in and check on his patients periodically.

145. In cross examination Mr Rawlinson asked Patient A about Dr Garrard having waved her arms around. Patient A said that it was only on the first occasion he visited her cubicle. Mr Rawlinson put it to Patient A that Dr Garrard was not just randomly waving her arms around, that he was checking to see what sort of power she had in her upper and lower limbs. She said that was what he was supposed to be doing, but the way in which he did it was not an examination, that she had had such an examination previously and that was how she knew what he was supposed to be doing. Patient A was of the view that Dr Garrard was waving her arms randomly. Mr Rawlinson put it to Patient A that Dr Garrard had written in

the medical record of the examination *"upper limb lower limb normal power, tone reflexes throughout"*. Patient A said that was *"false, an invention"*. Mr Rawlinson put it to Patient A that given she suffered from FND, one of the symptoms was an effect upon her limbs. Patient A said that Dr Garrard only stopped when she screwed her face up, and he was laughing pulling her leg up. She also said that Dr Garrard only touched her right leg, not her left leg. Mr Rawlinson asked Patient A whether she was confused or misremembering, Patient A stated that she 100 percent was not.

146. Patient A also said in cross examination that Dr Garrard falsified the records for about 30 or 40 minutes.

147. The Tribunal considered that Patient A's accounts given to the nursing team and to the police along with her oral evidence were inconsistent. They also did not align with the medical note by Dr Garrard of what he recorded as happening during his consultation with Patient A at XXX on 27 March 2021 in terms of an examination. The Tribunal considered that the medical notes made by Dr Garrard in respect of Patient A were unremarkable, that they appeared to have been made contemporaneously, and they do not appear to have been altered. The Tribunal considered that the medical notes were consistent with the treatment plan Ms C recalled being put in place.

148. The Tribunal had no reason to believe that the medical note written by Dr Garrard was not contemporaneous and there was nothing before it to indicate a reason as to why Dr Garrard might have fabricated the note of his first interaction with Patient A. The Tribunal noted that at XXX on 27 March 2021 Patient A had reported to Sister D that on the initial examination there was no inappropriate behaviour and that Dr Garrard had moved her legs and felt her tummy. This was consistent with Dr Garrard's clinical note of the consultation. The Tribunal accepted that the note was an accurate account of what took place.

Patient A's mobile telephone

149. In the GMC referral, it is set out by Patient A's husband that Dr Garrard removed Patient A's phone from her.

"Approx 20 minutes later he came back, he removed her jumper from under her head and her phone... He left for roughly 40 - 60 minutes within this time she had chance to find her phone and put it under her bum..."

150. In the transcript of her interview with the police, Patient A stated:

“When the first time he came in, he says, “I will take your phone from you. You need to relax and sleep this off”. I don’t know where my phone went. Sorry about that.

So I had this - the second time he was in there, I had - I was resting my head on my night jumper and he had - he pulled that away from me and he put it behind me on the table, where my personal belongings were moved to the side, my bag. I don’t know where my phone went but my bag was on there, that was put on the table...”

“So from probably the lady putting the cannula in, the first nurse putting the cannula in, I didn’t see the other girls again. Then he - at this point I was moving my legs about or trying to feel for my phone without moving too much or - at this point the - the thing was beeping because my heart rate was high. He - I managed to find my phone and it was underneath - it was right at the end of the bed. So for me to sit up and reach would - straight-legged would cause even a lot of pain and I reached forward and I got my phone. I - I put - I could hear a lot of talking outside and I put it under my bum, and I knocked my prescription within a sick bucket and I knocked the prescription on the floor and I was getting really hot, so I moved the dressing gown down a little bit.”

“...I don’t know whether that’s because he’d seen things had been knocked on the floor or my phone weren’t where - where he left it.

Then a nurse come in. I’d got my phone and I was - I was - I tried to ring somebody. I tried to ring - oh no, I tried to text the welfare officer and I asked him to please come to the hospital to get me and bring the police. (The witness became upset) But when I was writing the message the phone kept ringing because my blood pressure or whatever was high.

So I tried to send a text message. No, I’m - no, that’s not true. I’d got my phone and I tried to send a text message to the welfare officer to please come to the hospital and bring the police and then I hid it under my bum, and that’s when the doctor came back in for the last time.”

151. The Tribunal reminded itself that Patient A had her phone by XXX as she sent a text message to a family friend stating:

“help me plz I'm in a and e Winchester bed 13 bring the police Iv been sexual asauled”

152. In cross examination by Mr Rawlinson, during the November 2023 Tribunal, Patient A was asked why when she realised that Dr Garrard's behaviour was inappropriate, did she not start looking for her phone then. Patient A said that she started looking for her phone as soon as she realised it was inappropriate and that was when she messaged the family friend. Mr Rawlinson asked Patient A how she had not noticed the phone next to her on the bed previously, Patient A said that it was not next to her, but that it was down by her feet and she could not see it. She said that she had limited mobility, that it was dark and she was experiencing pain moving. Mr Rawlinson asked Patient A why she did not call the police at XXX when she messaged the family friend and waited until XXX to make the 999 call. Patient A said it was because she tried to get a friend to come and get her before she rang the police as she wanted to get out of the hospital. Mr Rawlinson put it to Patient A that she still was not quite sure about what was going on. Patient A said that she knew exactly what was going on and that she did not want to be there. She confirmed that after she had sent the message at XXX Dr Garrard came back into her cubicle and that she hid her phone under her bottom because she was frightened of Dr Garrard coming back.

153. Patient A told the police on two occasions that she did not know where her phone was and that Dr Garrard had taken it from her. In cross examination she accepted that it was on her bed by her feet and that she later put it under her bottom. The Tribunal found this to be another inconsistency in the account of Patient A. The Tribunal was mindful that the lack of use of her phone earlier by Patient A could be an indicator that she was asleep.

Patient A's symptoms and the impact of medication on Patient A

154. The Tribunal had regard to the South-Central Ambulance Service - Patient Clinical Record, for Patient A, dated 26 March 2021, it is recorded that her presenting complaint was 'Neurological Headache'. It also recorded:

"History and Presenting Complaint

Pt has functional neurological disorder and hx of migraines, for past 3/7 pt has had global crushing headache, this evening at 2015 pt had sudden of left hand side squeezing sensation in head, this caused pt to lose consciousness for 30 seconds, witnessed event.

Past Medical History

...functional neurological disorder, migraines, short-term memory loss

...

Medication

co-codamol, diazepam, duloxetine, dymista, fluticasone, naproxen, omeprazole, pregabalin,

Patient's Medication Taken to Hospital with Patient

...

