Neutral Citation Number: [2024] EWHC 1906 (Admin)

Case No: AC-2024-LON-000668

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/07/2024

Before :

THE HONOURABLE MRS JUSTICE HEATHER WILLIAMS DBE

- -

Between :

DR STEPHEN HIGGINS	**Appellant**
- and -	
GENERAL MEDICAL COUNCIL	**Respondent**

- -
- -

Oliver Williamson (instructed by **MDU Services Ltd**) for the **Appellant**
David Hopkins (instructed by **General Medical Council**) for the **Respondent**

Hearing dates: 4 July 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 25 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE HEATHER WILLIAMS

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1. This is an appeal brought under section 40 of the Medical Act 1983 ("MA 1983") from the Medical Practitioners Tribunal's ("the Tribunal") findings of sexual misconduct by the Appellant General Practitioner and its decision to erase him from the register.

2. The allegations concerned Dr Higgins' behaviour towards four junior female members of staff at the General Practice ("the Practice") where he was a partner. They were referred to by the Tribunal as Ms A, Ms B, Ms C and Ms D. In summary, he was said to have made unwelcome comments of a sexual nature to the four women, in person, over the telephone and/or via messaging services. It was also alleged that he had hugged Ms A a number of times without her permission and that on one occasion he had shut the door behind her, grabbed her and tried to kiss her against her will.

3. The structure of the allegations and the Appellant's response to each charge was as follows:

    i) Allegation 1 set out the basic working conditions. This was not an allegation of misconduct and was admitted;

    ii) Allegations 2 – 13 contained the factual particulars of the alleged misconduct. This conduct was denied by the Appellant, save for Allegation 3a concerning Ms A and Allegations 12 and 13 concerning Ms D;

    iii) Allegation 14, which was denied, alleged that the conduct described in Allegations 2 – 13 was sexually motivated; and

    iv) Allegation 15, which was also denied, was that the conduct described in Allegations 2 – 13 constituted unlawful sexual harassment contrary to section 26(2) of the Equality Act 2010 ("EA 2010").

4. The Tribunal found all the allegations proven save for Allegations 14 and 15 in relation to the conduct towards Ms B described in Allegations 7 and 8. The hearing took place across 22 days. The Tribunal heard oral evidence from each of the four complainants and from the Appellant. Evidence and submissions on the facts lasted from 31 July 2023 to 14 August 2023. The Tribunal deliberated for 7 days and then handed down its determination. The subsequent hearing on whether the matters found proved amounted to impairment of the Appellant's fitness to practice took place on 23 – 24 August 2023. The Tribunal found that the Appellant's fitness to practice was impaired by reason of the misconduct. The hearing on sanction was adjourned due to lack of time and was held between 29 and 31 January 2024, when the Tribunal revoked the interim order that had been in place and determined that the Appellant should be erased from the register and an immediate order made.

5. There are four grounds of appeal, albeit there is considerable overlap between the first three grounds. I will briefly summarise the grounds at this stage. They are set out in more detail from para 96 below.

6. Ground 1 is that the Tribunal failed to have regard to relevant evidence, specifically: (i) messages which Ms A had sent to the Appellant during the period July – October 2020 and her failure to disclose that she had done so; (ii) the evidence listed at para 9 of the

Grounds of Appeal which is said to be relevant to the credibility of Ms A's account of the incident in October 2020 which the Tribunal found to be a sexually motivated assault; and (iii) inconsistency in Ms B's evidence as to why she deliberately engaged in messaging with the Appellant on Snapchat and the impact of her evidence that she did this upon the proposition that Dr Higgins' conduct was unwanted.

7. Ground 2 is that the Tribunal failed to give any or any adequate reasons for its findings of fact on central issues. In particular, the Tribunal failed to address the matters highlighted under Ground 1 when finding that Ms A's account was cogent and credible; and failed to address the Appellant's points that are listed at para 19 of the Grounds. In addition, the Tribunal provided inadequate reasons for accepting Ms B's account in light of the points highlighted in Ground 1. Further, that the Tribunal failed to give adequate reasons for finding that the proven conduct towards Ms C and Ms D was of a sexual nature, when this was not how the women themselves had characterised his behaviour.

8. Ground 3 asserts that the Tribunal erred in its approach to credibility and weighing of the evidence, in particular that it inconsistently weighed in favour of inculpatory evidence of GMC witnesses and against exculpatory evidence of the Appellant and specific examples are given.

9. Ground 4 contends that in any event the Tribunal erred in its approach to assessing the Appellant's insight which was, in turn, relevant to the severity of the sanction imposed, as it: (i) failed to have sufficient regard to clear evidence of insight and the Appellant's remediation; (ii) wrongly categorised the Appellant's conduct as undertaken by "a doctor in a position of trust and power" and (iii) treated the Appellant's denials of the allegations as precluding him from demonstrating that he understood the gravity of his conduct. In addition, there was no evidence to support the finding that there was a significant risk of him repeating the behaviour.

10. During his oral submissions Mr Williamson clarified that Grounds 1 – 3 challenged the Tribunal's findings in respect of Allegations 2 – 6 (save for the admitted Allegation 3a) and Allegations 9, 14 and 15. He indicated that Dr Higgins did not now dispute the Allegations 10 and 11 conduct concerning Ms C or the Allegations 7 and 8 findings relating to Ms B (albeit the latter was simply on the pragmatic basis that there was no materiality in doing so, given that Allegations 14 and 15 were not established in relation to this behaviour).

11. The structure of this judgment is as follows:

The allegations and the findings: para 12

The background: paras 13 - 14

The proceedings: para 15

The Tribunal's determination: paras 16 – 69 :

Initial directions: para 17

The Tribunal's analysis of the evidence: paras 18 - 21

The allegations and the findings

12. The charges that the Appellant faced and the outcome in respect of each of these allegations was as follows:

> "1. At the time of your actions as set out in paragraphs 2-13:
>
> a. you were working as a General Practitioner at a GP Practice ('the Practice');
>
> b. …Ms A, Ms B, Ms C and Ms D were junior members of staff at the Practice.
>
> **Admitted and found proved**

Ms A

2. On or around 14 May 2020, you approached Ms A in the Practice's reception area and:

a. asked Ms A:
   i. if you could have an affair; **Determined and found proved**
   ii. how many people she had slept with; **Determined and found proved**
   iii. when she had lost her virginity;

or words to that effect; **Determined and found proved**

b. said to Ms A:
   i. 'oh you wouldn't be interested in me because I'm bald but it would make my day'; **Determined and found proved**
   ii. that when you were Ms A's age you would sleep around a lot and experiment with people; **Determined and found proved**
   iii. that you thought Ms A should do the same (referring to your comment to Ms A as described in paragraph 2bii);

   or words to that effect. **Determined and found proved**

3. On one or more occasion between July 2020 and October 2020 you sent a Snapchat message to Ms A in which you:

a. called Ms A beautiful, or words to that effect; **Admitted and found proved**
b. asked for a:
   i. naked picture of Ms A; **Determined and found proved**
   ii. picture of Ms A's breasts; **Determined and found proved**
   iii. picture of Ms A kissing Miss E;

   or words to that effect. **Determined and found proved**

4. On or around 25 June 2020, you sent to Ms A an EMIS message in which you stated:

a. Ms A was 'beautiful'; **Determined and found proved**
b. 'I only keep coming into reception to see you because you're beautiful',

or words to that effect. **Determined and found proved**

5. Between July 2020 and October 2020:

a. on one or more occasion:
   i. when Ms A entered your room at the Practice you:
      1. said to Ms A 'come and give me a cuddle' or words to that effect; **Determined and found proved**
      2. grabbed Ms A and hugged her without receiving her permission to do so; **Determined and found proved**
   ii. you sent an EMIS message to Ms A in which you:
      1. stated that you had left an unsigned sick note on reception and that if Ms A needed a cuddle she could go to your room and pretend she needed the sick note to be signed, or words to that effect; **Determined and found proved**
      2. invited Ms A and Ms E to your room to:
         a. kiss; **Determined and found proved**
         b. have a threesome,

      or words to that effect; **Determined and found proved**

iii. you said to Ms A that if she didn't tell anyone what you were like, you could get her:
1. a Healthcare Assistant job; **Determined and found proved**
2. booked onto a phlebotomy training course;
or words to that effect; **Determined and found proved**

6. On or around 9 October 2020:
a. Ms A entered your room at the Practice and you:
i. closed the door behind Ms A; **Determined and found proved**
ii. grabbed Ms A around her shoulders; **Determined and found proved**
iii. grabbed Ms A's face under her chin; **Determined and found proved**
iv. removed Ms A's mask; **Determined and found proved**
v. tried to kiss Ms A; **Determined and found proved**
vi. refused to let go of Ms A; **Determined and found proved**
vii. said to Ms A:
1. 'do you feel bad?'; **Determined and found proved**
2. 'cheating on your boyfriend', when Ms A asked you what she should feel bad about; **Determined and found proved**
3. 'it's more interesting if someone could walk in – that's what
makes it fun'; **Determined and found proved**
4. 'don't worry I won't try to grab your boobs unless you want me to'; **Determined and found proved**
5. 'I know you're scared, tell me to fuck off', or words to that effect; **Determined and found proved**

b. when in the Practice's reception area with Ms A after the events described in paragraph 6a, you said 'I'm not leaving without you' or words to that effect; **Determined and found proved**

c. after the events described in paragraphs 6a-6b, you sent to Ms A a Snapchat message stating 'that was fun', or words to that effect. **Determined and found proved**

Ms B

7. On one occasion on a date between approximately 15 August 2021 and 31 August 2021, you approached Ms B in the Practice's kitchen area and said 'you've got a bad side' or words to that effect. **Determined and found proved**

8. On one occasion on a date between approximately 1 November 2021 and 19 November 2021 you:
a. were sat at your desk at the Practice near to Ms B and you moved unnecessarily close to her on one or more occasion; **Determined and found proved**

b. approached Ms B in the Practice's staff room and said to her 'I've never seen you with your mask off, you're so pretty' or words to that effect. **Determined and found proved**

9. On or around 19 November 2021 you sent an electronic messages to Ms B stating words to the effect of:

a. 'we should talk more because you cheer me up'; **Determined and found proved**
b. 'add me to Snapchat'; **Determined and found proved**
c. 'you are brave for adding me'; **Determined and found proved**
d. 'I get bored at work'; **Determined and found proved**
e. 'I like to be bad at work'; **Determined and found proved**
f. 'don't tell your mum about this because I will get into lots of trouble'; **Determined and found proved**
g. 'I want to give you a hug'; **Determined and found proved**
h. 'why don't you make an excuse to come and see me in my room or somewhere upstairs'; **Determined and found proved**
i. 'why don't you grab a sicknote and get an excuse to come to my room for a hug'. **Determined and found proved**

Ms C

10. On or around 17 September 2021 you sent to Ms C a WhatsApp message in which you wrote words to the effect of:

a. I really like you; **Determined and found proved**
b. I know you have a boyfriend; **Determined and found proved**
c. I want to get to know you better. **Determined and found proved**

11. On or around 20 September 2021 you sent to Ms C an EMIS message stating 'I'm here until 7pm if you want to come in for a cuddle' or words to that effect. **Determined and found proved**

Ms D

12. On one occasion between approximately October 2021 and 19 November 2021, during a telephone call with Ms D, you asked her to make her voice sound more sexy, deeper or huskier or words to that effect; **Admitted and found proved**

13. On or around 19 November 2021:

a. during a telephone call with Ms D, you asked her if she was going to deepen her voice, or words to that effect; **Admitted and found proved**

b. you sent to Ms D an EMIS message stating that you and Ms D needed to find a way to make calls 'more fun' or words to that effect. **Admitted and found proved**

14. Your conduct as set out at paragraphs 2-13 was sexually motivated. **Determined and found proved in relation to all the paragraphs 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13 and not proved in relation to paragraph 7 and 8**

15. Your conduct as set out at paragraphs 2-13 was unlawful harassment by virtue of Section 26(2) of the Equality Act 2010 in that you engaged in unwanted conduct of a

sexual nature which had the purpose or effect of violating the dignity of, or creating an intimidating, hostile, degrading, humiliating or offensive environment for:

a. Ms A; **Determined and found proved in relation to paragraph 2, 3, 4, 5 and 6.**
b. Ms B; **Determined and found proved in relation to paragraph 9. Not found proved in relation to paragraph 7 and 8.**
c. Ms C; **Determined and found proved**
d. Ms D. **Determined and found proved**"

The background

13. The Appellant qualified as a doctor in 1999 and went on to train in general practice. In 2004 he started at the Practice, where he became a partner in 2008. The GMC was contacted by the Senior Partner at the Practice on 26 November 2021 after allegations were made about the Appellant's conduct by two of the complainants. He left the Practice in December 2021 (his last working day there was in mid-November 2021). At the time of the events in question Dr Higgins was in his mid-40s. He was the doctor in charge of the reception area.

14. Ms A was a receptionist at the Practice. She was 18 years old when she started to work there, turning 19 in the summer of 2020. Ms B was an apprentice receptionist who was 17 years old at the time of the index events. Ms C was a university student who worked as a part-time dispenser at the practice and Ms D was a dispenser at the practice.

The proceedings

15. Ms A raised concerns about Dr Higgins' behaviour in an email sent on 19 November 2021 after she had ceased to work for the Practice. She was then interviewed by a representative of the Practice on 4 December 2021 via Zoom. The Tribunal had a transcript of this interview and watched the recording. The Tribunal also had witness statements from the complainants, others who worked at the Practice and Dr Higgins. The Snapchat and EMIS messages that were referred to in the allegations had not been preserved. The Appellant produced various messages that Ms A had sent to him. I was told by counsel that Ms A gave evidence for approximately one day and Ms B for about half a day. Dr Higgins gave evidence for three days. The transcript of the evidence and submissions from the fact-finding stage of the proceedings runs to 518 pages.

The Tribunal's determination

16. The Tribunal's determination comprises 78 pages of single-lined spaced text. I have read and considered the decision as a whole. However, it is unrealistic for me to set out every aspect that I have had regard to. I will summarise the Tribunal's reasoning on matters germane to the grounds of appeal.

Initial directions

17. The Tribunal gave a series of self-directions at paras 14 – 21. It reminded itself that the burden of proof rested with the GMC and that the civil standard of proof applied. It noted that it must consider all the evidence before it, prior to making findings as to the credibility of any witness and that when assessing a witness' credibility, it should not

rely exclusively on the witness' demeanour. It noted that it should be cautious not to apply stereotypical images of how an alleged victim or an alleged perpetrator ought to have behaved at the time or how they ought to have given their evidence. The Tribunal directed itself that it should consider the Appellant's good character and the absence of any regulatory findings against him. In considering whether the Appellant's actions were sexually motivated, the Tribunal's self-direction referred to *Basson v GMC* [2018] EWHC 505 and *Harris v GMC* [2021] EWCA Civ 763 ("*Harris*") (para 77 below). The Tribunal also set out the terms of section 26 of the EA 2010 (para 78 below).

The Tribunal's analysis of the evidence

18. Before turning to each of the specific allegations, between paras 22 – 39 the Tribunal summarised a number of over-arching points that related to the respective accounts of Ms A and Dr Higgins. At paras 22 – 29 the Tribunal referred to a number of points that had been raised on the Appellant's behalf in relation to Ms A's credibility and reliability and her responses. It is apparent that at this stage, the Tribunal was reminding itself of these matters before it came on to evaluate the competing evidence on each of the specific allegations. In light of the grounds of appeal I will set out some of the passage that followed in full:

> "23. Ms A stated in her oral evidence that '*probably the main reason*' for her leaving was due to Dr Higgins, but also confirmed that the practice manager would upset her as '*she wasn't the nicest*'. Ms A said that she '*also wanted to change careers and move job in general*'. In her statement, she said that she wasn't ready to leave when she did but did so because of Dr Higgins.
>
> 24. In oral evidence, Ms A accepted that she may have been mistaken about paragraph 2 of the Allegation specifically taking place on Monday 14 May 2020, she could not recall specific dates well, but maintained the specifics of the core allegation. Similarly, she clarified that instead of Dr Higgins '*always*' calling her pretty, she meant '*occasionally*'.
>
> 25. Overall, Ms A confirmed that she did send messages and photos on Snapchat and EMIS to Dr Higgins, '*nothing was inappropriate or in a sexual manner'*. Her position on his contact that the '*majority of it was unwanted. I shouldn't have messaged him back…I was young and like I say, it shouldn't have gone further but I shouldn't have been put in that position*'. Ms A accepted that she had sent photos of her '*face*' but not of anything inappropriate. She stated that '*there was nothing inappropriate from Dr Higgins for a year after I first started'* she said that they '*got on well before all of this started and I knew that in his position what he was doing was wrong. I didn't take it seriously at the time and I played it as a joke, as my way of coping with it, and I didn't want to offend or upset him as he was my boss*'.

> 26. After having blocked him in October 2020, the Tribunal further noted Ms A's position that from early 2021, she was once again communicating with Dr Higgins on Snapchat and EMIS. In this respect Ms A stated that '*I didn't want anything completely inappropriate, I just wanted to get on with everyone at normal level as I had done when I first started…just wanted things to be normal again*'. In respect of whether at this time, subsequent to the 9 October 2020 allegation, Ms A was comfortable seeing Dr Higgins, speaking to him and being around him, Ms A clarified her position, '*I used to see him every day and I got over it and didn't think he would do anything more'*."

19. The Tribunal also referred to correspondence between Ms A and Dr Higgins in respect of a Deputy Manager role which the Appellant had indicated he wanted to secure for her. In March / April 2021 Ms A said, "I feel like it's got out of hand…I think best just to leave it" (para 27). The Tribunal also noted that in the summer of 2021, Ms A had exchanged messages with the Appellant about the difficulties that she was having with the practice manager (para 28). In para 29 of its decision, the Tribunal referred to Ms A explaining that in November 2021 she emailed her complaint about the Appellant's behaviour to the Practice because she was concerned about the younger girls in reception and thought that if she did this maybe he "won't do the same to others in the future".

20. In paragraphs 30 – 39 the Tribunal made some general points about Dr Higgins' evidence. The Tribunal summarised the personal issues that Dr Higgins had described having at the time (para 31) and him saying that in early 2020 he was "behaving oddly…being out of control…and having left the planet" (para 32). The Appellant had said in his evidence that he was shocked and surprised to hear the testimony of most of the complainants and that he accepted he had failed to maintain professional boundaries "even though some tested barriers, I should have kept…I let them fade away so feel bad now on many levels" (para 33). The Appellant said that he had made inappropriate jokes in an effort to keep morale up and that he was lonely and "in a bad place" (paras 34 – 35). Although accepting that he had significantly overstepped boundaries, he maintained that there was nothing sexual in his behaviour, "it was just a diversion from things". He also said that Ms A had at one time developed a romantic interest in him (para 35). He said in relation to the messages that he sent, that when he started he "couldn't stop, even if I tried" (para 36). He said that after May 2020 his professional boundaries were gradually coming back, but that there were "blips" (para 38). The Tribunal noted that the Appellant's position was that Ms A had influenced and conspired with Ms B and Ms C in respect of the allegations that he had offered hugs. He suggested that Ms A had tried to cause him harm because he had not been able to help her advance her career (para 39).

21. The Tribunal then explained that it had considered each of the allegations separately and evaluated all the evidence in order to make its findings on the facts (para 40). The Tribunal then addressed each of the disputed allegations in turn.

The factual allegations concerning Ms A

22. In relation to Allegation 2, the Tribunal set out the rival accounts of Ms A and Dr Higgins as to what had occurred. The Tribunal observed that Ms A had readily accepted that if 14 May 2020 was not a Monday (the day on which she usually worked late), then she was covering the late shift for someone else on that date (para 42). The Tribunal noted that Dr Higgins had accepted that some of their conversations were on the "edge of what they should have been" and that during his evidence he had indicated that as he did not remember what he had said to Ms A, he had to deny her account. He had also said that "these are disgraceful conversations to be having with a 20-year-old…she would often start these and thought they were funny" (para 45). The Tribunal noted that Dr Higgins' evidence was unclear and contradictory, as in his witness statement he had denied making any of the alleged comments. By contrast, the Tribunal said of Ms A that "it considered that her willingness to accept that she had the day of the week wrong added to rather than detracted from her credibility" (para 46).

23. The Tribunal set out the rival accounts in relation to the disputed aspects of Allegation 3 and referred to the Appellant having accepted during his evidence that there had been "racy exchanges" with Ms A (para 52). It also referred to Ms A's acceptance that she had sent messages and pictures of her face to Dr Higgins and her explanation that "nothing was inappropriate or in a sexual manner like he would send to me, and I didn't remember a lot of them as I used to go out a lot" (para 53). Snapchat messages disappear unless steps are taken to preserve them; in this regard the Tribunal referred to Ms A's explanation for why she had not taken steps to screenshot the messages or otherwise preserve the evidence, namely that she had not thought to do so at the point when she received the messages (para 54). The Tribunal also considered whether Ms A had any motivation to fabricate the allegations, concluding that there was no supporting evidence of this and that the EMIS messages passing between the two of them from the summer of 2021 until when Ms A left the practice, did not show any falling out or ill will (para 55). Overall, the Tribunal considered that Ms A's account was credible and convincing and it rejected Dr Higgins' denial (para 56).

24. Having set out the rival accounts in relation to Allegation 4, the Tribunal noted that the Appellant had both accepted calling Ms A "beautiful" in another message and had accepted Ms G's evidence that he had paid her a compliment via Snapchat that was consistent with his acknowledgement of having lost his sense of professional boundaries at this time (para 60). The Tribunal also referred to Dr Higgins' acceptance that he would send personal messages on EMIS that were not to do with work and to an inconsistency between Dr Higgins' evidence and the account in his witness statement (paras 61 – 62). At para 65 the Tribunal indicated that it accepted Ms A's account as credible and that it did not find Dr Higgins' denial to be plausible.

25. The Tribunal set out the respective accounts of Ms A and Dr Higgins in relation to Allegation 5.a (i). Ms A maintained that he had grabbed her and hugged her on four occasions and this had made her feel "very uncomfortable". Dr Higgins' evidence was that Ms A's account of the four hugs was fabricated and that there had been just one hug, which was initiated by Ms A in about June 2020, and which he had not found to be sexual in any way, although he thought that it was sexual for her. He said that in August / September 2020 Ms A had asked for a hug and he had declined (paras 67 – 74). The Tribunal observed that Dr Higgins' accounts were inconsistent, because in his statement he had accepted that there may have been more than one hug. Additionally,

the Tribunal noted that his explanation as to why he had not saved Ms A's messages to him in which she had sought hugs from him was inconsistent with other evidence that he had given (para 76). The Tribunal concluded that Dr Higgins' account was unreliable and, by contrast, Ms A had been clear and consistent (para 77).

26. The Tribunal also considered that Allegation 5.a (ii) was proved, again noting a shift in Dr Higgins' accounts (para 83). The Tribunal did bear in mind that aspects of Ms A's evidence did not feature in the earlier video account that she had recorded for the Practice, concluding that it was not an embellishment or something that detracted from her credibility (para 84). In relation to Allegation 5.a (iii) the Tribunal referred to the Appellant's admission that he had called Ms A "beautiful" on Snapchat, to his acknowledgment that he had lost his professional boundaries and that he had used Snapchat to converse with junior colleagues out of work hours and on non-work-related matters and to the allegations that it had already found proved (para 89).

27. In relation to Allegation 5.b the Tribunal found Dr Higgins' account to be confused and unreliable for reasons it identified; it also noted that he had accepted using EMIS for unprofessional non-work-related messages (para 95). By contrast, it considered that Ms A's account had been consistent (para 96).

28. The Tribunal set out the rival accounts of the October 2020 assault allegation in considerable detail (paras 98 – 105). The Tribunal observed that Ms A had readily conceded that she may not have been clear on the date / day and accepted that 9 October 2020 (the date she had referred to) may not have been a Thursday. The Tribunal said that Ms A had otherwise been consistent and "had otherwise maintained the accuracy of her account of the core allegation" (paras 100 – 101). The Tribunal referred to Ms A saying that she could not recall what had happened to the container of urine that she was holding when she entered the room, explaining that she "was not focused on that". The Tribunal noted that Dr Higgins denied the entirety of Allegation 6. He said that on 9 October 2020 he had asked Ms A if she wanted a hug and she had looked surprised and said that she did not. He said that he thought he was on safe ground as she had asked for a hug before and "it was something to do…on the spur of the moment…seemed like a bit of fun". Dr Higgins added that Ms A seemed keen to get away and that he had "messed up". The Tribunal noted that in his oral evidence the Appellant had referred to "doing something no one knows" and doing something that was "a little bit daring" (paras 104 – 105). At para 106 the Tribunal said that Dr Higgins' account was "slightly confused" in respect of whether he had offered or wanted to show Ms A how to test urine. It continued by referring to the Appellant's evidence that after the hug between them in June 2020 they had agreed that nothing like that would happen again, observing:

> "Against that backdrop, and with him thinking that Ms A had a romantic interest in him, and that *he* did not find Ms A attractive, nor did he have any sexual interest in her, the Tribunal could not understand why Dr Higgins would have offered a hug to Ms A '*as something to do'*. The Tribunal noted that Dr Higgins was unable to explain why he did not include this version of events in his written statement. The Tribunal rejected these accounts by Dr Higgins as implausible."

29. The Tribunal also referred to: (i) an EMIS message from Dr Higgins to Ms A sent on 11 February 2021 in which he had said, "I think a lot of you (especially how you handled my bad behaviour) I won't ever try it on with you again, but I am always here if you need me"; (ii) a further message that he sent her on 23 July 2021, in which he said that he felt much better now, but, looking back he realised that at the time "I was out of control"; and (iii) Dr Higgins' acknowledgement in his oral evidence that he looked back "in disgust" at a "shameful period of time" (paras 107 – 109).

30. The Tribunal said that having considered the entirety of the evidence, it concluded that the events of 9 October 2020 were as Ms A described. Her evidence was cogent, clear and credible, whereas Dr Higgins' account was confused, unreliable and incredible (para 110). The Tribunal also found Allegations 6.b and 6.c proved for the reasons it identified at paras 111 – 112. As regards Allegation 6.c these reasons included that Dr Higgins had himself used a similar phrase in saying that his offer of a hug to Ms A "seemed like a bit of fun" and that Ms A had blocked Dr Higgins' messages for a period.

The factual allegations concerning Ms B

31. The Tribunal considered the allegations concerning Ms B between paras 115 – 153. It set out the rival accounts in relation to Allegation 7, observing that Ms B's written account given to the Practice in November 2021 did not include this allegation. The Tribunal referred to Dr Higgins' acceptance that he had crossed the line with his use of inappropriate words and communications and identified inconsistency between his written statement and oral evidence (paras 115 – 118). The Tribunal were satisfied on balance that Dr Higgins had made the alleged comment to Ms B. The Tribunal also found that Allegation 8.a was established, noting that the Appellant said he had a vague recollection of the incident, whereas Ms B had been clear and consistent in her accounts. The Tribunal also considered that there was no identified motive for Ms B to fabricate these events which she herself confirmed were "not sexual" (paras 120 – 123). In indicating that Allegation 8.b was also proved, the Tribunal referred to the fact that Dr Higgins had completely denied the incident, whereas Ms B had been readily accepting of inaccuracies in the details in her statement and had readily accepted that there was nothing sexual in the interaction, which tended to confirm that there was no reason to think that she had fabricated the allegation (paras 125 – 127).

32. In addressing Allegation 9, the Tribunal indicated that it had considered the Appellant's contention that Ms A had influenced Ms B's evidence, particularly the allegation relating to a hug (para 129). After summarising Ms B's explanation of how she came to give her written account to the Practice, the Tribunal said that she had vehemently denied being untruthful in her evidence or conspiring with Ms A (paras 130 – 135). Considering the entirety of her evidence, the Tribunal rejected the contention that she had been influenced by Ms A or that she had any motive to fabricate or lie in her account (paras 136 – 137). The Tribunal then went through each of the sub-allegations in Allegation 9 examining the evidence. The Tribunal noted the Appellant's contention that if he had sent the alleged messages, Ms B would have saved them, commenting:

> "Ms B's testimony was clear, the reason she had not saved these, or screenshot them was because doing so would alert Dr Higgins which she did not want to do. This technicality with Snapchat was also confirmed by Dr Higgins who further provided that he has used Snapchat as a way of communicating with Ms B as

> opposed to texts as text notifications come up on the phone screen. He said '*I found a way to hide Snapchat messages'*. He stated that he placed that application '*in a separate area on his phone as his daughter would get into his phone'*. He confirmed that he knew that communicating with a 17-year-old was inappropriate and '*the way I was then and wanted to keep it secret from my wife and daughter*."

33. The Tribunal considered that the wider evidence supported Ms B's account in respect of the words used by Dr Higgins. It noted that he had sent other messages where he referred to being "bored" at work; that in the above-cited evidence he had referred to trying to keep his messages with Ms B from his family; and that Ms G had said in her evidence that Ms B had asked her to help move her things from the admin office to reception so that she would not be alone, as she felt uncomfortable that Dr Higgins was going to come to see her (paras 145 – 151). The Tribunal took account of the fact that in her oral evidence Ms B had said that she thought the Appellant's message referring to a hug had been sent via Snapchat, whereas her earlier accounts had referred to an EMIS message. Given the passage of time since November 2021 the Tribunal thought that this sort of confusion of detail was understandable and that Ms B's account was otherwise clear, consistent and convincing (paras 151 - 152).