On Examination

Pt states this does not feel like her normal migraines, pt states is having problems focusing her vision, squeezing sensation in left side of head, pt feels nauseated when moving, pt had one episode of tloc with husband lasting approximately 30 seconds, another episode lasting approx 15 seconds witnessed by crew, pupils 3mm reactive, fast negative, pt has ongoing short term memory loss but today this has worsened, pt feels muddled, pt states photophobia is only in left eye, migraines usually present in right, no seizure-like activity, pt usually [XXX] and it is normal for pt to be incontinent of urine. Pt has significant family hx of strokes and bleeds.

Pt diagnosed with functional neurological disorder in September, felt she was managing okay but has recently noticed that she is struggling to cope mentally, spoke to gp Monday who adv. pt to lower pregabalin. Pt has suicidal ideology, would throw herself out of window...

Nervous System Assessment

Patient Doesn't Remember Falling Down.

Medicines

Morphine Sulphate 10 mg in 5 ml oral solution

155. Patient A told Dr Garrard that she was taking *co-codamol, diazepam, and pregabalin*, according to her clinical record made by Dr Garrard.

156. The medical record of Patient A's attendance at hospital also recorded that on 27 March 2021 at XXX, Patient A reported to Dr O (ED Consultant) "...her headache had gotten better but with the subsequent stress caused to her it has come back. She has already taken her own medication for this: Pregabalin 100mg, Cocodamol 30/500 [x2]..." The Tribunal noted that the decision to take pregabalin and co-codamol that morning whilst experiencing a

headache was at odds with what she had said in her GMC statement and oral evidence about her decision not to take pregabalin and co-codamol the previous day. The reduced dose of pregabalin 100 mg was, however, consistent with the reduced amount of pregabalin she told the police she had taken on 26 March 2021 as detailed below.

157. In the transcript of her interview with the police, it is recorded that she told them that she takes *“quite a lot of drugs.”* She listed pregabalin, diazepam, co-codamol, omeprazole, naproxen and duloxetine.

158. In the transcript of the police interview, Patient A was asked about having to take medication to manage her FND on that Friday (26 March 2021). She said that she had medication at about 5pm, that she had taken 100mg of pregabalin but that usually she would have taken 200 mg, but as the medication cause side-effects of headaches she took less that day. She also said that she did not take her diazepam, but that she did have two co-codamol which were 30/500 which *“are quite strong”*. She confirmed that she did not consume any alcohol and that she had had a lesser dose of medication than usual.

159. In his pre-prepared police witness statement, dated 30 April 2021, Dr Garrard stated:

“...Patient A advised that she was on 15 mgs of diazepam (benzodiazepine medication used to treat anxiety, muscle spasm, fits, alcohol withdrawal or difficulty sleeping) each night and pregabalin (a medicine to treat anxiety and/or pain) 3 times a day. This stuck in my mind, as it seemed a high dosage of diazepam. She was also taking regular Co-codamol (for pain). Patient A advised the medication was for pain relief, but I recall thinking that odd, as she had not mentioned pain associated with her FND.”

160. In her GMC witness statement, Patient A stated on the 25 March 2021, she believed that she took her medications normally. Contrary to what she had told the police, she said that on the morning of 26 March 2021 she decided not to take her medications, as she thought it possible they were contributing to her migraine. Patient A stated that she only took two paracetamol and one naproxen that morning, and took a further paracetamol that afternoon. Patient A stated that when the paramedics assessed her at her house she was prescribed and administered 10 mg oral morphine. Patient A stated she received no other medication or prescriptions, except for oxygen, during her hospital stay up until she decided to take some of her usual daily medications on XXX 27 March 2021.

161. In her supplemental witness statement, Patient A stated that in her initial GMC statement, she said that she did not take her medications on the morning of 26 March 2021 due to a migraine, other than two paracetamol, one naproxen tablet and further paracetamol

later that afternoon. She added that she did not experience any withdrawal effects from her medication in the past or on that day. Patient A also said that she was provided with oral morphine at home by the paramedic and oxygen at the hospital, she confirmed that she received these without any adverse effect.

162. In his cross-examination of Patient A, Mr Rawlinson asked Patient A to read her witness statement in which she stated that *“On the morning of the 26 March ... due to a migraine, I had decided to not take the medications, as I thought it possible the medications were contributing to my migraine, and I only took two paracetamol and one naproxen that morning.”* He asked her whether this was correct. Patient A stated, “Yes”, that she was 100% sure. She also said that she was sure that she had not taken any diazepam, pregabalin or duloxetine on that day. Patient A accepted that she was given some morphine by the paramedics. Patient A said that she did not have co-codamol, rather two paracetamol and one naproxen. Mr Rawlinson then asked Patient A about her *“Short-term memory loss”*. Patient A clarified that sometimes when she spoke having a general flowing conversation, she would lose her train of thought. She said that she said memory loss in her witness statement, but that was not necessarily what she meant. Patient A said that it was noticeable because it happened a lot more when she first got FND. She rejected the assertion from Mr Rawlinson that from around March 2021 she was suffering from short-term memory loss and said that was not accurate.

163. Mr Rawlinson put it to Patient A that everything else on the medical note was correct apart from the fact that it was recorded that she had short-term memory loss. Patient A said that was correct. Mr Rawlinson put it to Patient A that the record stated, *“[Patient A] has ongoing short term memory loss but today this has worsened ... ”*, he asked whether this was accurate. Patient A stated that her answer was the same, that it was becoming ‘stumped’ in conversation. She accepted that she thought it significant enough to mention to the paramedics, and that this information had come from her. She also accepted that she had felt muddled at that time, then said the word she would use was ‘woozy’. Patient A was asked whether it was fair to say that she could not quite remember properly what had happened to her. She said “No”. She also denied that she told the paramedics that she was struggling to cope mentally at that time. Mr Rawlinson asked Patient A why they had written *“[Patient A] has suicidal ideology, would throw herself out of window.”* Patient A said that it was a joke because she was in a lot of pain and that she was in bed at the side of a patio door. She said she was joking saying the worst she could do was roll off her bed.

164. Mr Rawlinson put it to Patient A that the much more likely explanation was that she was worried about the side effects of the pregabalin and that was why she went to her GP because it was causing her to have suicidal thoughts. Patient A rejected these contentions.

She also rejected the assertion that having suicidal ideology fits in with her struggling to cope mentally.

165. In respect of the amount of medication Patient A had taken on the day of and or day before she went into hospital on XXX 26 March 2021, Patient A's account was clearly not consistent. The contemporaneous evidence was that she had taken pregabalin and co-codamol that day. The Tribunal concluded that she had indeed taken pregabalin and co-codamol on 26 March 2021 at XXX.

166. The Tribunal considered that whilst it was possible that any one of the areas regarding Patient A's memory loss, loss of consciousness, being muddled, suicidal ideations, or the amount of medication that Patient A had taken, could have been taken out of context and reported incorrectly. It did not, however, consider it plausible that professional paramedics had taken several of these factors out of context. It accepted the accuracy of the paramedic's note. The Tribunal considered that a pattern had emerged of Patient A minimising those factors that might potentially undermine or weaken her account as to what she alleged had happened. The Tribunal considered that this went to Patient A's reliability as a witness.

167. In cross examination by Mr Rawlinson, Mr F confirmed that the prescription of 30/500 co-codamol was a combination of codeine and paracetamol and was the strongest codeine that one could get prescribed. Mr F confirmed that codeine is essentially metabolised into the same byproduct as morphine and is an opioid. He also confirmed that each drug has a half-life / absorption period, which is how long it takes the body to absorb it, and it reaches what is called a peak plasma time, which is when it is at its most effective. Further, that thereafter it has what is called a half-life which is how long it takes for half the medication to effectively leave the body. He confirmed that the period by which half-life is eliminated from the body is between two and four hours.

168. The Tribunal was satisfied, on the balance of probabilities that Patient A had taken pregabalin and co-codamol on 26 March 2021, plus what the paramedics had administered to her by way of morphine, and it would still have been in her system when she attended hospital.

169. Mr F opined in his supplemental expert report, dated 10 August 2023:

"6. Page 11, question 7.c: you note that morphine side effects taken from BNF include confusion and hallucination. In your opinion, to what extent is it possible that the morphine could have caused confusion and/or hallucination so as to affect Patient A's perception of the events alleged? Are you able to provide any comment on whether

Patient A's reported experience of physical sensations could be explained by way of side effects of Morphine?

I have observed patients who have had morphine and become confused afterwards about events that have happened to them whilst in the ED. The side effects listed in my report include "hallucination" and this term can presumably include tactile hallucinations, although the BNF is not explicit in saying this. I have not personally observed patients reporting tactile hallucinations in my own clinical practice, but I am not able to say with any certainty that tactile hallucinations can occur with morphine use, and if they do, what frequency would be expected. This would be something for a toxicologist or psychiatrist to comment upon and I would defer to one of these experts. For assistance I have included a relevant review article on this issue.

7. Could Patient A's functional neurological disorder as referenced within her medical records account for any possible confusion/hallucination/physical sensations?

Although I have experience of this condition as it presents to the ED, this condition falls into the remit of neurology and psychiatry and I would defer to experts from these specialities in terms of the full spectrum of symptoms that are known to occur with this condition."

170. Following questions by the Tribunal during the 2023 Tribunal, Mr F was asked about his supplemental expert report in which he stated that *"I have observed patients who have had morphine and become confused afterwards about events that have happened to them whilst in the ED."* He confirmed that included where there has been a misinterpretation of things that have been done to a patient physically. He said that whilst he did not have a personal experience of this, sometimes when a patient is given morphine to help the medics to perform a painful procedure, when the patient is spoken to afterwards they are not really clear about what actually went on in terms of physical contact that was had with the patient. He said that they would not necessarily remember very much about it. Mr F confirmed that patients could be confused about the nature of the physical contact.

171. The Tribunal considered that it was more likely than not that Patient A was experiencing some confusion and memory loss, as was recorded by the paramedics, when she was admitted to hospital.

172. Patient A was also taken through the accounts of Sister D and Ms C, and she was unable to recall all of the matters which they had recorded that she had told them, suggesting her recollection of events was not entirely clear.

Was Patient A asleep or awake

173. The Tribunal considered the evidence in respect as to whether Patient A was awake or asleep XXX 26 March 2021 XXX 27 March 2021.

174. The Tribunal also considered Patient A's account that Dr Garrard had thought she was asleep. It questioned what the point would have been of Dr Garrard having gone into the cubicle and waving Patient A's arms about, and pinching her finger and shoulder, if he had wanted to expose, look at and sexually touch her breasts whilst she was asleep. Such actions would be likely to cause a sleeping patient to stir, rather than being an effective method of checking she was asleep. It considered this element of Patient A's account to be unlikely, lacking in credibility and suggestive of confusion.

175. In the handwritten account made by Nurse P, a nurse supervising Ms C, on the 27 March 2021 at XXX, she wrote *"Was told by Dr Neil that patient was not to be disturbed as she was on oxygen to clear her headache because she is having a lot of medications. The patient was left to sleep..."*

176. In Ms C's GMC statement, she stated that Patient A had told her that she remembered Dr Garrard untying her gown and began to describe being hypnotised by him and her *'going back to sleep'*. This piece of evidence was considered by the Tribunal to be significant, as it is a piece of evidence demonstrating Patient A said she had been asleep which cannot easily be explained away as a mistake. Furthermore, the Tribunal noted that Patient A had told the police that when Dr Garrard was chanting or squeezing her ear *"I didn't want to wake up"*.

177. In her oral evidence before the 2023 Tribunal, Ms C was asked if she could remember what exactly Patient A had said to her, Ms C said, *"I remember her saying that she was in a trance, and that she was being hypnotised."*

178. In his pre-prepared police witness statement, dated 30 April 2021, Dr Garrard stated:

"46. In the event, Patient [A] remained asleep until at least [XXX]. I checked on the patient three or four times between [XXX]. The patient was also checked on during that time by the HCA... Until I saw the medical records, I was under the impression that the nurse had also been checking on the patient(sic) every hour, as would be normal practice in an emergency department. I did not attempt to wake the patient. I waited in the room long enough to satisfy myself that she was moving naturally as one does during sleep and was therefore not unconscious."

179. In his witness statement, dated 16 October 2023, Dr Garrard stated:

“70. In the event, Patient A remained asleep until at least [XXX]. I checked on the patient three or four times between [XXX]. The reason for doing so is two-fold, firstly to see if the patient has improved in order to discharge them, and secondly to ensure they have not deteriorated. The patient was also checked on during that time by the nurse and HCA. I did not attempt to wake the patient. I waited in the room long enough to satisfy myself that she was moving naturally as one does during sleep and was therefore not unconscious.”

180. The Tribunal has concluded that Patient A had presented at hospital, had taken a number of strong medications, was suffering from a migraine and was receiving high flow oxygen treatment. On her own evidence her eyes had been closed throughout her time in Bay 13 although she states she was actually pretending to be asleep. The room was darkened. Only Patient A stated that she was not asleep and she has not always been consistent about that. Others observed that she appeared to be asleep.

181. Patient A did have to check with Ms C whether she had tied her gown or not, suggesting that she was not clear about the events XXX. Further, that Ms C stated that, *“Patient A told me that she remembered Dr Garrard untying her gown and began to describe being hypnotized by him, her going back to sleep.”* Ms C also stated in her police interview that, *“On every one of my checks, [Patient A] appeared to be asleep and at no point appeared agitated or upset. I never saw [Patient A] move nor heard her utter a word. I also do not recall her pressing her button to call for assistance.”*

182. The Tribunal noted that each of the three accounts from Ms C appeared to be slightly different.

The handwritten account, dated 27 March 2021 at XXX:

“she asked me if I tied her gown up, I replayed(sic) I did lossly(sic).”