The factual allegations concerning Ms C

34. The Tribunal considered the allegations relating to Ms C at paras 154 – 170 of the determination. In relation to Allegation 10, the Tribunal said that it could not find any indication that Ms C had colluded with Ms A or anyone else in the Practice; on the contrary, she had given an analytical account and had been keen to point out details which she could not remember at the time of giving her oral evidence (para 159). The Appellant had accepted that he may have said to Ms C, "I know you have a boyfriend, and he may get the wrong idea". When asked if he had messaged Ms C to apologise, the Appellant agreed that he had done so because he was upset and "had strayed into messaging something inappropriate" (paras 162 – 163). The Tribunal said that it was concerned about the cogency of the Appellant's evidence and noted his account had changed from an initial denial; it contrasted this with Ms C's full and clear account (paras 164 – 165).

35. In relation to Allegation 11, the Tribunal again noted that Dr Higgins denied sending the alleged message, but that he had not been able to identify any motive for Ms C to fabricate this allegation (para 167). It accepted that Ms C had not saved or photographed the messages as she did not have any intention of reporting Dr Higgins at the time when they were received (para 169).

Sexual motivation

36. Having made its findings in relation to the disputed aspects of Allegations 2 – 13, the Tribunal proceeded to consider whether the proven conduct was sexually motivated, reminding itself again of the Appellant's good character (para 171).

Ms A

37. The Tribunal found that each element of the Appellant's conduct towards Ms A (Allegations 2 – 6) was sexually motivated (paras 172 – 183). In making this assessment it reminded itself of Dr Higgins' denials. In summary, the main reasons that the Tribunal identified for drawing this conclusion in respect of Allegations 2 – 5 were: (i) the Appellant had made multiple comments that had a sexual connotation and some, such as the request for a naked picture and a picture of her breasts, were overtly sexual; (ii) Dr Higgins' denials of a sexual interest in her were not credible; (iii) in his oral evidence, Dr Higgins had accepted that he had sent "racy" messages and he had also said that he had considered what would happen if he had ended up having sex with Ms A, that he found her a bit scary and he wondered whether he could even "perform". In short, the Tribunal concluded that the Appellant's conduct was in pursuit of a future sexual relationship with Ms A and that there was no other plausible explanation for his actions. In relation to Allegation 6, the Tribunal repeated some of the factors that it had already identified in relation to the earlier allegations and indicated that it rejected the Appellant's account that the incident on 9 October 2020 was a "bit of fun" without sexual undertones. Given the context and the nature of his actions, the Tribunal considered that there was a strong inference that his actions were for sexual gratification.

Ms B

38. In rejecting the proposition that the conduct in Allegations 7 and 8 was sexually motivated, the Tribunal noted that Ms B had not perceived it in this way and that there was insufficient evidence for the Tribunal to infer that these ill-judged comments were in fact sexually motivated (paras 185 – 187). However, the Tribunal accepted that the Appellant's conduct in Allegation 9 was sexually motivated. Considering all the evidence, it took the view that there was a strong inference that his intention in communicating with Ms B by private messages was to offer and invite hugs and telling her not to inform her mother of the messages, was to cerate a personal connection with Ms B and to further a future sexual relationship with her. It considered that Dr Higgins' conduct demonstrated a replication of a similar pattern of behaviour that it had found proved in relation to Ms A (para 194).

Ms C

39. The Tribunal's reasons for finding that the conduct in relation to Ms C was sexually motivated were as follows:

> "197. The Tribunal reminded itself of Dr Higgins' evidence and explanations which it had not considered plausible and had rejected. Dr Higgins had been messaging Ms C out of work hours, had previously commented on her hair and noticed that she 'didn't usually make an effort with it'. He had stated to Ms C, that he really liked her, he knew that she had a boyfriend and that he wanted to get to know her better. Dr Higgins had told Ms C that she could reply as his phone did not show notifications. When told that Ms C had wanted to keep the relationship professional, Dr Higgins had asked her not to tell her boyfriend about his messages. It considered 'secretiveness' on Dr Higgins'

> part to be demonstrative of a lack of innocent intention on his part. The Tribunal considered that there was a strong inference that Dr Higgins' intention was sexually motivated.
>
> 198. The Tribunal took the view that a pattern had emerged of Dr Higgins offering to hug/cuddle junior colleagues and asking junior colleagues to not 'tell' others about various aspects of his conduct. It could find no plausible alternative explanation other than a sexual motivation. It considered that in sending this message to Ms C, Dr Higgins' motivation was to pursue a future sexual relationship with her."

Ms D

40. The Tribunal also considered that Dr Higgins' intention towards Ms D was the pursuit of sexual gratification (paras 201 – 204). The Tribunal noted that the Appellant had admitted the alleged conduct, explaining that his comments were intended to be humorous and that Ms D had laughed at the time. Ms D had confirmed that she had chuckled, but had described this as a "shocked laugh", saying that she found it "uncomfortable" and was "surprised", but hoped that he was "having a joke". The Tribunal said that Dr Higgins' explanation was not plausible and that it could not understand how making these suggestions to Ms D during her working day would be a joke or something that would raise morale.

Unlawful harassment

41. The Tribunal began this section of its determination by reminding itself of the constitute elements of the definition of unlawful harassment and of the Appellant's good character (para 205). It then considered the position in relation to Ms A between paras 206 – 227.

Ms A

42. The Tribunal began by considering Allegation 2. It said that the comments it had found proved were of a sexual nature. It noted that the Appellant had said that the allegations were either made up or consensual and that Ms A had vehemently maintained that all this conduct was unwanted (para 206). As regards the latter point, Ms A had said, "I would respond to him, that didn't mean I wasn't uncomfortable" and that she did not go into detail about her personal life but tried to say, "just enough so he would leave me alone". She said she had laughed at his comment about an affair but she was shocked and "after that I was uncomfortable if Dr Higgins was the duty doctor on Mondays. When he was, it would scare me as he would always come to talk to me. He wasn't always inappropriate, but you couldn't predict how he was going to be" (paras 207 - 208). The Tribunal concluded:

> "210… the questions in paragraph 2 a and b were unwanted by Ms A and they were conduct of a sexual nature by virtue of their content. It noted a power imbalance in the dynamic between Ms A and Dr Higgins, she was a young and junior member of staff and he was her '*boss*'. It considered the impact on Ms A as described by her and that it would be reasonable that these

> questions and their personal nature did violate A's dignity and create an intimidating work environment for her."

43. The Tribunal then summarised the proven conduct that it had found in relation to Allegations 3 – 5, which concerned the period June – October 2020. Calling Ms A beautiful and sending her an EMIS message saying he only kept coming to see her because she was beautiful, had sexual undertones; and the comments regarding cuddles, grabbing, hugging, the threesome and imagining what he would do to Ms A on the examination table was conduct of a sexual nature (para 211). Ms A had said that when they received the Appellant's message about a threesome, both her and Ms E had left work early and his comments made her uncomfortable. She would do her best to get one of the other girls to go into his room. The Appellant would sometimes apologise to her and she would just say "okay" as she did not want a confrontation (paras 213 – 216). The Tribunal also quoted the following passages from Ms A's evidence:

> "217. *Dr Higgins would message me to say that he had deliberately not signed the sick notes. If a patient came in to collect their sick notes, I would try to get the other ladies on reception to ask Dr Higgins to sign them. If I had to get Dr Higgins to sign a sick note, I would always tell him that the patient was at the practice waiting for it, making it clear that I had not gone to his room for anything he had offered me. He would say to me 'come and give me a cuddle'. In that situation, I wouldn't know what to say. I tried to make a joke of it, saying things like, 'you can't keep asking me for cuddles, it's weird'. He would come over and grab me. I wouldn't fight him off, but I would just stand there until he let me go and then I'd leave – it was really awkward.*
>
> 219. *…he did things I didn't agree to and I was uncomfortable with. I didn't know what to say, I was scared of repercussions, it was [a] very difficult situation to be in…I feel like in this period, we didn't take it as seriously as we should have, we were young and naïve and that he [Dr Higgins] took advantage of that*."

44. The Tribunal concluded that there was "considerable evidence" that the Appellant's conduct of sexual nature towards Ms A was unwanted; and whilst it may not have been his purpose, it had the effect of violating her dignity and created an intimidating and offensive environment for her, and her evidence of the effect of his conduct upon her was entirely reasonable (para 220).

45. In relation to Allegation 5.a (iii), the Tribunal noted that the Appellant's conduct was in effect asking Ms A to cover up his behaviour of a sexual nature and he had promised to try and get her a Health Care Assistant job if she did not tell anyone about it. The Tribunal referred to Ms A's evidence that he would make her "feel bad for him all the time…and how he was so unhappy". She said that he would "push it and then I'd be a bit freaked out and then after a few weeks I'd kind of get over it". The Tribunal concluded that the evidence pointed to the Appellant's conduct being unwanted by Ms A and creating an intimidating environment for her (para 222).

46. Turning to Allegation 6, the Tribunal referred to Ms A's evidence as to the effect of the assault upon her; that she was shaking and did not feel able to say anything to Dr Higgins at the time because she was so scared. Once he eventually let go of her, she said that "I told him to leave me alone, I was like please just go, leave me alone" (para 223). The Tribunal was satisfied that his conduct was unwanted and of a sexual nature. It accepted Ms A's evidence that she had called Ms E in tears as soon as she had left work. She then applied to change her role in the Practice as she did not want to see the Appellant and she blocked him on Snapchat after receiving the Allegation 6.c message (not unblocking him until 2021) (paras 224 – 225). The Tribunal found Ms A's account to be clear and convincing and the impact she described to be reasonable given the proven conduct; the incident violated her dignity and created an intimidating environment for her for a period thereafter (para 226).

Ms B

47. In light of the Tribunal's earlier findings, Allegations 7 and 8 did not engage the section 26(2) EA 2010 definition. As regards Allegation 9, the Tribunal indicated that it considered that whilst Ms B had been willing to add Dr Higgins as a friend on Snapchat, this was only for the purpose of collating evidence (para 234). It considered that the Appellant's conduct in seeking to establish a personal connection via sending hidden messages to her out of hours and his comment regarding hugs and making excuses to come to his room had a sexual context (para 235). The Tribunal referred to Ms B's oral evidence that she was "scared" and left the office early that day and to the disparity in the balance of power between her, as a young, new and junior member of staff and Dr Higgins, her employer (para 236). Additionally, and to avoid Dr Higgins, Ms B had moved from her allocated workspace, to sit with Ms G to avoid being alone with him, which she found "quite intimidating" (paras 237 - 238). The Tribunal accepted that the effect on Ms B was limited in time as Dr Higgins' last day working at the Practice was 19 November 2021, but Ms B would not have known that until at least the week after. Dr Higgins' conduct had created an intimidating environment for her and it was reasonable for it to have affected her as she had described (para 239).

Ms C

48. As regards Allegations 10 and 11, the Tribunal referred to Ms C's evidence that these messages were slightly different from others that the Appellant had sent:

> "241. …*'When I received the message, it was uncomfortable for me…on Friday, it felt really awkward…it felt more personal, it wasn't as light-hearted or professional or friendly as the conversation had been – it seemed more personal'. She stated that sexual was not the right word, 'I guess…wanting more than our professional relationship'*. Ms C considered Dr Higgins' conduct as she had detailed in her statement to be 'i*nappropriate*'."

49. The Tribunal was satisfied that the messages were unwanted and uninvited by Ms C and that this was conduct of a sexual nature, given the nature of the messages, the references to them being hidden from Ms C's boyfriend and the offer of a cuddle (para 242). The Tribunal referred to Ms C's evidence that she tried not to say the wrong thing in response to the messages, as she was concerned that it could put her in a difficult

position with work, so she would over-compensate when they were talking, to try and make things seem normal (para 243). Ms C had also said that after receiving the message about a cuddle she felt awkward going into the Appellant's room and if she needed to speak to him she would send a message asking him to come to the dispensary or ask one of her colleagues if they would go and speak to him; it was "just really uncomfortable" (para 244).

50. The Tribunal also referred to the power imbalance between Ms C and the Appellant, concluding that the Appellant's conduct was uninvited and caused her to feel embarrassed and intimidated in the workplace and the effect that his conduct had upon her was reasonable (para 245).

Ms D

51. In relation to Ms D, the Tribunal reminded itself that it had found that the conduct proved in relation to Allegations 12 and 13 was of a sexual nature. Her evidence was that the first time the Appellant had asked her to deepen her voice, she had found it uncomfortable, but she thought at the time that she would just let it go as she hoped it was a joke (para 248). However, when he then asked her again to do this (after her response the first time had been "no"), it made her feel uncomfortable, "I didn't feel it was fair to be said to me, I was just trying to do my job, if it was a joke, I didn't find it funny. I didn't want it to be said to me" (para 249). Ms D also said that it made her feel angry and that when she left work she still felt angry and uncomfortable. The Tribunal considered it reasonable that it had this effect on her (para 250). In addition, the Tribunal accepted that it was uninvited and unwanted conduct; Ms D had changed her work practice in consequence, sending screen messages instead of calling Dr Higgins (para 251). The Tribunal also referred to the significant imbalance of power and concluded that the Appellant's conduct had put Ms D in a difficult, embarrassing and uncomfortable position and had created an intimidating and offensive environment for her (para 252).

Impairment

52. The Tribunal received no further evidence at the impairment stage. It indicated that it had taken account of all the evidence received during the facts stage (para 255). Between paras 256 – 271 the Tribunal summarised the parties' submissions. Mr Williamson said that Dr Higgins recognised the seriousness of the Tribunal's findings (para 270). He also suggested that there were issues that had been raised that were not considered in the Tribunal's determination regarding Ms A and her "significant and unexplained actions including messages she sent him" (para 269).

53. The Tribunal set out the relevant legal principles at paras 272 – 275. No issue arises in relation to that summary.

54. The Tribunal summarised the findings that it had made in relation to Ms A, Ms B, Ms C and Ms D, referring also to their young ages and the imbalance of power between them and Dr Higgins. The Tribunal responded to the point made by Mr Williamson (para 52 above) as follows:

> "276. The Tribunal had considered the nature of the relationship between Ms A and Dr Higgins' and Ms A's

> evidence that whilst she had sent him messages and photographs, there was nothing of an inappropriate or sexual content sent. Ms A was young, aged 18 in May 2020 and a junior member of staff, whereas Dr Higgins was a 45-year-old man, a GP Partner, in a senior position of authority and was her employer. There was a clear imbalance of power in the dynamic of the relationship. Dr Higgins' conduct towards Ms A, included asking Ms A for a naked picture, and a picture of Ms A's breasts, grabbing, hugging Ms A without receiving her permission and having invited Ms A to his room to have a threesome, to be sexually motivated and consisting unlawful harassment. The conduct over a few months, was on a sliding scale, and at its most serious, had culminated in non-consensual physical contact with Ms A which included Dr Higgins attempting to kiss her."