In her statement to the police, dated 6 May 2021:

“[Patient A] said that her gown had been undone and that she believed the doctor in charge of her care had sexually assaulted her...”

In her GMC witness statement, dated 8 August 2023:

“Patient A told me that she remembered Dr Garrard untying her gown and began to describe being hypnotized by him, her going back to sleep...”

183. The Tribunal considered the probability that Patient A had stayed awake, lucid and alert throughout XXX. The Tribunal was satisfied that Patient A was awake at some points XXX. She clearly recollected events taking place in neighbouring cubicles, and the noise and activity in a busy A&E department would likely have prevented a deep unbroken sleep.

184. The Tribunal also considered Patient A's account of Dr Garrard having shaken Patient A's arms, and /or squeezed a finger and/or her shoulder/trap is on the second, third, fourth and fifth occasion he visited her in the cubicle.

185. In the transcript of her interview with the police, dated 1 April 2021, Patient A stated:

Second occasion

"So back to the doctor leaving the first time. He then came in again. I kept my eyes closed; I was - I kept my eyes closed. He - I knew it was him that came in. I didn't open my eyes, I knew it was him because he'd come in and he was like, "Stay sound asleep. When you will wake up from this you will be feeling great." He squeezed my fingertip quite hard and he dug his fingers into my, sort of like, trap area - trap area here, quite hard."

Third occasion

"So the third time he came back in. Again I knew it was the same man. "Stay sound asleep. When you wake up from this" and he's wiggling my arms. The whole time each time he came in he's wiggling my arms, and he tests - he squeezes my finger... The third time he came in I knew it was him again. Started off by talking, "Shush, stay sound asleep. When you wake up from this you will be" - the same chant the whole time. So this is the third time he came in. So he went to the opposite side, he went to the left side this time, and he squeezed my finger. He dug his fingers into this trap, and then he leant over and dug his fingers into this trap."

Fourth occasion

"Again, 20 minutes approximately later he came back in and, again, chanting the same - same things. He came to my left side again. He's wiggling my arms, he squeezed my fingertips, dug his fingers both into my left - my left and my right traps."

Fifth occasion

“Then he came in again and then he - this time he came - he came in, he came to my right side. He shut the curtain behind him each time. This time he squeezed my finger, dug his fingers into my - my neck and then he felt my left boob...”

186. The Tribunal noted that in the GMC referral for Patient A, it was her account that Dr Garrard dug his fingers into her shoulder and squeezed her finger on the second, third and fifth occasion. In her statement to the police this occurred on the second, third, fourth and fifth occasion. The Tribunal noted these further inconsistencies in her account.

187. The Tribunal carefully considered Patient A's account that she had lain entirely still pretending to be asleep, had allowed Dr Garrard to expose and touch her inappropriately, and that she was fearful of what he would do if he knew she was awake. It was mindful that victims of sexual misconduct do not necessarily respond in a particular way and it accepted that if the events described by Patient A, a XXX patient, had indeed occurred it would have been very frightening, and it may have caused Patient A to freeze. The Tribunal noted that Patient A's phone appeared to have been on her bed for the duration of the night and she did not attempt to use it until approximately XXX. She stated that she could not find it any earlier, despite her acceptance that she had located it on her bed. The Tribunal was mindful that the lack of use of her phone earlier would also be consistent with her having been fully or partially asleep earlier.

188. The Tribunal did not accept on the balance of probabilities that Patient A was awake all XXX. It was more likely than not that she had slept for a period or several periods of time, albeit any periods of sleep may have been short.

Are the evidential concerns the Tribunal has with the case of Patient A impacted by the similarities in the case of Patient B?

189. The Tribunal was mindful that there was another complaint against Dr Garrard. It considered whether the cross admissibility of Patient B's complaint assisted with the evidential issues with Patient A's complaint before making its decision in relation to the particulars of allegation concerning Patient A.

190. That alleged by Patient A in that Dr Garrard touched her breast(s) and squeezed her nipple, that he was chanting “You will lust for me” and “you’ll want to kiss me”, would amount to sexualised conduct were the Tribunal to find it proved. She also alleged sexual / heavy breathing.

191. Patient B on the other hand did not consider any of Dr Garrard's conduct towards her to have been sexual. Whilst she alleged that he asked her to take off her top and sports bra

on three occasions, and drop her trousers und underwear on more than one occasion, Patient B herself did not consider this to have been sexual in nature. She herself did not even notice if Dr Garrard looked at her when she did this or whether he was even facing her.

192. The Tribunal reminded itself of Patient B's initial complaint to Lewisham Trust PALS, dated 28 December 2021; the email summary of her telephone call with Ms K, dated 24 January 2022; and the Lewisham Trust interview note of Ms L's interview with Patient B, dated 23 February 2023, as have previously been set out. It also reviewed her GMC statements and the transcript of her oral evidence before the 2023 Tribunal.

193. It was Dr Garrard's account that he also thought that there was a CCTV camera in the consultation room and after being made aware of the complaint immediately requested that the CCTV in that area be obtained and viewed. He was never provided with a copy of the CCTV. Further, the investigation into Patient A was still ongoing at the time when he had the consultation with Patient B, and his Trust were aware of that complaint. The Tribunal considered the likelihood of Dr Garrard having acted in the way alleged given the wider circumstances of a previous investigation. The Tribunal thought it was possible that an individual would engage in sexual misconduct whilst still under investigation for an allegation of sexual misconduct. Opportunist sexual misconduct was not unlikely in such circumstances.

194. Dr Garrard said that he did not recall the consultation with Patient B, but did recall that Patient B brought him a coffee. The Tribunal noted that as with Patient A, the consultation with Patient B appeared to have been unremarkable as Dr Garrard did not have to issue any medication to Patient B as she was not seriously unwell.

195. Patient B complained that Dr Garrard had made her go to a nearby garage to buy some water for herself and a coffee for him. She sent text messages to that effect to boyfriend and to her friend at XXX and XXX, respectively, as has previously been set out above. She stated in both those messages that she found it weird. The Tribunal reminded itself that the allegations occurred during the COVID-19 Pandemic and hospital services were significantly altered during this time. Dr Garrard gave evidence that he would have advised her to go to the garage to buy water as the hospital shop was closed and the water dispensers had been removed. The Tribunal concluded that directing her to a garage to buy water in such circumstances was not unreasonable and this was supported by Dr G's expert report.

196. There is a dispute about whether it was Dr Garrard or Patient B who decided that IV fluid was not to be given. The Tribunal was of the view that it was not a matter the Tribunal needed to determine.

197. Patient B messaged her friend at XXX on 27 December 2021, when she was at home, and stated:

“...Also the doctor was really weird and wanted me to wait at the bus stop so he could drop me home. I said no twice and walked home

He also insinuated my partner was causing my anxiety and to avoid him...”

198. By the following morning Patient B was reporting that Dr Garrard had asked her to take her top and sports bra off on three occasions and that he asked her to drop her trousers and underwear. Patient B stated that she genuinely thought the removal of the clothes request was to do with a neurological exam. It was only the next day when she spoke to her boyfriend and her GP when she thought Dr Garrard requests and behaviour were odd. The Tribunal noted that the conversation with the GP actually took place on 29 December by which time Patient B had already reported her concerns including the request to remove clothing to the hospital.

199. In respect of Dr Garrard having asked Patient B to remove her top and sports bra on three occasions, she said she also thought this was a part of a neurological examination and did not believe there was anything sexual about it. She said that she was not even sure that when she did this Dr Garrard looked at her or was even facing her. Patient B said that Dr Garrard was friendly and interested. She could not recall the words he had said to her that led to her removing her upper clothing including her bra three times and pulling her trousers and underwear down once. She could recollect doing it. However, the Tribunal had regard to Mr Rawlinson’s cross examination of Patient B during the 2023 Tribunal. She was asked by Mr Rawlinson to clarify what exactly Dr Garrard had said to her, when she stated in her witness statement that *“He asked me to take them off”* referring to her top and bra. Patient B said that she could not recall. She confirmed that she could not recall the specific phrasing Dr Garrard used. She said however that his request would have followed his previous instructions from the neurological exam. Mr Rawlinson also put to Patient B that the other logical explanation was a auditory hallucinations, or a proper hallucination, and that she just imagined it. Patient B responded stating *“That is one explanation”*. Patient B said that she believed that Dr Garrard asked her to take her vest and sports bra off three times, and put them back on each time. She said that Dr Garrard took her blood pressure on the last occasion that she removed that clothing.

200. Mr Rawlinson asked Patient B whether she had an independent recollection, of Dr Garrard having taken her blood pressure when she was in her bra. Her response was that she did recollect her blood pressure being taken whilst she was in her bra. The Tribunal noted that this contradicted her respective accounts in her email to Lewisham Trust PALS, in her

telephone conversation with Ms K and in her interview with Ms L where she said that Dr Garrard had taken her blood pressure with her top and bra off. Mr Rawlinson put it to Patient B that her account which is closer in time was therefore less accurate than her subsequent recollection. Patient B agreed that was the case and agreed that was an odd feature of her memory. Mr Rawlinson then put it to Patient B that effectively she was guessing which account was more accurate. Patient B agreed.

201. Mr Rawlinson referred Patient B to her Trust interview with Ms L in which it was recorded that *"During the consultation, he carried out the normal hospital examinations. Then he made me take my top and bra off, multiple times ... "* Mr Rawlinson asked Patient B whether it was three times or multiple times. Patient B said that her memory would have been better when she gave her statement and what was written was *"I believe it was 3 times in total"*.

202. It was Patient B's evidence that she was also on her period XXX. She did not say to Dr Garrard that she was on her period, or request to go to the toilet first. Rather she appeared willing to, and unconcerned about, pulling down her underwear. The Tribunal considered that it would be unusual for Patient B to have gone along with this without question when she had said it had made her feel uncomfortable and especially given she was on her period. The Tribunal did not conclude that in itself this meant it had not happened, as it is not uncommon for patients to go along with requests from a healthcare professional without question.

203. Both Dr Garrard and Patient B agreed that Dr Garrard listened to Patient B's heart. The Tribunal noted however that asking Patient B to remove her sports bra to listen to her heart of take her blood pressure would not be clinically indicated and would be inappropriate.

204. Patient B's medical record demonstrated that on 27 December 2021, it was recorded that:

"NHS 111 report received... P/C: Mother saw pt fall over and hurt themselves on arms and legs.

Disposition: Refer to a Treatment Center within 1 hour

Selected care Service: Emergency Department (Appt Booking)..."

29 December 2021 at XXX

“Pt called 111 on 27th

had covid booster pfizer on 21/12, no fever, lethargy, no headache, dizziness, had symptoms onset on 24/12, 3 nights of disorientation, was unsure if dreamt last night woke up- fell down steps- 5-6- has mild bruises.

no HI

-no loc, was witnessed by mother,

no vomitting (sic)

has bruising on limbs,

pt cant remember what happened

Since start of sertraline pt balance is slightly off

has yawning and slight tremor

no fever no palpitationsno sweating

Plan: Dr to give pt call back to discuss potential change of medication or advice to discontinue”

205. The Tribunal noted that it is recorded within the medical note above that Patient B could not recall what had happened to her. She was unclear if she had dreamt falling down the stairs and only knew that she had because she had injured herself.

206. In the medical record of 29 December 2021 at XXX, it is recorded that:

“History

had very vivid dream, for 2-3 nights also sertraline started about 5 weeks ago - had shakes / diarrhoea / nausea / tremor.

seen in A&E see discharge.

Resting heart rate

Sertraline 50mg but has

COVID vaccine well tolerated, booster seemed to fatigue her - feeling better energy wise.

seen in A&E - discharge noted, ? sick euthyroid (sic), repeat TFT in 2-3 mths, patient has appropriately (sic) reported Dr to PALS because of these behaviours - asked her to go to shop for water and by him a coffee, asked for her to remove bra for BP, asked her to take off her bottoms as part of examination.

did not have ECG in A&E - for ECG, wean of sertraline - tritrate down over 2-4 wks, get ECG and rebook

anxiety levels better as boyfriend back. feeling better now.”

207. The Tribunal noted that by 8 February 2022 the medical records show that Patient B’s symptoms had appeared to have passed, and it was recorded that:

"History See below ?side effect from covid booster jab or sertraline

Symptoms:

Resting heart rate normally 70-75bpm, increased to 89bpm for a few weeks (currently 82bpm now). Palpitations affecting sleep overnight.

Diarrhoea, nausea, yawning, poor balance/felt dizzy and shaking

Variable sleep - too little/too much

Vivid dreams/sleep walking/ one episode of auditory hallucinations - ?due to lack of sleep Now all improved..."

208. The Tribunal noted specifically the reference above to Patient B having had one episode of auditory hallucination. Patient B denied that she had experienced an auditory hallucination during cross examination at the 2023 Tribunal, but the Tribunal has not seen any evidence that would explain away the reference to an auditory hallucination as a mistake by the GP. The Tribunal's view was that the '?' in the notes related to the GP querying whether the cause was lack of sleep as that immediately follows the '?'.