55. The Tribunal said that it had regard to various paragraphs of the GMC's Good Medical Practice ("GMP"), namely: that good doctors…maintain good relationships with patients and colleagues, are honest and trustworthy and act with integrity and within the law (para 1); you must work collaboratively with colleagues, respecting their skills and contributions (para 35); you must treat colleagues fairly and with respect (para 36); you must be aware of how your behaviour may influence others within and outside the team (para 37); and you must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession (para 65).

56. The Tribunal concluded that the conduct described in Allegations 7 and 8, which it had not found to be sexually motivated or unlawful harassment, was not sufficiently serious that it could properly be described as misconduct going to fitness to practice (para 282). The Tribunal said that the rest of the proven conduct was on a sliding scale of seriousness, "which whilst not on the lowest end, was not at the highest end of the scale either". It concluded that the conduct constituted "significant departures" from the paragraphs of the GMP that it had cited and that it would be "considered by fellow practitioners as deplorable" (para 283). The Tribunal also referred to the guidance, Leadership and Management for all doctors, indicating that the Appellant's behaviour had fallen short in respect to demonstrating effective team working and leadership and in promoting a working environment free from harassment (para 284). Overall, it was satisfied that the Appellant's conduct fell so far short of the standards of conduct expected of a doctor that it amounted to misconduct.

57. Turning to impairment, the Tribunal found that the Appellant had in the past and/or was liable in the future to bring the medical profession into disrepute; and had in the past and/or was liable in the future to breach one of the fundamental tenets of the medical profession (para 287). The Tribunal bore in mind that sexually motivated behaviour was "difficult but not impossible to remediate". It reminded itself of Dr Higgins' evidence that he had suffered a complete loss of professional boundaries and was out of control (para 288). The Tribunal acknowledged that the Appellant had referred to his conduct as "disgraceful" and "a shameful period of time". Although he had said that he had started to improve from 4 – 6 weeks after the start of the loss of those boundaries in May 2020, the Tribunal was concerned that most of the proven misconduct occurred after that 4 – 6 week period (para 289). The Tribunal took account of Dr Higgins' apology in his written statement, his unreserved apology to Ms D via his counsel and

his expressions of remorse in his contemporaneous messages to Ms A (para 290). Whilst there had not been any further concerns reported, Dr Higgins' actions were not a single isolated incident and had occurred with Ms B, Ms C and Ms D after he had shown remorse to Ms A. He had also looked to cover up his behaviour by telling Ms B not to tell her mother and Ms C not to tell her boyfriend (para 291).

58. The Tribunal then set out the following conclusions:

> "292. The Tribunal was mindful that since its earlier findings, there had been little time for further reflection and remediation. However, other than that Dr Higgins accepting his loss of professional boundaries and his oral testimony that that was no longer the case and that he had subsequently put boundaries back in place, it had no evidence before it as to remediation and in particular, in respect of the conduct found proved. It had no evidence as yet about how Dr Higgins would prevent his behaviour recurring.
>
> 293. It therefore considered that there is some evidence of developing insight, but it is limited. The Tribunal could not be satisfied that there was not risk of repetition in the future.
>
> 294. The Tribunal was mindful of the public interest in this case. Given Dr Higgins' limited insight and lack of remediation and therefore, a risk of repetition, it considered all three limbs of the overarching objective were engaged. It considered that to protect, promote and maintain the health, safety and wellbeing of the public, and the need to promote and maintain public confidence in the medial profession and the need to promote and maintain proper professional standards would be undermined if a finding of impairment were not made.
>
> 295. Accordingly, the Tribunal has determined that Dr Higgins' fitness to practise impaired by reason of misconduct."

Sanction

Additional evidence

59. The Tribunal received additional evidence from the Appellant at the sanction stage, including: a reflective statement dated 13 February 2022; thank you notes and messages from patients; a development and restoration plan dated February 2022; a letter from Dr Higgins dated 29 January 2024; a letter from a BACP accredited psychotherapist dated 26 January 2024; certificates of completion of and reflections on courses on sexual harassment; and a letter from his current workplace.

The submissions

60. The GMC's submissions are summarised at paras 300 – 314 of the determination. Mr Kitching submitted that the only appropriate sanction was one of erasure. He also submitted that there were two aspects to insight. Firstly, an understanding of why the

conduct was unacceptable and the degree to which it fell below expected standards. That kind of insight did not require any acceptance of the facts on the part of the doctor. But the second aspect was a personal understanding of why the doctor acted in the way he did. Mr Kitching contended that it was impossible to gain this second type of insight unless there was an acceptance of the conduct in question.

61. The submissions on behalf of the Appellant were summarised at paras 315 – 332. Mr Williamson argued that suspension was the appropriate and proportionate outcome. Mr Williamson said that Dr Higgins accepted the Tribunal's findings in relation to misconduct, accepted that he had behaved inappropriately and had apologised. Mr Willamson emphasised that there were unique precipitating factors at the time and that it should be regarded as a temporary aberration in an otherwise unblemished career. He submitted that since the events Dr Higgins had done a great deal to ensure that he would never fall into that situation again; he had taken very positive steps to address the factors that led to the misconduct, including undergoing therapy and undertaking considerable learning and development, including a Professional Boundaries Course and a sexual harassment awareness course. He would not allow his behaviour to be repeated. Mr Williamson said that the proceedings had been a salutary lesson for Dr Higgins, who had gone to great lengths to understand why he behaved as he did.

Determination of sanction

62. The Tribunal summarised the applicable legal principles at paras 333 – 336. (I set out those principles from para 81 below.) It then identified the relevant aggravating and mitigating factors at paras 338 – 341, concluding at para 342, that the aggravating factors in this case outweighed the mitigation.

63. In terms of aggravating factors, the misconduct was "inherently serious and would be considered deplorable by fellow practitioners". The misconduct was towards multiple young woman who worked in a junior capacity in the Practice. There was an imbalance of power and Dr Higgins' conduct involved a breach of his professional position and a breach of trust as their employer. It also took place over a sustained period. The Appellant had asked Ms C not to tell her boyfriend and Ms D not to tell her mother. He had offered Ms A a job as a Healthcare Assistant if she did not tell anyone what he was like. Dr Higgins had some awareness of the inappropriateness of his conduct at the time, as these communications showed; and, additionally, he had found a way to hide Snapchat messages so that they were not seen by his daughter if she looked at his phone.

64. In terms of mitigating factors, the Tribunal took account of the Appellant's previous good character and unblemished career, the lapse of time since the incidents occurred and the admissions he had made in relation to Allegations 12 and 13 concerning Ms D. The Tribunal also acknowledged his apology, remorse for his actions and evidence about his personal circumstances at the time of the incidents. It said that it gave weight to these matters, but bore in mind that his conduct was not an isolated incident, which could be regarded as a temporary lapse of judgement, as it was sustained over a significant period.

65. Unsurprisingly, the Tribunal rapidly ruled out the options of taking no action or imposing conditions. The Tribunal then considered whether suspension would be appropriate and proportionate, having regard to paras 92, 93 and 97 of the Sanctions Guidance (paras 86 – 87 below). It referred to the imbalance of power, the effect of Dr

Higgins' misconduct upon the complainants, the sustained nature of his conduct and that he had breached a fundamental tenet of the medical profession and brought the profession into disrepute. It considered that the misconduct was "behaviour unbefitting of a registered doctor, and so serious that action must be taken to protect member of the public and to maintain public confidence in the profession" (para 350).

66. The Tribunal then referred to the factors identified at sub-paras 97 e, f and g of the Sanctions Guidance (para 87 below). It said it had considered all the additional documentation submitted by the Appellant and noted the courses he had undergone and that he had carried out further reflections (paras 351 – 352).

67. Between paras 353 – 356 the Tribunal said that it had given particular consideration to his reflective statement and his 29 January 2024 letter. It noted Dr Higgins' reflections on the importance of maintaining professional boundaries and understanding power differentials. The Tribunal quoted his statement that the Professional Boundaries Course had taught him that professional power can make those involved feel a desire to please or be afraid to stop their involvement in unprofessional behaviour. He also said that he was aware that what had happened would have an effect on those involved for the rest of their lives and that he had let them down. In light of these documents the Tribunal considered that "there had been some development of Dr Higgins' knowledge of sexual harassment in the workplace and its impact on victims and others" (paras 353 – 354). The Tribunal also quoted a passage from the letter from Mr Seth Butcher, the BACP psychotherapist, indicating that in the sessions with him the Appellant had shown commitment and engagement, a sincere need to understand the seriousness of his behaviour and clear remorse. The letter said that Dr Higgins had "come a long way not only in putting measures into place to make sure this type of behaviour never happens again, but also with his mental health. He is no longer feeling depressed or isolated and has made a real effort to understand what happened and to learn from it…". The Tribunal accepted that the Appellant's attendance at these courses and the therapy he had undergone was evidence of remediation.

68. The Tribunal's conclusion as to why suspension was not an appropriate sanction was as follows:

> "357. The Tribunal however remained mindful that it had found proved a pattern of sexually motivated behaviour on the part of Dr Higgins in addition to the sexual harassment which has had an adverse effect on his junior colleagues. It noted that Dr Higgins had stated that he had let down his colleagues and it was submitted on his behalf that Dr Higgins had gone to great lengths to understand why he behaved as he did. The Tribunal was mindful of Dr Higgins' ongoing right to defend and deny any or all of the allegations, found proved. However, it did not find evidence to demonstrate sufficient understanding, reflection or insight in respect of the seriousness and gravity of the sexually motivated behaviour which included sexual gratification and pursuit of a future sexual relationship by a doctor in a position of trust and power, as found proved. Accordingly, the Tribunal took the view that Dr Higgins' insight was not holistic and remained limited. It therefore did not consider that Dr Higgins had

> sufficient insight such that he would not pose a significant risk of repeating his behaviour."

69. The Tribunal then addressed erasure. It had regard to paras 108, 109, 136, 137, 138, 149 and 150 of the Sanctions Guidance (paras 88 – 89 below), which it considered to be engaged. The proven conduct indicated a serious and reckless departure from the principles set out in the GMP. It also considered that there had been an abuse of the Appellant's position as the employer of his junior colleagues and that he had departed from the GMP principles of working collaboratively with his colleagues. It further concluded that the proven sexual misconduct had the potential to seriously undermine public trust and confidence in the profession (para 360). The Tribunal weighted Dr Higgins' interest in not being able to practice as a doctor in the balance, but concluded that the reputation of the profession, the need for public protection and to maintain public confidence and proper professional standards of conduct for the medical profession to be the more important. It concluded that the Appellant's behaviour was fundamentally incompatible with being a doctor (para 361). Accordingly, the Tribunal determined that erasure of Dr Higgins' name from the medical register was the appropriate and proportionate sanction (para 362).

The legal framework

70. The appeal is brought under section 40 MA 1983. Section 40(7) provides that on an appeal from the Tribunal under this section, the Court may (as relevant): dismiss the appeal; allow the appeal and quash the direction appealed against; substitute for the direction appealed any other direction which could have been given by the Tribunal; or remit the case for the Tribunal to dispose of the case in accordance with the directions of the Court. The appeal is by way of re-hearing, rather than review: PD 52D, para 19. The Court will allow an appeal where the Tribunal's decision was wrong or unjust because of a serious procedural or other irregularity: CPR 52.21(3).

The appellate jurisdiction

71. The principles applicable to the Court's jurisdiction were summarised by Warby J (as he then was) in *R (Dutta) v GMC* [2020] EWHC 1974 (Admin) ("*Dutta*") at para 21. His summary refers to the following section 40 appeals: *Gupta v GMC* [2001] UKPC 61, [2002] 1 WLR 1691, *Meadow v GMC* [2006] EWCA Civ 1390, [2007] QB 462, *Southall v GMC* [2010] EWCA Civ 407, *Casey v GMC* [2011], NIQB 95 *Yassin v GMC* [2015] EWHC 2955 (Admin) and *Bawa-Garba v GMC* [2018] EWCA Civ 1879. He said:

> "(1) The appeal is not a re-hearing in the sense that the appeal court starts afresh, with regard to what has gone before, or (save in exceptional circumstances) that it re-hears the evidence that was before the Tribunal. 'Re-hearing' is an elastic notion but generally indicates a more elastic process than a review: *E I Dupont de Nemours & Co v S T Dupont* (Note) [2006] 1 WLR 2793 [92-98]. The test is not the 'Wednesbury' test.
>
> (2) That said, the appellant has the burden of showing that the Tribunal's decision is wrong or unjust: *Yassin* [32(i)]. The

> Court will have regard to the decision of the lower court giving it 'the weight that it deserves': *Meadows* [128] (Auld LJ, citing *Dupont* [96] (May LJ)).
>
> (3) A court asked to interfere with findings of fact made by a lower court or Tribunal may only do so in limited circumstances. Although this Court has the same documents as the Tribunal, the oral evidence is before this Court in the form of transcripts, rather than live evidence. The appeal Court must bear in mind the advantages which the Tribunal has of hearing and seeing the witnesses, and should be slow to interfere. See *Gupta* [10], *Casey* [6(a)], *Yassin* [32(iii)].
>
> (4) Where there is no question of a misdirection, an appellate court should not come to a different conclusion from the tribunal of fact unless it is satisfied that any advantage enjoyed by the lower court or tribunal by reason of seeing and hearing the witnesses could not be sufficient to explain or justify its conclusions: *Casey* [6(a)].
>
> (5) In this context, the test for deciding whether a finding of fact is against the evidence is whether that finding exceeds the generous ambit within which reasonable disagreement about the conclusions to be drawn from the evidence is possible: *Yassin* [32(v)].
>
> (6) The appeal Court should only draw an inference which differs from that of the Tribunal, or interfere with a finding of secondary fact, if there are objective grounds to justify this: *Yassin* [32(vii)].
>
> (7) But the appeal Court will not defer to the judgment of the tribunal of fact more than is warranted by the circumstances: it may be satisfied that the tribunal has not taken proper advantage of the benefits it has, either because reasons are not satisfactory, or because it unmistakably so appears from the evidence: *Casey* [6(a)] and cases there cited…Another way of putting the matter is that the appeal Court may interfere if the finding of fact is 'so out of tune with the evidence properly read as to be unreasonable': *Casey* [6(c)], citing *Southall* [47] (Leveson LJ). "