209. Patient B accepted that she had experienced vivid dreams and sleepwalking, but flatly denied this as an explanation for what she has alleged against Dr Garrard. Mr Rawlinson asked Patient B about Dr Garrard suggesting she get some water from the garage and him a coffee. Patient B said that Dr Garrard firstly offered her an IV drip, which she "Yes" to. She said Dr Garrard then suggested, *"Actually, it would be a better idea if you went outside and got yourself a bottle of water"*. He explained where the garage was and how to get to it. She said that Dr Garrard did not outright ask for a coffee, rather that he *"heavily implied, "Whilst you're there, there's this machine. This is how it works", implying, "A coffee would be gratefully received"*. Mr Rawlinson put it to Patient B that Dr Garrard never actually asked her to get him a coffee from the garage. Patient B said that Dr Garrard *"hinted that he would like one, why else explain the coffee machine, how it works, what type of coffee he prefers?"*, Patient B went on, *"I would say that hinting that heavily is akin to asking."* She conceded that Dr Garrard did not outright say, *"Get me a coffee."*

210. In respect of the allegations that Dr Garrard told Patient B to go to a nearby garage to buy some water and get him a coffee, it was Dr Garrard's case that he has a cow's milk allergy and would have been particular about the type of coffee he would drink. He said that he did recall Patient B getting him a coffee, but that he did not ask her to and did not drink it.

211. Patient B also stated that Dr Garrard wanted her to wait at the bus stop for him, no matter how long it took, and that he would take her home from there. She said that she refused and said she would walk. She said that he insisted again.

212. The Tribunal considered the photo evidence before it of the outside of Lewisham Hospital where the bus stop was located. There were double red lines preventing stopping on the road and did not appear to be anywhere to pull up with a car. Dr Garrard has said that he did not drive into work that day but had walked. Further, Dr Garrard was not going to be finishing work for another 50 minutes after Patient B was discharged. The Tribunal considered the plausibility of Dr Garrard asking Patient B to wait for him in these circumstances, where it was cold and dark, and thought it was unlikely, although could not rule it out.

213. The Tribunal considered that the most serious of the allegations Patient B made was that of him asking her to take her top and sports bra off three times, and to drop her trousers and underwear. It noted that this was not the first concern Patient B had raised. Instead, she told her friend and boyfriend about him telling her to go and get herself some water and him a coffee from a nearby garage, she then commented by text to her friend about Dr Garrard saying that her boyfriend was causing her sleepwalking and anxiety. Further, that she should avoid her boyfriend. Whilst in itself it was not a determining factor, the Tribunal noted that Patient B had a more detailed account of Dr Garrard's behaviour by the morning.

214. The Tribunal noted that it was after she had spoken to her boyfriend the following morning after her A&E attendance, that she thought Dr Garrard's behaviour was of concern and subsequently raised the complaint by email to Lewisham Trust PALS.

215. When met with the allegation of Patient B, Dr Garrard immediately asked for the CCTV, not just of the consultation room, but of the wider area.

216. Patient B had previously and recently experienced issues with sleepwalking, vivid dreams and auditory hallucinations around the time of her consultation with Dr Garrard. The Tribunal also noted that there was evidence before it that at the time of attending Lewisham Hospital, Patient B was suffering from serotonin syndrome, or side effects of sertraline which had been exacerbated by the Covid vaccination. The Tribunal considered whether Patient B was experiencing an auditory hallucination or vivid dream in relation to the behaviour of Dr Garrard. This was in keeping with the expert evidence from Dr H and Professor I that she had symptoms related to sertraline, although they disagreed on whether it was serotonin syndrome or the side effects of sertraline.

Hearsay evidence

217. The Tribunal considered that it would have been assisted in asking Patient B some questions in respect of her being on her period and not saying anything to Dr Garrard in that respect when he asked her to drop her trousers and underwear. It considered that any

clarifying questions, as with Patient A, would have assisted it, but were unlikely to have been determinative in its fact finding. The Tribunal did not give any less weight to Patient B's hearsay evidence as her reasons for not wanting to give oral evidence for a second time were understandable. She had previously shown herself to be willing to answer questions over a prolonged period.

218. In his cross examination of Patient B, Mr Rawlinson also referred Patient B to her medical record on 8 February 2022 in which reference is made to "*Vivid dreams*", and "*Variable sleep - too little/too much*". He asked Patient B whether she recalled a history of "*Variable sleep - too little/too much*". Patient B said that she could, that she had been having trouble either falling asleep or suddenly getting very tired some days and just having a nap without really meaning to. She said in oral evidence:

"Too little sleep, obviously you can concentrate less, you're a bit more sluggish at work. The naps, they didn't happen every day, or every week, but once or twice I was meant to do something in the evening, and instead woke up, "Oh, I've taken a nap, from half five to seven", that I didn't mean to do."

219. Patient B's evidence demonstrated she was having trouble with not having enough sleep and falling asleep in the evening when she had not intended to. This was at around the same time of day that she went to hospital and had a consultation with Dr Garrard. The Tribunal noted it was possible she was experiencing vivid dreams and auditory hallucinations on 27 December 2021.

220. The Tribunal noted that the messages Patient B sent to her boyfriend and friend were not continuous. She stopped messaging her boyfriend at XXX. She messaged her friend at XXX, and then her next message to her friend was then sometime later at XXX, which is when she first said about Dr Garrard wanting her to wait at the bus stop so he could drop her home, and that he had insinuated that her partner was causing her anxiety and to avoid him.

221. The Tribunal considered that, with the symptoms Patient B had been experiencing, it was entirely plausible that she could have fallen asleep between XXX and XXX and had a vivid dream or experienced an auditory hallucination. The Tribunal considered it plausible that Patient B may have had a false memory and that the GMC had not put forward a strong enough case to rule out other very real possibilities for her account.

222. The Tribunal considered that in the case of Patient A, she had appeared to have been in and out of sleep, and the medication she had taken still having an impact of her with a recorded loss of memory and remembering things. Patient B had been experiencing vivid dreams and auditory hallucinations. The Tribunal considered that it was entirely plausible,

and it could not rule out, that in line with what she had experienced over the preceding three evenings, Patient B had fallen asleep at some point whilst in A&E, and/or had experienced a vivid dream after her attendance at A&E. The Tribunal noted the significance of the fact that Dr Garrard appears to have been the last person Patient B had face to face contact with before she walked home and went to bed. The Tribunal also noted that she had not been able to distinguish between things that had happened and things she had dreamt as documented in her GP records and the 111 telephone consultation.

Was it a coincidence, there being two similar complaints?

223. The Tribunal was satisfied that it could not rule out coincidence as a possibility in the context of two complaints where the evidence for both lacked consistency, credibility, cogency and clarity. When scrutinising the evidence of both Patient A and Patient B there were numerous elements which troubled the Tribunal. The cross admissibility of the cases and considering them together did not rectify the serious issues in the evidence. Whilst on the face of it, having two patients who have created false memories of events concerning Dr Garrard may seem highly improbable, the reality was that both patients were experiencing symptoms that meant the creation of a false memory (through dreaming, hallucination, medication or confusion) was entirely possible as supported by the expert evidence. Dr Garrard had likely been their last significant face to face interaction before sleep and it is perhaps not unlikely that when they were tired they may both have experienced his softly spoken voice to have felt hypnotic. The Tribunal concluded that, on the balance of probabilities, the similarity in their accounts could be explained away by coincidence.

The Tribunal's findings on the facts of the case

Paragraphs 1a-f (i)-(ii) of the Allegation

1. On or around 27 March 2021, whilst treating Patient A in the Accident and Emergency department at Royal Hampshire County Hospital, you:
 - a. dug your fingers into Patient A's shoulder;
 - b. squeezed Patient A's fingers;
 - c. touched Patient A's breasts on one or more occasion
 - d. squeezed Patient A's nipple on one or more occasion;
 - e. chanted to Patient A in a hypnotic way;
 - f. said to Patient A:
 - i. 'you will lust for me' or words to that effect;
 - ii. 'you'll want to kiss me' or words to that effect.

224. The Tribunal considered that there were many inconsistencies, as it has set out above, in respect of the various accounts of Patient A. Her evidence at times lacked credibility and cogency. It was of the view therefore that cumulatively her evidence was unreliable, and it could put little weight on her evidence overall as a credible witness. The Tribunal also considered that Dr Garrard's account was consistent and credible, including when he gave oral evidence for a second time before this Tribunal. It is supported by the medical notes and is consistent with the accounts of the nursing staff.

225. The similarities with Patient B's complaint were not significant enough to make up for the serious concerns that the Tribunal had about the reliability of the evidence. Patient A may well have found Dr Garrard's voice and actions to feel hypnotic but that does not mean that everything else is made out. There was an alternative explanation for what Patient A said had happened.

226. The Tribunal gave some weight to the fact Dr Garrard is of good character in terms of impacting on whether his evidence should be believed. This was just one thing that was considered alongside everything else rather than being determinative in itself. It gave some weight to the fact that he was willing to give evidence for a second time at this hearing, and did so consistently.

227. The Tribunal could not be satisfied on the balance of probabilities that it could find paragraphs 1a-f (i)-(ii) proved, and the GMC has not discharged its burden to demonstrate that it was more likely than not that these events, as alleged, occurred.

228. The Tribunal therefore found paragraphs 1a-f (i)-(ii) of the Allegation not proved.

Paragraph 2 of the Allegation

2. Your actions as described at paragraph 1a-d above amount to inappropriate physical contact with Patient A.

229. Given the Tribunal's findings at paragraphs 1a-f (i)-(ii) of the Allegation, paragraph 2 in respect of paragraph 1a-d of the Allegation falls away.

230. The Tribunal therefore found paragraph 2 of the Allegation not proved.

Paragraphs 3a(i)-(iv) of the Allegation

3. On or around 27 December 2021, whilst treating Patient B at Lewisham Hospital, you:

- a. asked Patient B to remove her:
 - i. vest on one or more occasion;
 - ii. bra on one or more occasion;
 - iii. trousers;
 - iv. underwear;

when it was not clinically indicated;

231. The Tribunal was satisfied that Dr Garrard did ask Patient B to remove her hoodie in order to take her blood pressure. The Tribunal noted the way in which Patient B's concerns evolved, the lack of recollection by her of specifics such as what Dr Garrard had said to her and the inconsistencies in her evidence including about whether she was wearing her bra or not when her blood pressure was taken.

232. The Tribunal was of the view that it could not rely on the account of Patient B in the circumstances of this case, given the very real possibility that she may have been experiencing:

- an auditory hallucination consistent with what her GP had recorded in February 2022, or
- a vivid dream in which she was unable to ascertain what was real, consistent with the three nights preceding the events in question.

233. The Tribunal gave weight to the fact that Dr Garrard is of good character and that impacted the extent to which it accepted his account given consistently again for a second time in oral evidence.

234. The Tribunal therefore found paragraphs 3a (i)-(iv) of the Allegation not proved.

Paragraph 3b(i) of the Allegation

3. On or around 27 December 2021, whilst treating Patient B at Lewisham Hospital, you:
 - b. told Patient B:
 - i. to go to a nearby garage to buy some water for herself and some coffee for you;

235. The Tribunal considered that the Allegation states that Dr Garrard ‘*told*’ Patient B to go to a nearby garage to buy some water for herself and some coffee for himself. In her oral evidence before the November 2023 Tribunal, Patient B accepted that she inferred that Dr Garrard intimated that she get him a coffee, and that he had not ‘*told*’ her.

236. The Tribunal considered whether to amend this paragraph of the Allegation so that the charge of telling Patient B to buy herself some water, was separate to the charge that Dr Garrard told her to get him a coffee. The Tribunal was of the view that if proved, Dr Garrard intimating that Patient B could get a coffee for him whilst going to a nearby garage to get herself some water would not amount to a regulatory matter and there would be no culpable finding of facts against Dr Garrard in this regard.

237. Although Dr Garrard may well have told Patient B to go to the garage to buy water for herself, it would not amount to a fitness to practise concern in itself, and therefore the Tribunal did not amend this paragraph of the Allegation to facilitate finding this proved.

238. The Tribunal therefore found paragraph 3b (i) of the Allegation not proved.

Paragraphs 3b(ii) and (iii) of the Allegation

3. On or around 27 December 2021, whilst treating Patient B at Lewisham Hospital, you:
 - b. told Patient B:
 - ii. that Patient B’s boyfriend was causing her sleepwalking and anxiety and that Patient B was not to trust him or her parents;
 - iii. that no one understood Patient B and her symptoms apart from you;

239. The Tribunal had before it Patient B's text to her friend sent at 23:25 on 27 December 2021, which stated:

"He also insinuated my partner was causing my anxiety and to avoid him..."

240. The Tribunal also noted that in her complaint email to Lewisham Trust PALS on 28 December 2021, Patient B stated:

"...he said my boyfriend was causing my sleepwalking and anxiety, my parents didn't understand my anxiety and none of them could be trusted - only he could be. He said that I should follow all his instructions and to avoid my boyfriend."

241. In her witness statement to the GMC, dated 5 July 2022, Patient B stated:

"...He would say that it was my boyfriend that was causing my sleepwalking and anxiety, and that I was not to trust him, nor my parents as no one understood me and my symptoms apart from him."

242. The Tribunal considered that this was her interpretation of what Dr Garrard had said. In cross examination before the November 2023 Tribunal Patient B was asked by Mr Rawlinson:

"...you know the nuances of language and whether someone is hinting at something, or insinuating it, or saying it literally or specifically. You know the difference between all of those things, don't you?"

Patient B responded, *"No comment"*.