72. In *Byrne v GMC* [2021] EWHC 2237 (Admin) ("*Byrne*"), Morris J reviewed the case law regarding the approach that the appeal Court should take to findings of fact made by the Tribunal. In addition to cases I referred to in para 71 above, he cited *Thomas v Thomas* [1947] AC 484, *Libman v GMC* [1972] AC 217, *Assicurazioni General SpA v Arab Insurance Group* [2003] 1 WLR 577, *McGraddie v McGraddie* [2013] UKSC 58, *Henderson v Foxworth* [2014] UKSC 41 and *Perry v Raleys Solicitors* [2019] UKSC 5. He summarised the position as follows:

> "12. Firstly, the degree of deference shown to the court below will differ depending on the nature of the issue below: namely whether the issue is one of primary fact, of secondary fact, or rather an evaluative judgment of many factors: *Assicurazioni Generali* at ¶¶16 to 20…
>
> 13. Secondly, the governing principle remains that set out in *Gupta* ¶10 referring to *Thomas v Thomas*. The starting point is that the appeal court will be very slow to interfere with findings of primary fact of the court below. The reasons for this are that the court below has had the advantage of having seen and heard the witnesses, and more generally has total familiarity with the evidence in the case. A further reason for this approach is the trial judge's more general expertise in making determinations of fact: see *Gupta*, and *McGraddie v McGraddie* at ¶¶3 to 4. I accept that the most recent Supreme Court case interpreting *Thomas v Thomas* (namely *McGraddie* and *Henderson v Foxworth*) are relevant. Even though they are cases of 'review' rather than 'rehearing' there is little distinction between the two types of cases for present purposes…
>
> 14. Thirdly, in exceptional circumstances the appeal court will interfere with findings of primary fact below. (However, the reference to 'virtually unassailable' in *Southall* at ¶47 is not to be read as meaning 'practically impossible' for the reasons given in *Dutta* at ¶22.)
>
> 15. Fourthly, the circumstances in which the appeal court will interfere with primary findings of fact have been formulated in a number of different ways, as follows:
>
> - where 'any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusions: per Lord Thankerton in *Thomas v Thomas* approved in *Gupta*;
>
> - findings 'sufficiently out of the tune with the evidence to indicate with reasonable certainty that the evidence has been misread' per Lord Hailsham in *Libman*;
>
> - findings 'plainly wrong or so out of tune with the evidence properly read as to be unreasonable': per *Casey* at ¶6 and Warby J (as he then was) in *Dutta* at ¶21(7);
>
> - where there is 'no evidence to support a…finding of fact or the trial judge's finding was one which no reasonable judge could have reached': per Lord Briggs in *Perry* after analysis of *McGraddie* and *Henderson*."

73. The onus of proof is on the GMC and the standard of proof to be applied by the Tribunal and by this Court is the civil standard of balance of probabilities: *Byrne* at para 22.

74. In *Volpi v Volpi* [2022] EWCA Civ 464, para 2, Lewison LJ summarised the "well-settled" principles applicable to appeals on question of fact, including that:

> "(iii) An appeal court is bound, unless there is a compelling reason to the contrary, to assume that the trial judge has take the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it."

75. If the Court finds that the Tribunal went wrong at the first stage, it should quash the conclusions reached at all three stages, unless persuaded that the error would have made no difference to the outcome: *Dutta,* para 20.

Duty to give reasons

76. In *Southall* Leveson LJ (as he was then) confirmed that the purpose of the duty to give reasons is to enable the losing party to know why he has lost and to allow him to consider whether to appeal. He said that the duty would be satisfied if, having regard to the issues and the nature and content of the evidence, the reasons for the decision are plain, either because they are set out in terms, or they can be readily inferred from the overall form and content of the decision (para 54). In straightforward cases, setting out the facts to be proved and finding them proved would generally be sufficient (para 55). However, when "the case is not straightforward and can properly be described as exceptional" the position was different. Characterising the case before him as coming within this category, Leveson LJ explained: "I am not suggesting that a lengthy judgment was required but, in the circumstances of this case, a few sentences dealing with the salient issues was essential: this was an exceptional case…" (para 56). He added that if the Tribunal had disbelieved Dr Southall "he was entitled to know why, even if only by reference to his demeanour, his attitude or his approach to specific questions" (para 57). In *Byrne*, Morris J described *Southall* as the "leading authority" on the duty to give reasons (para 24).

Sexual motivation

77. A sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship: *Basson v GMC* [2018] EWHC 505 (Admin), para 14.

Section 26 Equality Act 2010

78. Section 26 EA 2010 provides as follows:

> "**26. Harassment**
>
> (1) A person (A) harasses another (B) if –
>
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and
>
> (b) the conduct has the purpose or effect of-
>
> (i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if –

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if –

(a) A or another person engages in unwanted conduct of a sexual nature…

(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect."

79. The relevant protected characteristics for the purposes of section 26 include sex: section 26(5).

80. As there is no issue raised with the way that the Tribunal applied the law in this case, it is unnecessary for me to refer to the case law concerning this definition of harassment.

Sanction

81. The question for this Court to ask is whether the sanction was appropriate and necessary in the public interest or was excessive and disproportionate: *Sastry & Okpara v GMC* [2021] EWCA Civ 623, para 31.

82. The Sanctions Guidance provides guidance to tribunals when imposing sanctions on a doctor's registration. Para 14 sets out the overarching objective:

> "The main reason for imposing sanctions is to protect the public. This is the statutory overarching objective, which includes to:
>
> a. protect and promote the health, safety and wellbeing of the public

> b. promote and maintain public confidence in the medical profession
>
> c. promote and maintain proper professional standards and conduct for the members of the profession."

83. Para 15 says that each reference to protecting the public in the Guidance is to be read as including these three limbs of the overarching objective. In deciding which sanction to impose, the Tribunal should start by considering the least restrictive sanction and work upwards to the most appropriate and proportionate sanction (paras 20 and 67). It should always have regard to the principle of proportionality, weighing the interests of the public against those of the doctor (para 20). The reputation of the profession as a whole is more important that the interests of any individual doctor (para 17). Once the Tribunal has decided that a certain sanction is necessary to protect the public, it must be imposed, even where this may lead to difficulties for the doctor (para 21).

84. The Tribunal is to consider and balance any mitigating and aggravating factors (paras 24 – 60). The Guidance states the following in relation to insight:

> "45. Expressing insight involves demonstrating reflection and remediation.
>
> 46. A doctor is likely to have insight if they:
>
> a. accept they should have behaved differently (showing empathy and understanding)
>
> b. take timely steps to remediate (see paragraphs 31 – 33) and apologise at an early stage before the hearing
>
> c. demonstrate the timely development of insight during the investigation and hearing."

85. Paragraph 31 says that "Remediation is where a doctor addresses concerns about their knowledge, skills, conduct or behaviour" and goes on to describe the forms that it can take. Lack of insight is identified as an aggravating factor at para 51, the Guidance then continues:

> "52. A doctor is likely to lack insight if they:
>
> a. refuse to apologise or accept their mistakes
>
> b. promise to remediate, but fail to take appropriate steps, or only do so when prompted immediately before or during the hearing
>
> c. do not demonstrate timely development of insight
>
> d. fail to tell the truth during the hearing…"

86. In relation to the option of suspension, the Guidance says:

> "92. Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).
>
> 93. Suspension may be appropriate, for example, where there may have been acknowledgment of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated…"

87. Para 97 sets out a non-exhaustive list of factors, explaining that the presence of some or all of them would indicate suspension may be appropriate. The list includes: (e) no evidence that demonstrates that remediation is unlikely to be successful; (f) no evidence of repetition of similar behaviour since the incident; and (g) the tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.

88. The Tribunal may erase a doctor from the medical register in a case where this is the only means of protecting the public (para 107). Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where the action is necessary to maintain public confidence in the profession (para 108). Para 109 sets out a non-exhaustive list of factors, explaining that if any of them are present this may indicate that erasure is appropriate. This list includes: (a) a particularly serious departure from the principles set out in the GMP where the behaviour is fundamentally incompatible with being a doctor; (d) abuse of position / trust (and reference is made to para 65 of the GMP); and (f) offences of a sexual nature.

89. Para 136 says that doctors are expected to work collaboratively with colleagues; and para 137 indicates that colleagues includes "anyone a doctor works with". Para 138 of the Guidance states that more serious outcomes are likely to be appropriate if there are serious findings that involve (amongst other forms of misconduct) sexual harassment. The following paragraphs deal specifically with sexual misconduct:

> "149. This encompasses a wide range of conduct from criminal convictions for sexual assault and sexual abuse of children…to sexual misconduct with patients, colleagues, patients' relatives or others…
>
> 150. Sexual misconduct seriously undermines public trust in the profession. The misconduct is particularly serious where there is an abuse of the special position of trust a doctor occupies, or where a doctor has been required to register as a sex offender. More serious action, such as erasure, is likely to be appropriate in such cases."

90. In *Alberts v General Dental Council* [2022] EWHC 2192 (Admin), Foster J rejected a submission that references to "the public interest" in the General Dental Council's Sanction Guidance did not encompass work colleagues and were focused only on patient safety (para 39). Noting that the overarching objective referred to the public and was not confined in that narrow way, she said: "Plainly the interest of fellow professionals and staff is comprehended in the public interest".

91. In *Arunachalam v GMC* [2018] EWHC 758 (Admin) ("*Arunachalam*") Kerr J summarised a number of propositions that he drew from the authorities relating to cases of sexual misconduct, including:

> "34. First, sexual misconduct is self-evidently always serious and often likely to lead to erasure, even for a first time offender. …Third, lack of what is called 'insight' tends to increase the severity of the sanction and, conversely, proof of insight tends to mitigate it. 'Insight' roughly translates as owning up, saying sorry and convincing the panel that offending behaviour will not be repeated. This is obviously more difficult if the charges are denied.
>
> …..
>
> 37. …Eighth, personal mitigation counts for less than in other contexts because of the imperative need to preserve and uphold public confidence in the profession and to preserve and uphold standards of behaviour…
>
> 38. Ninth as Mr Justice Collins said in *Giele v GMC* [2006] 1 WLR 942 at paragraph 33, it is not the law that in sexual misconduct cases erasure should follow unless the circumstances are exceptional. The severity of the sanction required to maintain and preserve public confidence in the profession 'must reflect the views of an informed and reasonable member of the public'."

92. Kerr J also addressed the situation where the sexual misconduct involved a colleague:

> "59. Where the victim is a colleague rather than a patient, severe sanctions in such cases are generally necessary, in addition, to protect and uphold the dignity of the workplace in the profession and to protect their freedom to work without being molested."

93. In *Yusuff v GMC* [2018] EWHC 13 (Admin) ("*Yusuff*") Yip J made a number of observations regarding the relevance of insight. Whilst she was focused on a subsequent review hearing, the parties were agreed that her remarks are of wider import:

> "18. It would be wrong to equate maintenance of innocence with a lack of insight. However, continued denial of the misconduct found proved will be relevant to the Tribunal's consideration on review. As…the Sanctions Guidance makes clear, refusal to accept the misconduct and failure to tell the truth

> during the hearing will be very relevant to the initial sanction…A want of candour and continued dishonesty may be taken into account by the Tribunal in reaching its conclusions on impairment…
>
> …..
>
> 20. I conclude having reviewed all the relevant authorities that at a review hearing:
>
> a. The findings of fact are not to be reopened;
>
> b. The registrant is entitled not to accept the findings of the Tribunal;
>
> c. In the alternative, the registrant is entitled to say that he accepts the findings in the sense that he does not seek to go behind them whilst still maintaining a denial of the conduct underpinning the findings;
>
> d. When considering whether fitness to practice remains impaired, it is relevant for the Tribunal to know whether or not the registrant now admits the misconduct;
>
> e. Admitting the misconduct is not a condition precedent to establishing that the registrant understands the gravity of the offending and is unlikely to repeat it;
>
> f. …..
>
> g. A want of candour and/or continued dishonesty at the review hearing may be a relevant consideration in looking at impairment."

94. In *Irvine v GMC* [2017] EWHC 2038 (Admin) ("*Irvine*") at para 83, Holroyde J (as he then was) observed that it was "not wrong or unfair of the Tribunal to take into account when considering impairment, that Mr Irvine was doggedly maintaining an account of administrative sloppiness when they had found that his misconduct was much more serious than that". The Judge went on to say that it would have been "illogical, and wrong" for the Tribunal to ignore that he was maintaining an untruthful account when considering whether there was a realistic prospect of remediation.

95. In *Professional Standards Authority v The Health and Care Professions Council* [2017] EWCA Civ 319, Lindblom LJ observed that whether a registrant had shown insight into their misconduct and how much insight they had shown were "classically matters of fact and judgment for the professional disciplinary committee in light of the evidence before it" (para 38).

The grounds of appeal

Ground 1: failure to have regard to relevant evidence

96. Ground 1 alleges three respects in which the Tribunal failed to have regard to evidence that is said to be fundamental to the factual issues in the case.

97. Firstly, the following messages sent by Ms A to the Appellant (given that he contended that her allegations were made up or the behaviour was "entirely consensual"; whereas she said that the conduct was unwanted and made her uncomfortable):

    i) On 11 July 2020 a photograph of her face with love hearts added;

    ii) On 19 July 2020 a photograph of her face blowing a kiss or pouting with love hearts on her face and an annotation "U cute";

    iii) On 29 July 2020 a photograph of part of her face, taken at her home and asking "You coming here tonight? Xxx";

    iv) On 6 September 2020 a photograph of her face blowing a kiss or pouting;

    v) On 18 September 2020 a message containing a photograph of a bar at a party and the message "think you should come";

    vi) On 3 / 4 October 2020 images at home, one saying "Yeah, ok when you coming?? Xx".

98. Ground 1 contends that Ms A failed to explain why she sent these messages to the Appellant and why she did not disclose them in her initial accounts. It is alleged that this went to Ms A's credibility and/or to the questions of whether the Appellant's conduct was "unwanted" and/or to whether it could amount to unlawful harassment and/or to the nature of his sexual motivation and/or to the seriousness of his conduct.

99. Secondly, in relation to the 9 October 2020 assault (Allegation 6) evidence that was relevant to the credibility of Ms A's allegation, namely:

    i) In around March and June 2021 Ms A approached the Appellant seeking medical advice / treatment for gynaecology related conditions when he was not her doctor;

    ii) On an occasion in May 2021 Ms A telephoned the Appellant shortly after midnight;

    iii) On 11 June 2021 Ms A sent a message to the Appellant, "Thanks for the crisps, have i done something to annoy you? As I feel as if you've been really off with me recently";

    iv) On 23 July 2021 Ms A sent a message to the Appellant whilst they were both in the Practice saying "I'm bored up here on my own :(".

100. In this regard reference is also made to the fact that Ms A did not make any formal complaint about the alleged assault until November 2021 and did not disclose the

messages referred to in the preceding paragraph. It is also said that Ms A's credibility was relevant to the allegations made by the other complainants, given the alleged collusion and given that the Tribunal relied on there having been a pattern of behaviour on the part of the Appellant.

101. Thirdly, in relation to Ms B it is alleged that in finding that the Appellant's conduct was unwanted, unlawful harassment and sexually motivated, the Tribunal failed to consider the significance of Ms B deliberately and willingly engaging in messaging contact with him and that she was motivated to engage in such conduct by an intention to collect evidence. Further, that the Tribunal failed to have regard to a discrepancy between Ms B explaining that she added the Appellant on Snapchat because she thought she might be able to obtain some evidence that way and her saying that the reason she had not saved any of the allegedly inappropriate messages that he sent was because he would be alerted to this if she did so, due to a technicality with Snapchat.

Ground 2: failure to give any or any adequate reasons

102. The Appellant contends that the Tribunal failed to give reasons for its findings of fact on disputed issues that were central to the case. Firstly, it is said that the Tribunal made no reference to the matters identified under Ground 1 when rejecting Dr Higgins' evidence and accepting that Ms A's evidence was cogent and credible, even though they were fundamental to the truthfulness and reliability of her account. The Tribunal failed to provide adequate reasons for accepting Ms A's account and rejecting the Appellant's; and did not assess the evidence that suggested consensual contact by Ms A.

103. Secondly, it is said that the Tribunal failed to adequately address the matters raised on behalf of Dr Higgins listed at para 19 of the Grounds, in circumstances where it was obliged to consider and to give reasons in respect of its assessment of this evidence. The listed matters are:

Ms A did not commit her account to writing until November 2021;

i) The written account that she did then make was not disclosed by Ms A and was said to no longer exist;

ii) When Ms A gave her account on video to the Practice, she read substantially from these written notes she had made;

iii) The notes contained material errors on key matters such as days and dates;

iv) When Ms A gave her first signed witness statement to the GMC she relied upon a transcript of the video account;

v) When Ms A gave her oral evidence she relied materially upon the contents of her GMC witness statement, which via the process set out above stemmed from the unseen notes;

vi) When cross-examined, Ms A was unable to recall or explain detail that had not been in her initial account, for example she was unable to say what had happened

to a sample of patient urine that she had been carrying immediately prior to the assault allegedly taking place;

vii) Comments were made by the untrained interviewer from the practice staff during the video which did little to assist in eliciting important details or in assessing the reliability or credibility of the account;

viii) In her oral evidence Ms A had said that the assault lasted some five minutes. This was not something that she had said before. The Tribunal did not refer to the duration of the alleged assault at all;

ix) Ms A's evidence was disposed to exaggeration. For example, she suggested in her GMC statement that the "only reason" she had left her job at the Practice was due to the Appellant. However, in the messages disclosed by the Appellant, Ms A had said that she was unhappy for other reasons which she indicated were relevant to her exit.

104. The Appellant further alleges that the Tribunal provided inadequate reasons for accepting Ms B's account and rejecting the Appellant's. It is said that the Tribunal gave no reasons why it accepted Ms B's account despite the discrepancy highlighted under Ground 1 and in circumstances where there were no contemporaneous messages retained.

105. It is also said that the Tribunal gave inadequate reasons for finding that the Appellant's conduct towards Ms C was of a sexual nature in circumstances where she had said that "sexual was not the right word" to describe his behaviour towards her. Similarly, the Tribunal failed to explain why it had rejected Ms D's characterisation of his behaviour towards her as a joke.

Ground 3: flawed rationale and reasoning

106. Ground 3 alleges that the Tribunal was inconsistent in its treatment of inculpatory and exculpatory evidence in a way that favoured the GMC's witnesses and was to the Appellant's disadvantage. Specifically:

i) The Tribunal concluded that Ms A's accounts were "clear and consistent" without considering all the methods by which her account came to be given;

ii) Ms A's accounts did not include key information which she deliberately chose not to disclose, but the Tribunal failed to consider the impact of this on her credibility; and

iii) Ms A could not recall details that had not been recorded in her earlier account (the urine sample is referred to again), suggesting problems with her memory of key events.

107. At para 46 of its determination, the Tribunal considered that Ms A's willingness to accept that she had the day of the week wrong in relation to Allegation 2 added to her credibility, rather than detracting from it, when this was not a conclusion that was open to it as Ms A had had no alternative in the circumstances, when faced with the point in cross-examination, to do other than accept that she had got this wrong.

108. At para 84 of its determination, the Tribunal accepted that certain parts of her evidence that were not in her video account were not an embellishment or something that detracted from her credibility; whereas, by contrast, it recorded at para 106 that the Appellant was unable to explain why he did not include the version of events that he gave in evidence in his statement;

109. In relation to Allegation 6, the Tribunal found Ms A's account to be consistent and credible although she could not recall what had happened to the container of urine; whereas, by contrast, it considered that the Appellant was "slightly confused" as to whether or not he had wanted to show Ms A how to test the urine; and

110. In relation to Ms B's evidence, the Tribunal considered it understandable that she had some confusion over the detail, given the time that had elapsed; whereas it did not afford the Appellant the same degree of latitude, stating that it found his account to be confused and unreliable.

Ground 4: flawed approach to sanction and direction of erasure

111. This is advanced as a free-standing point if Grounds 1 – 3 fail. Ground 4 contends that the Tribunal erred in imposing the sanction of erasure as:

i) It failed to have sufficient regard to the clear evidence of insight and the Appellant's remediation and his recognition of the seriousness of his conduct and its impact on his colleagues;

ii) Properly considered, the Appellant's conduct and relationship with Ms A could not be categorised as amounting to "sexual gratification and pursuant of a future sexual relationship by a doctor in a position of trust and power". The behaviour was not such as to place it within the category of the "position of trust a doctor occupies" referred to in para 150 of the Sanctions Guidance, and thereby "fundamentally incompatible with being a doctor". The relationship was an employment one that did not involve the abuse of a doctor's special position of trust with a patient;

iii) It erred in its approach to the Appellant's right to deny allegations; the Tribunal "in effect treated denials as a specific factor which precluded the Appellant from demonstrating that he understood the gravity of his conduct"; and

iv) It found that there was a significant risk of the Appellant repeating the behaviour, when there was no evidence that he had done anything of this nature before or since and the most serious conduct alleged by Ms A was of an entirely different nature to that alleged by Ms B, Ms C and Ms D.

The Appellant's submissions

112. In this section of my judgment, I will not repeat the contentions that I have already identified in setting out the grounds. However, I will summarise the way in which they were developed in Mr Williamson's skeleton argument and oral submissions. I will focus on the overarching and general points that he made, identifying some further specific aspects that he advanced when I come on to explain my conclusions. As I indicated to Mr Williamson during his oral submissions, I do not intend to entertain

free-standing submissions that raised new points, rather than supported existing grounds of appeal. For the avoidance of doubt, no application was made to amend the grounds of appeal.

Grounds 1 - 3

113. There was considerable overlap in the submissions made in respect of these three grounds. The central focus of Mr Williamson's contentions was on the messages that Ms A had sent to Dr Higgins in the periods July – October 2020 and May – July 2021 (paras 97 and 99 above), which she had not revealed and the Appellant had disclosed. He submitted that although the Tribunal had made brief reference to her sending messages to him (in particular in paras 25 – 26 of its determination), it had simply and uncritically recited her evidence on these matters and accepted it without subjecting it to any of the rigorous analysis that was required. He stressed that this was particularly necessary given that Ms A's credibility was central to the case against Dr Higgins; given that the disputed messages he was alleged to have sent her had not been retained and so were not available to the Tribunal; and given that findings were required as to the nature of the relationship between them, which the Appellant said was entirely consensual. Mr Williamson emphasised that the messages that the Appellant produced were the best contemporaneous evidence available to the Tribunal. In that regard he referred to the case law that has emphasised that the demeanour of a witness is not a reliable pointer to their honesty and that contemporaneous documentation will always be of the utmost importance, in particular *Kimathi v Foreign and Commonwealth Office* [2018] EWHC 2066 (QB) at para 96 and the review of the authorities in this area by Warby J (as he then was) at paras 38 – 42 in *Dutta*. Mr Williamson sought to draw an analogy with the errors made by the Tribunal in the latter case.

114. Mr Williamson emphasised that the 2020 messages spanned a similar period to Allegations 3 – 6 and that the first message in the series was sent by Ms A, who had initiated this contact between them. He also said that her conduct in relation to the messages was consistent with that of a "willing responder" and inconsistent with the account she gave in her December 2021 Zoom interview where she said that she would ignore it when Dr Higgins sent her inappropriate messages. Mr Williamson also stressed the photographs that Ms A had sent to the Appellant in July 2020, saying that this behaviour was not consistent with her account in her statement that she would say just enough for the Appellant to leave her alone (referred to at para 207 of the Tribunal's determination). In relation to Allegation 6, Mr Williamson highlighted the "I'm bored up here on my own" message from Ms A, submitting that sending this communication to Dr Higgins was inconsistent with her account of being assaulted on 9 October 2020.

115. Another central theme of Mr Williamson's submissions was that the Tribunal had not grappled with a number of the points that he had made in cross-examining Ms A and/or in his submissions and that this was a further indication that it did not subject her account to the proper scrutiny that was required. By way of example, he said that the Tribunal had failed to deal with Ms A's inconsistent accounts as to why she had left the Practice: in her witness statement she had said that it was "completely because of him" (Dr Higgins) that she had left; whereas her contemporaneous messages indicated that she was unhappy at work and thinking of leaving for various reasons including that she disliked the practice manager. The Tribunal had characterised Ms A's evidence as "consistent" without assessing these sorts of points.

116. Mr Williamson submitted that the Tribunal had not grappled with the lapse of time that had occurred before Ms A gave her first account and how that had affected its reliability. Furthermore, the determination was silent on the concerns raised by the Appellant as to how Ms A's account came to be prepared.

117. As regards the other complainants, Mr Williamson said that the Tribunal's reasons did not deal at all with why the messages to Ms B were unwanted, in circumstances where she had deliberately sent messages to Dr Higgins with the intention of eliciting his responses. As regards Ms C, she had been clear in her evidence that "sexual" was not the right term for Dr Higgins' conduct towards her and Ms D had described his messages as "dad jokes". These characterisations were consistent with the Appellant's own account and the Tribunal had given no reasons for rejecting this.

Ground 4

118. Mr Williamson's overarching submission was that the sanction of erasure was wrong, excessive and disproportionate. The Tribunal had accepted that Dr Higgins' conduct was not at the higher end of the sliding scale; the GMC had acknowledged that this was not a case involving "serious harm"; he otherwise had an unblemished record; he had accepted that his conduct was deplorable and had undertaken a substantial amount of remediation and reflection; and there was no evidence of a risk of recurrence. In terms of his insight, Dr Higgins had accepted that he had behaved disgracefully towards the complainants and that he had crossed boundaries that he should not have crossed. The case was distinct from one where a doctor continued to deny the misconduct in total; and there was nothing to support the Tribunal's analysis that Dr Higgins did not appreciate the gravity of his conduct.

119. As it was not entirely clear to me from the remediation documents, the Tribunal's summary of counsel's submissions or his skeleton argument, I asked Mr Williamson to clarify the extent to which the Appellant had admitted the misconduct by the time of the sanctions hearing, the extent to which he admitted it now and whether, for the purposes of the appeal, the Appellant had reneged on admissions that were made at or by the time of the sanctions hearing. Mr Williamson said that there had been no change of position (other than the fact that Dr Higgins now admitted Allegations 10 and 11 in relation to Ms C: see para 10 above). He said that at the time of the sanctions hearing, Dr Higgins accepted the Tribunal's findings in the sense that he accepted they had been made and that the hearing would proceed on that basis. Furthermore, he had admitted Allegations 12 – 13 in relation to Ms D and Allegation 3a in relation to Ms A and, more generally, he had admitted that he had failed to respect or maintain professional boundaries with the complainants, that it was his responsibility to do so and that he should not have been sending them personal messages. However, (save for Allegation 3a) he had continued to deny the proven conduct that was the subject of Allegations 2 – 11 and 14 – 15.

Discussion and conclusions

Grounds 1 and 3

120. As counsel did in their submissions, I will first address Grounds 1 and 3 and then turn to Ground 2. At the outset I will make some overarching observations. Ms A alleged that Dr Higgins had behaved in the way described in Allegations 2 – 6 and he denied

this (save for Allegation 3a), characterising her complaints as fabricated or instances where she had deliberately misrepresented what were consensual exchanges between them. In addition, the Appellant contended that Ms A had colluded with and influenced Ms B and Ms C in the untrue allegations that they made. Accordingly, the Tribunal had to determine where the truth lay in terms of these allegations and denials. To do so, the Tribunal heard evidence from Ms A over a day and from Dr Higgins over three days (para 15 above). It also heard from the other complainants (para 4 above). The Tribunal had the opportunity to evaluate these witnesses. The points that Mr Williamson seeks to raise in support of Grounds 1 and 3 were made by him in cross-examination and/or in his closing submissions and the Tribunal had the opportunity to consider them during their seven days of deliberations. There is no reason to believe that they did not do so conscientiously.

121. It follows that the Tribunal had the significant advantage over this Court of seeing and hearing the witnesses give their evidence. In these circumstances, the appeal Court should be very slow to interfere with its findings of primary fact (paras 71 and 72 above).

122. Furthermore, Mr Williamson does not suggest that the legal directions set out in the determination were other than correct. Amongst other directions, the Tribunal reminded itself to consider all the evidence, before making findings as to the credibility of any of the witnesses (para 17 above).

Ground 1: Ms A

123. As I have summarised at para 97 above, the first part of Ground 1 contends that the Tribunal failed to have regard to the messages that Ms A sent to the Appellant in the period July – October 2020. This proposition is simply inaccurate. The Tribunal referred to these messages at paras 25, 53 and 207 of its determination (paras 18, 23 and 42 above). Moreover, when Mr Williamson complained in his submissions at the Stage 2 hearing that the Tribunal had not had regard to these messages in arriving at its earlier findings, the Tribunal responded in terms at para 276 of its determination that it had considered the nature of the relationship between Ms A and Dr Higgins, explaining that whilst Ms A had sent him messages there was nothing of an inappropriate or sexual content in them and the Tribunal had had regard to the clear imbalance of power in the dynamic of their relationship (paras 52 and 54 above). Furthermore, in so far as Ground 1 also asserts that Ms A failed to explain why she sent these messages to the Appellant, this is also inaccurate. The explanation that she gave is set out in the Tribunal's para 25 (para 18 above). It was open to the Tribunal to accept this explanation.