243. The Tribunal considered that given Patient B's symptoms and presentation at A&E, it would not be unusual for a doctor to explore causative factors for her anxiety and make comments as part of a therapeutic or management plan. It had before it no other evidence as to the words Dr Garrard used when discussing this matter with Patient B. The Tribunal considered that the wording alleged was Patient B's interpretation of the consultation.

244. The Tribunal again noted that the stem of this allegation is that Dr Garrard 'told' Patient B, whereas she has said that Dr Garrard insinuated her boyfriend was causing her sleepwalking and anxiety and that Patient B was not to trust him or her parents.

245. The Tribunal noted that Patient B only raised the sub-paragraph (iii) *‘that no one understood Patient B and her symptoms apart from you’*, when she completed her GMC witness statement some seven months after the event and that this was not supported by the contemporaneous evidence, in that she did not mention this in her text messages to either her boyfriend or her friend, or in her complaint email to Lewisham Trust PALS.

246. The Tribunal also noted that Ms K telephoned Patient B to discuss her complaint. Ms K summarised her discussion with Patient B in an email, dated 24 January 2021. In that email she made no reference to that as set out sub-paragraphs 3b(ii) and (iii) of the Allegation.

247. The Tribunal could not be satisfied, given Patient B’s unreliability in respect of paragraph 3a, that it could rely on her evidence in respect of paragraph 3b(ii) or (iii). Further, the Tribunal was not satisfied that the GMC had discharged its burden on the balance of probabilities.

248. The Tribunal therefore found paragraphs 3b(ii) and (iii) of the Allegation not proved.

Paragraph 3b(iv) of the Allegation

3. On or around 27 December 2021, whilst treating Patient B at Lewisham Hospital, you:

b. told Patient B:

iv. to wait at the bus stop and that you would pick Patient B up after your shift and take her home;

249. In Patient B’s text to her friend sent at XXX on 27 December 2021, she stated:

“...Also the doctor was really weird and wanted me to wait at the bus stop so he could drop me home. I said no twice and walked home...”

250. In her complaint email to Lewisham Trust PALS on 28 December 2021, Patient B stated:

“...He insisted on me waiting at the bus stop, no matter how long it took, and he would take me home from there after I was signed off to go home. I said no, I'd walk. He insisted again. (I did walk home).”

251. The Tribunal also noted that in the summary email, dated 24 January 2021, of Ms K following her telephone with Patient B to discuss her complaint, she recorded:

“...about waiting at the bus stop and then he would take her home... She said no but then he would repeat the question again to see if she gave the same response.”

252. The Tribunal considered that Dr Garrard’s account was that he walked to work that day and had not driven. The Tribunal had before it a photo image of the outside of the Lewisham Hospital which showed double red lines and nowhere to stop to pick anyone up outside the front of the Lewisham Hospital. The Tribunal also considered that by the time Patient B was discharged, Dr Garrard had another 50 minutes of his shift, XXX, on a Sunday XXX in December.

253. The Tribunal was of the view that, given her symptoms recorded by her GP of auditory hallucinations and vivid dreams which confused what was real or not, it was plausible that Patient B had fallen asleep at some point before texting her friend (either at the hospital or at home), which could have accounted for her believing that Dr Garrard had repeatedly asked her to wait for her by the bus stop. The Tribunal has already set out its view that it has found Dr Garrard’s evidence to have been consistent and credible, and that he is of good character. It has also found that Patient B’s evidence could not be fully relied upon.

254. The Tribunal was of the view that the GMC had not discharged its burden on the balance of probabilities.

255. The Tribunal therefore found paragraph 3b (iv) of the Allegation not proved.

Paragraph 3c of the Allegation

3. On or around 27 December 2021, whilst treating Patient B at Lewisham Hospital, you:

c. spoke to Patient B on one or more occasion in a hypnotic way.

256. The Tribunal considered the evidence of Patient B in the Trust interview with Ms L in that she was clear that she did not think that Dr Garrard had spoken to her in a hypnotic way.

257. The Tribunal therefore found paragraph 3c of the Allegation not proved.

Paragraphs 4a, b and c of the Allegation

4. Your actions set out at:
 - a. paragraphs 1a-e and 2 were carried out without Patient A's consent;
 - b. paragraph 3c were carried out without Patient B's consent;
 - c. paragraphs 1, 2, 3a, 3b ii-iv and 3c were sexually motivated

258. The Tribunal determined that as if has found all the earlier paragraphs of the Allegation not proved, paragraphs 4a, b and c fall and are not proved.

The Tribunal's Overall Determination on the Facts

259. The Tribunal has determined the facts as follows:

1. On or around 27 March 2021, whilst treating Patient A in the Accident and Emergency department at Royal Hampshire County Hospital, you:
 - a. dug your fingers into Patient A's shoulder;
Determined and found not proved
 - b. squeezed Patient A's fingers;
Determined and found not proved
 - c. touched Patient A's breasts on one or more occasion;
Determined and found not proved
 - d. squeezed Patient A's nipple on one or more occasion;
Determined and found not proved
 - e. chanted to Patient A in a hypnotic way;
Determined and found not proved
 - f. said to Patient A:
 - i. 'you will lust for me' or words to that effect;
Determined and found not proved

- ii. 'you'll want to kiss me' or words to that effect.

Determined and found not proved

2. Your actions as described at paragraph 1a-d above amount to inappropriate physical contact with Patient A. **Determined and found not proved**

3. On or around 27 December 2021, whilst treating Patient B at Lewisham Hospital, you:

a. asked Patient B to remove her:

i. vest on one or more occasion; **Determined and found not proved**

ii. bra on one or more occasion; **Determined and found not proved**

iii. trousers; **Determined and found not proved**

iv. underwear; **Determined and found not proved**

when it was not clinically indicated;

b. told Patient B:

i. to go to a nearby garage to buy some water for herself and some coffee for you; **Determined and found not proved**

ii. that Patient B's boyfriend was causing her sleepwalking and anxiety and that Patient B was not to trust him or her parents;

Determined and found not proved

iii. that no one understood Patient B and her symptoms apart from you;

Determined and found not proved

iv. to wait at the bus stop and that you would pick Patient B up after your shift and take her home; **Determined and found not proved**

c. spoke to Patient B on one or more occasion in a hypnotic way.

Determined and found not proved

4. Your actions set out at:

- a. paragraphs 1a-e and 2 were carried out without Patient A's consent;
Determined and found not proved
- b. paragraph 3c were carried out without Patient B's consent;
Determined and found not proved
- c. paragraphs 1, 2, 3a, 3b ii-iv and 3c were sexually motivated.
Determined and found not proved

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. **Fitness to practise not impaired**

260. Given that the Tribunal has determined the Allegation is not proved in its entirety, the stage for consideration of whether Dr Garrard's fitness to practise is currently impaired has not been reached.

261. The Tribunal determined that any interim order currently in place on Dr Garrard's registration is hereby revoked with immediate effect.

262. This case is concluded.