124. No doubt mindful of the difficulties that I have just identified, Mr Williamson developed a more nuanced version of this contention in his oral submissions. Rather than asserting that the Tribunal had failed to have regard to this material, he said that it had failed to analyse Ms A's evidence with the necessary rigour, uncritically accepting it, including her explanation for sending these messages. I also reject this version of the submission. It is not borne out by the Tribunal's determination. As I have set out at some length between paras 22 – 30 above, the Tribunal examined each of the allegations made by Ms A with care and in considerable detail. Prior to this, the Tribunal began its evaluation of her allegations by reminding itself at its paras 22 – 29 of some overarching points that had been made on Dr Higgins' behalf (paras 18 – 19 above). The overarching points the Tribunal noted at that stage included: changes in her accounts as to why she

had left the Practice; mistakes that she made over dates; the messages and photos that she sent to Dr Higgins via EMIS and Snapchat in both 2020 and in 2021; and why she had made her complaint in November 2021. It is apparent from this that the Tribunal had these overarching credibility points in mind when they evaluated each of her allegations. As it explained at para 40 of the determination, the Tribunal then considered each of the allegations separately, but it evaluated all the evidence in making its findings (para 21 above). This approach is unassailable. In his skeleton argument, Mr Williamson suggested that paras 22 – 29 of its determination indicated that the Tribunal had made up its mind prematurely on whether it believed Ms A, before turning to the detail of the allegations. I reject that suggestion; that is not what the decision says and Mr Williamson accepted in his oral submissions that the Tribunal did not do this.

125. For these reasons I reject the first part of Ground 1. Mr Williamson suggested that the July – October 2020 messages should have played a particularly prominent part in the Tribunal's reasoning because they were the only contemporaneous records. However, whilst they were relevant for the Tribunal to consider (as they did), these messages proved nothing about the core questions of whether the conduct alleged in Allegations 2, 3, 4, 5 and 6 respectively took place. As such, they were bound to take a less central role than a truly contemporaneous document would have done. For example, had the messages referred to in Allegations 3, 4 and/or 5 been available, they would plainly have provided the starting point for evaluating these allegations. Even on the Appellant's case, at their highest, the July – October 2020 messages from Ms A did not go directly to whether the conduct in Allegations 2, 3, 4, 5 and 6 occurred, rather they went to: her credibility; to whether the conduct, if it occurred, was unwanted (Allegation 15); and to the seriousness of any established misconduct. There is no analogy to be drawn between the Tribunal's careful decision in this case and the flawed approach of the Tribunal in *Dutta*, where it asked itself whether it believed the complainant before considering the contemporaneous documents, deciding that it believed her on an "impressionistic" basis as a result of her demeanour; and it adopted "a novel case theory" not advanced by the GMC, rather than considering the evidence in the round (paras 42 – 43).

126. In so far as Mr Williamson also relies upon the fact that Ms A did not disclose the existence of the messages that she sent to Dr Higgins, Ms A was asked about this in cross-examination and she said that it was because she did not regard them as sexual or inappropriate and she did not think of them when giving her earlier accounts. It was open to the Tribunal to accept this explanation and to conclude that her earlier failure to mention the messages did not materially undermine her credibility. As I have already explained, it cannot be inferred that the Tribunal failed to consider this aspect, simply because they did not refer to it explicitly.

127. The second aspect of Ground 1 alleges that the Tribunal failed to have regard to the messages sent by Ms A to Dr Higgins in the period May – July 2021 and her approaching him about a gynaecological issue in March 2021 or later. Again, this contention is unsustainable as the Tribunal in fact referred in terms to these messages at para 26 of its determination, as part of the overarching points it set out regarding Ms A's credibility (para 18 above). Again, it is also incorrect to say that Ms A provided no explanation for sending these messages. Her explanation is recorded in the Tribunal's para 26 and it was entitled to accept it.

128. Mr Williamson advanced what I have described as the more nuanced version of this contention as well at the oral hearing. I reject it for the same reasons as I have set out at paras 124 – 126 above in relation to the July – October 2020 messages, save that his argument is even weaker here as the contact from Ms A came months after the Allegation 6 alleged assault and thus could not be characterised as contemporaneous documentation or as throwing any direct light upon what occurred on 9 October 2020.

Ground 3: Ms A

129. In so far as Ground 3 alleges that the Tribunal did not consider the impact of the July – October 2020 and the 2021 messages on Ms A's credibility, I have just addressed this when I considered Ground 1.

130. Whilst not quite how it is put in the grounds, in his skeleton argument and oral submissions Mr Williamson suggested that it was not rationally open to the Tribunal to find that the Appellant's conduct was "unwanted" within the meaning of section 26 EA 2010, in light of the messages that Ms A had sent to him. This proposition is unsustainable. Between paras 206 – 226 the Tribunal explained in some detail why it concluded that the conduct it had found proved in Allegations 2 – 6 was unwanted by Ms A. I have summarised its reasoning at paras 42 – 46 above.

131. I remind myself that Dr Higgins' proven conduct included: asking Ms A to send him a naked picture and on another occasion to send him a picture of her breasts; inviting Ms A and Ms E to his room to "have a threesome"; messaging her that he could imagine what he would do to her on the examination table; grabbing her and trying to kiss her and then messaging her afterwards "that was fun". Furthermore, by the time it came to consider Allegation 15, the Tribunal had also found that this behaviour was sexually motivated. Accordingly, this serious conduct went way beyond the messages that Ms A had sent to the Appellant and the Tribunal was fully entitled to take the view that there was no equivalence, all the more so, when it factored in, as it did, the difference in age and the complete imbalance of power in their relationship.

132. Furthermore, the Tribunal was entitled to accept that Dr Higgins' behaviour made Ms A feel uncomfortable and that at times it scared her and freaked her out, as she had described (para 42 and 45 above). It is apparent that Ms A had articulately explained that she did not want to be confrontational; that she was scared of the repercussions and so had tried to laugh off Dr Higgins' behaviour; that she had found "it was a very difficult situation to be in"; and she was "young and naïve" and felt that he had taken advantage of this (paras 43 - 44 above). Ms A also explained that she did not want to make a scene as Dr Higgins had promised to help her obtain a Health Care Assistant role if she did not tell anyone about his behaviour and that he would make her feel sorry for him (para 45 above). The Tribunal was entitled to accept this evidence and to find, as it said, that there was "considerable evidence" that the conduct was unwanted (para 44 above). It is also apparent from the Tribunal's findings that Ms A felt she had to alter her behaviour as a result of Dr Higgins' conduct: she left work early after receiving the "threesome" message; she would try to get other members of staff to go to his room instead of her; and after the 9 October 2020 incident she blocked him on Snapchat (paras 43 and 46 above). I also note that the finding that the Allegation 6 assault involved unwanted conduct followed almost inevitably from the nature of the conduct that was found proved.

133. Mr Williamson submitted that the response from Ms A recorded at para 207 of the determination, where she said that she would say just enough for Dr Higgins to leave her alone (para 42 above) was inconsistent with the messages that she sent to him and that the Tribunal's apparent failure to appreciate this showed an absence of critical evaluation on their part. I do not accept this. The point was just one of many that Mr Williamson advanced on his client's behalf; the Tribunal could not be expected to expressly reason through every one of these points in what was already a long determination. The fact that they did not refer to it explicitly is no indication that it was not considered (para 74 above). In any event, I do not see any inconsistency as at that juncture Ms A was talking about not revealing details of her personal life; the messages that she sent that Mr Williamson relies upon did not do so.

134. Similarly, the fact that more than nine months after the 9 October 2020 assault, in circumstances where she saw him every working day at the Practice, Ms A sent him the "bored up here" message was material that the Tribunal were entitled to regard as not significantly denting the credibility of the assault allegation. Again, the fact that the Tribunal did not refer to it expressly cannot be taken as an indication that it did not have regard to this message. In any event, the Tribunal identified multiple reasons why it preferred Ms A's account of those events, as I have summarised at paras 28 – 30 above.

135. Ground 3 also alleges that the Tribunal failed to consider the method by which Ms A's account came to be given. Mr Williamson rests this on the fact that the determination does not describe the process that I summarised at para 15 above. However, it was not incumbent upon it to do so. The Tribunal had watched her video interview given in December 2021 to The Practice and was able to evaluate it and compare it with her testimony. The Tribunal were aware that she was asked in cross-examination about why she had not complained any earlier than November 2021. At its para 29 the Tribunal noted Ms A's account as to why she complained when she did (para 19 above); and as I have just highlighted, when identifying why it found that the conduct was "unwanted", the Tribunal noted that Ms A had explained the means that Dr Higgins' had used to induce her not to complain at an earlier stage. The Tribunal was entitled to accept this evidence. Furthermore, at various points during its fact finding, the Tribunal referred to the Appellant's assertion of collusion between the complainants, explaining why it rejected that proposition (paras 20, 23, 31, 32 and 35 above). In so far as Mr Williamson put some emphasis on Ms A's failure to retain and disclose the notes that she made prior to the video interview, Mr Hopkins indicated that this was not a point that was pressed before the Tribunal and nor was it suggested that this prejudiced Dr Higgins' ability to defend himself against the allegations; in the circumstances there was no obligation on the Tribunal to address it explicitly.

136. Mr Williamson also submitted that the Tribunal had failed to engage with Ms A's reliability, in circumstances where she could not recall details that had not been recorded in her earlier account. The main example that he gave was that when asked in cross-examination, she was unable to say what had happened to the sample of patient urine that she had been carrying immediately prior to the 9 October 2020 assault. This point is also unmeritorious. Firstly, the Tribunal did in fact engage directly with this point in its determination (para 28 above). Secondly, if the Appellant behaved towards Ms A as alleged, it is perfectly understandable that she was not at all focused upon what she did with the urine container and the Tribunal were entitled to accept her explanation in that regard.

137. Mr Williamson emphasised the way that the Tribunal had dealt with Ms A's error in respect of the day when Allegation 2 occurred. He said that the Tribunal was wrong to give her credit for conceding that she must have got the day of the week wrong, in circumstances where she had no choice but to do so, as she was shown that 14 May 2020 was not a Monday. I have summarised the Tribunal's reasoning in respect of this at para 22 above. The Tribunal had the benefit of hearing Ms A's evidence. There are many circumstances in which witnesses do not accept that they are wrong about something, even when presented with seemingly incontrovertible material to that effect; the Tribunal was perfectly entitled to have regard to the willingness shown by Ms A to accept that she was wrong about this matter.

138. Ground 3 also seeks to compare the way that the Tribunal viewed discrepancies in Ms A's accounts, with discrepancies in the Appellant's accounts; the suggestion being that the Tribunal acted unfairly. One of the two examples given relates to Allegation 6. It is said that the Tribunal found Ms A's account to be consistent and credible, although she could not recall what happened to the container of urine; whereas it characterised the Appellant as "slightly confused" over whether he had wanted to show Ms A how to test the urine. There is nothing in this complaint. I have already addressed why the Tribunal were entitled to regard Ms A's inability to recall what she did with the urine jar as insignificant (para 136 above). By contrast, Dr Higgins had relied upon offering to show Ms A how to test the urine sample as the reason why they were together in his room. Accordingly, the Tribunal were entitled to regard this lapse in recollection as a rather more significant feature. However, in any event, the Tribunal only described this aspect of his evidence as "slightly confused"; and it is apparent from its reasoning on Allegation 6 read as a whole, that this was not the main reason why it rejected his denials,the central features being that the account he gave was "implausible" and his apparent admission to earlier inappropriate conduct when he said afterwards that he would not "ever try it on with you again" (para 28 and 29). In short, there was no unfairness or inconsistency in the Tribunal preferring Ms A's account.

139. The second example seeks to contrast the Tribunal's acceptance in respect of Allegation 5a(ii) that aspects of Ms A's evidence that did not feature in her earlier video account were not an embellishment (para 26 above), with the way that it dealt with the Appellant's evidence in respect of Allegation 6 (para 28 above). Again, there is nothing to suggest unfairness in the Tribunal's approach. The Appellant is not comparing like with like. The respective evidence was given in relation to two different allegations and in circumstances where, as I have already noted, it identified a number of additional reasons for rejecting Dr Higgins' denial of the 9 October 2020 assault. Furthermore, as the question of whether he grabbed her (as she said) or offered to hug her (as he said) was central to the Tribunal's resolution of Allegation, it is unsurprising that it attached some significance to the Appellant's failure to mention in his witness statement the explanation that he now gave for offering the hug.

140. Stepping back from these particular examples, when assessing alleged discrepancies in the witnesses' evidence, the Tribunal did so in the context of the totality of the evidence. As Ms A and Dr Higgins gave conflicting accounts in relation to a number of important matters, the Tribunal had to decide who it believed; it could not simply believe both of them. The fact that it preferred the evidence of Ms A to that of Dr Higgins, simply indicates that it was carrying out that task; it is not indicative of unfairness.

141. Furthermore, as Mr Williamson's submissions tended to suggest that Dr Higgins was unfairly penalised by the Tribunal for minor inconsistencies in his evidence (when Ms A was not), it is worth recalling that changes in his account was something that was highlighted by the Tribunal on multiple occasions: see for example paras 22, 24, 25, 26, 27, 30 and 34 above.

142. It is also worth recalling that the Tribunal identified a substantial number of reasons why it rejected Dr Higgins' denials. This was not simply because there were some inconsistencies in his account. The reasons included: the Appellant accepted that he was "out of control" and had failed to maintain professional boundaries in messaging junior colleagues on personal matters outside of work hours (paras 20 and 26 above); he described being in "a bad place" and being unable to stop the messaging even if he tried (para 20 above); he acknowledged that his communications with Ms A were "disgraceful conversations" to be having with a 20 year old (she was, in fact 18) (para 22 above); he accepted that he had undertaken "racy exchanges" with Ms A (para 23 above); his explanation in relation to the 9 October 2020 allegation was implausible and did not make sense (para 28 above); he had admitted to improper conduct in subsequent messages to Ms A (para 29 above); he agreed that he tried to keep his messaging activities secret from his family (para 30 above); he told Ms B not to tell her mother about the messages (para 38 above); and he told Ms C not to tell her boyfriend (para 39 above).

Ground 1: Ms B

143. The first aspect of the complaint in relation to Ms B, is that the Tribunal concluded that the conduct proved under Allegation 9 was "unwanted" without having regard to the fact that she had deliberately engaged in messaging the Appellant as she was wanted to collect evidence against him. This contention is unsustainable. When it considered the "unwanted" issue as part of Allegation 15, the Tribunal expressly referred to the fact that Ms B was willing to add Dr Higgins as a friend on Snapchat in order to collect evidence (para 47 above). However, it went on to find that the 19 November 2021 message was unwanted conduct as it scared Ms B, caused her to leave the office early that day and to move from her allocated workspace to avoid being alone with him (para 47 above). This was a sufficient evidential basis for finding that the conduct was unwanted and it was an unsurprising conclusion considering the power imbalance between them and the proven contents of this message. In any event, the fact that an individual takes steps to record a person's behaviour does not convert what would otherwise be unwanted conduct into wanted conduct. Indeed, on her account, it was precisely because Ms B had concerns about Dr Higgins' behaviour that she was seeking to obtain supporting evidence of it.

144. The second point made under Ground 1 is that the Tribunal failed to have regard to the alleged discrepancy that I have summarised at para 101 above. The short answer is that the Tribunal was aware of this; it was highlighted by Mr Williamson and the Tribunal referred to both of these aspects of Ms B's evidence (paras 32 and 47 above). This point went primarily to Ms B's credibility and to whether Allegation 9 was true (in circumstances where the Appellant wholly denied it), rather than to the question of whether it was unwanted. The Tribunal carefully evaluated the evidence, identifying a number of reasons why it found Allegation 9 proved, not least that Ms B had no motive to lie about the message (paras 32 – 33 above). This provided a rational basis for the Tribunal to accept Ms B's account. Moreover, in its reasoning the Tribunal referred in

terms to the fact that Ms B had not retained the message and it was clearly alive to the significance that Mr Williamson attached to that point (para 32 above). What it made of the point was a matter for the Tribunal's assessment.

Ground 3: Ms B

145. So far as Ms B is concerned, Ground 3 alleges that the Tribunal adopted an inconsistently unfair approach to discrepancies in her evidence, as against discrepancies in Dr Higgins' evidence, suggesting that he was not afforded the same degree of latitude. The grounds give no examples of this, but one is provided in Mr Williamson's skeleton argument. The discrepancy in Ms B's evidence that he highlights concerned whether the Allegation 9 message had been sent via Snapchat or EMIS (para 33 above). Given the time that had elapsed, the Tribunal was perfectly entitled to regard her confusion in relation to this as understandable. It noted that her core allegation had not wavered in any of her accounts. By contrast, there were multiple, significant inconsistencies in Dr Higgins's accounts; I have listed some of the Tribunal's references to them at para 141 above. The Tribunal was entitled to take the approach that it did. Furthermore, this was not the only reason why Ms B's account was accepted. As I have summarised earlier, the Tribunal identified multiple reasons why it preferred her account in respect of the factual allegations (paras 31 – 33 above) and why it regarded the Appellant's conduct towards her as unwanted (para 47 above).

Conclusion

146. Accordingly, I reject Grounds 1 and 3. The Appellant has not made out the specific complaints that he makes. The Tribunal clearly had regard to the evidence that he says was ignored and the conclusions it reached were reasonable ones that were open to it. There is nothing to suggest that the Appellant's points were not considered and it was for the Tribunal to assess the witnesses' accounts. In truth, Grounds 1 and 3 are no more than expressions of disagreement with the Tribunal's conclusions. Whichever formulation from the earlier authorities is applied (para 72 above), this is plainly not a case where any legitimate basis has been shown for interfering with the Tribunal's findings of primary fact or its evaluative assessments.

Ground 2

Ms A

147. The first complaint made under Ground 2 is that the Tribunal failed to provide adequate reasons for accepting Ms A's account and rejecting the Appellant's denials and that it did not assess the evidence suggesting consensual contact (para 102 above). The latter point is simply a repetition of part of Ground 1, which I have already addressed. I have summarised what is required by way of reasons at para 76 above. Even if this is properly regarded as an "exceptional case" within the *Southall* categorisation, the Tribunal more than met the duty to provide "a few sentences dealing with the salient issues" and an explanation as to why Dr Higgins' was disbelieved "even if only by reference to his demeanour, his attitude or his approach to specific questions". A Tribunal's decision is to be read as a whole and it is readily apparent from my earlier summary of its reasoning, that the Tribunal in fact identified multiple reasons why it preferred the accounts of the complainants over that of the Appellant (paras 18 – 51 above).

148. The second complaint is that the Tribunal failed to explicitly address the matters listed in para 19 of the grounds (para 103 above). I reject this as well. The Tribunal was not obliged to deal explicitly with every point that Mr Williamson made in cross-examination or closing, as he accepted during the appeal hearing. The Tribunal's reasons were obliged to meet the standard that I have identified and plainly did so. As regards Mr Williamson's specific points: (i) I have addressed his concern about the absence of express mention of the process by which Ms A made her account at para 135 above; (ii) contrary to the Appellant's contention, the Tribunal did address the point about the urine container (para 136 above); (iii) the Tribunal were entitled to treat the fact that Ms A had not indicated how long the assault lasted in her earlier accounts as insignificant – nothing turned on this and there is no indication that she had been asked about its length at an earlier stage; and (iv) the Tribunal did remind itself of the inconsistency in Ms A's account as to the reasons why she left the Practice, when it set out some of the overarching criticisms that had been made of her evidence (para 18 above).

Ms B

149. It is said that the Tribunal gave inadequate reasons for accepting Ms B's account and rejecting the Appellant's. I do not accept this. The Tribunal gave multiple reasons for doing so, as I have summarised at paras 31 – 33 above and discussed at paras 144 – 145 above.

Ms C and Ms D

150. It is also alleged that the Tribunal gave inadequate reasons for finding that the Appellant's conduct towards Ms C and Ms D was of a sexual nature, when the complainants had not characterised it in that way (para 105 above).

151. This complaint is not well-founded. The Tribunal gave a detailed explanation of why it found that Dr Higgins' conduct towards Ms C was sexually motivated, as I have summarised at para 39 above. The Appellant had told her that he really liked her and wanted to get to know her better. He told her not to tell her boyfriend. He messaged her outside of work hours and on 20 September 2021 suggested she come to his office for a cuddle. The Tribunal was entitled to view this as part of a pattern with the misconduct that it had found proven in relation to Ms A and Ms B. It noted that there was no other plausible motivation for the Appellant's actions. Then when the Tribunal came on to consider Allegation 15, it reminded itself that Ms C had said that "sexual was not the right word" to describe the messages (para 48 above). However, this did not preclude the Tribunal, with the benefit of the wider evidential picture that it had and the findings it had already made (which included overtly sexual behaviour towards Ms A), from concluding that this was conduct of a sexual nature. I summarised the reasons the Tribunal gave for doing so at para 49 above. The reasons given in relation to the findings on both Allegations 14 and 15 were sufficient.

152. As regards Ms D, I have summarised why the Tribunal found the admitted conduct to be sexually motivated at para 40 above. Essentially, this was because it rejected the plausibility of Dr Higgins' explanation that he had simply made the comments as a joke. Furthermore, it is not accurate to characterise Ms D's evidence as agreeing that his comments were a joke; she said that she was "uncomfortable", "surprised", and had emitted a "shocked laugh" (para 40 above). She also said that she did not find it funny

and it made her feel angry (para 51 above). The Tribunal highlighted this evidence, as I have indicated in my earlier summary. The Tribunal was also entitled to take into account the findings it had made in respect of his behaviour towards the other complainants. The reasons give by the Tribunal were sufficient.

153. It therefore follows that I also reject Ground 2 in its entirety.

Ground 4

Insight

154. The Appellant's complaints are twofold: that the Tribunal failed to have sufficient regard to the clear evidence of his insight and remediation; and that it erred in treating his denials as precluding him from demonstrating insight and remediation (para 111 above).

155. It is apparent from its reasoning that the Tribunal carefully considered the evidence of insight and remediation provided by the Appellant (para 67 above). The Tribunal found that there had been "some development" in this regard, but that he had not demonstrated "sufficient understanding, reflection or insight in respect of the seriousness and gravity of the sexually motivated behaviour", such that his insight remained "limited" (paras 67 – 68 above). It was entitled to do so.

156. Contrary to the Appellant's submission, the Tribunal did not suggest that the Appellant's denials precluded him from showing he had developed insight; it accepted he had developed some insight, but not enough. Plainly the Appellant's continued denials were relevant in this regard and the Tribunal was entitled to take them into account. If there were any doubt about this, the position is confirmed by the passages in *Arunachalam* at para 34, *Yusuff* at paras 18 and 20 and *Irvine* at para 83 (paras 91, 93 and 94 above). Although he admitted that he had failed to maintain professional boundaries with the complainants, that he should not have been sending them personal messages and that his conduct was disgraceful, the Appellant continued to deny that he behaved in the ways found proven at Allegations 2, 3 (save for 3a), 4, 5, 6, 7, 8, 9 and 10. He also continued to deny that his conduct had been sexually motivated (Allegation 14) and that he had sexually harassed the complainants (Allegation 15), both of which the Tribunal had also found proven. In this regard his position had not altered from the fact-finding stage of the proceedings, despite the Tribunal's careful, reasoned findings at stage 1. In these circumstances, whilst he was not precluded from doing so, it was inevitably difficult for Dr Higgins to establish anything close to full insight and difficult for the Tribunal to be satisfied that he had truly developed the necessary understanding of his misconduct and the seriousness of what he had done, in circumstances when he continued to deny that the large majority of it had occurred. The admissions that he had made were to a significantly lower level of inappropriate behaviour. There is force in the distinction that counsel for the GMC drew in his closing submissions (para 60 above).

157. I reject the suggestion that the present case is distinguishable from the judicial observations made in the trio of cases I have referred to in the preceding paragraph. As I have explained, the Appellant only admitted to a much lower level of inappropriate conduct than that found by the Tribunal and so the force of those observations is not diminished.

158. Stepping back from the individual allegations which Dr Higgins continued to deny, the submissions made on Grounds 1 – 3 in this appeal did not assist his case in this regard. Despite the Tribunal's clear explanation of the power imbalance and how this dynamic had affected the behaviour of the complainants and the impact of the misconduct upon them, oral submissions referred to Ms A as a "willing responder" (para 114 above) and, via Mr Williamson's skeleton argument, the Appellant continued to contend that this was "an entirely mutual relationship" (para 26). Whilst this material was not before the Tribunal and I would have reached the same conclusion without it, it does underscore the validity of the Tribunal's assessment that his insight remained limited. Mr Williamson continued to characterise the relationship between Ms A and Dr Higgins as a consensual one for the purposes of his submissions on Ground 4. However, that approach is unrealistic; Ground 4 is advanced on the basis that Grounds 1 – 3 have not succeeded; and, accordingly, in circumstances where Dr Higgins had behaved (amongst other respects) as set out in Allegations 5, 6, 14 and 15.

159. The Tribunal's approach was also consistent with the Sanctions Guidance. In the main the Appellant had refused to accept the misconduct and, on the Tribunal's findings, had failed to tell the truth about his behaviour during the hearing (para 85 above). In the circumstances he had not addressed the Tribunal's concerns about his misconduct (para 84 above). The Tribunal also took into account, as it was entitled to do, that much of misconduct occurred after the time when the Appellant said in his evidence that he had started to improve after realising that he has lost his boundaries (para 57 above).

160. As I have noted at para 95 above, assessment of insight is classically a matter for the Tribunal to assess. The Tribunal saw and heard the Appellant giving evidence over three days; subsequently it heard detailed submissions on sanction and it considered the remediation materials submitted by Dr Higgins. There is no basis for finding that it erred in the way that it assessed his level of insight.

Position of trust

161. As I have indicated, Mr Willamson disputes that the circumstances fell within para 150 of the Sanctions Guidance. He contends that this text was aimed at situations where a doctor abused the special position of trust that they held with a patient. I have set out para 150 of the Guidance at para 89 above. The wording is not confined to the doctor – patient relationship. Those who drafted the Guidance could have expressed the proposition in that narrower way, if that was their intention. The reference is simply to "the special position of trust a doctor occupies". I see no reason why this should not include a doctor's abuse of the power that they have over junior colleagues. Indeed, in addition to the overall power imbalance, Dr Higgins specifically tried to use his power in the employment relationship, promising Ms A a Health Care Assistant's role if she did not reveal his behaviour (para 45 above). On the face of it, that is something that makes the misconduct particularly serious, and so it would be surprising if para 150 did not cater for that situation. Such an approach is also consistent with the inclusion of fellow staff within the overarching objective of protecting and promoting the health, safety and wellbeing of the public (paras 82 and 90 above), and with judicial recognition of the seriousness of sexual misconduct towards a colleague (para 92 above).

162. Accordingly, I consider that the Tribunal were correct to treat these circumstances as coming within para 150 of the Sanctions Guidance, as I have summarised at para 69 above.

Risk of repetition of conduct

163. The Tribunal were plainly alive to the Appellant's otherwise unblemished career, which it referred to on a number of occasions. Nonetheless, given that it had legitimately found that Dr Higgins had only developed limited insight into the nature and seriousness of his misconduct, it was entitled to conclude that it was not satisfied that there was other than a significant risk of him repeating his behaviour (para 68 above).

The sanction of erasure

164. I do not accept that the sanction of erasure was excessive or disproportionate in the circumstances of this case. I am satisfied that it was appropriate and necessary (para 81 above).

165. As I have summarised at paras 63, 65, 68 and 69 above, the Tribunal took into account that:

- The nature of the misconduct was inherently serious;
- The abuse of trust by a doctor in a position of seniority over junior colleagues was involved, in circumstances where there was a clear imbalance of power;
- Sexual harassment was involved;
- There were multiple complainants;
- The misconduct occurred over a sustained period;
- The misconduct involved a pattern of sexually motivated behaviour;
- The Appellant offered Ms A a job as a Health Care Assistant if she did not inform anyone; and he told Ms B not to tell her mother and Ms C not to tell her boyfriend;
- He took steps to hide his activities from his family;
- The impact of his conduct upon the complainants (which Dr Higgins accepted would be long-lasting);
- The proven conduct indicated a serious and reckless departure from the principles set out in the GMP.

166. This approach was consistent with its findings on the evidence and consistent with the Sanctions Guidance and the caselaw principles. The Tribunal, rightly, also identified and took into account the mitigating factors, the evidence of remediation and the impact on Dr Higgins (paras 64, 67 and 69 above). In the circumstances the Tribunal was entitled to find that the proven sexual misconduct had the potential to seriously undermine public trust and confidence in the profession; and to have regard to the importance of the reputation of the profession, the need for public protection and to maintain public confidence and proper professional standard standards. The Tribunal was entitled to conclude that the Appellant's behaviour was fundamentally

incompatible with being a doctor and to impose the sanction of erasure from the register.

Outcome

167. Accordingly, and for the reasons I have identified, the appeal is dismissed.